

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF FLORIDA**

PENSION BENEFIT GUARANTY )  
CORPORATION )  
1200 K Street, N.W. )  
Washington, DC 20005 )

Plaintiff, )

v. )

NATIONAL PIANO INSTITUTE )  
CORPORATION )  
1950 SW 30<sup>th</sup> Avenue )  
Pembroke Park, FL 33009 )

NATIONAL PIANO INSTITUTE )  
CORPORATION )  
16173 Eastridge Court )  
Chino Hills, CA )

Defendants. )

Civil Action No. 0:16-cv-61355

**COMPLAINT**

**PRELIMINARY STATEMENT**

1. This action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1301-1461 (2012, Supp. II 2014). The Pension Benefit Guaranty Corporation ("PBGC" or "Plaintiff") brings this action against National Piano Institute Corporation, as incorporated in Florida ("National Piano-Florida") and National Piano Institute Corporation, as incorporated in California ("National Piano-California") (collectively, the "Defendants") to collect: (1) the statutory liability arising under 29 U.S.C. §§ 1362(a), (b) for unfunded benefit liabilities owed to PBGC as a result of the termination of the National Piano Institute Corporation Defined Benefit Plan (the "Pension Plan"); (2) the statutory liability arising under 29 U.S.C. §§ 1082, 1083 for missed minimum funding contributions and (3) the statutory

liability arising under 29 U.S.C. §§ 1306 and 1307 for unpaid pension insurance premiums and termination premiums.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action, without regard to the amount in controversy, under 28 U.S.C. § 1331 and under 29 U.S.C. § 1303(e)(3).

3. Venue properly lies with this Court under 29 U.S.C. § 1303(e)(2).

### **PARTIES**

4. Plaintiff PBGC is 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 established by Title IV of ERISA.

5. Defendant National Piano-California was incorporated on October 2, 1998 under the laws of the State of California. National Piano-California's primary place of business was in Chino Hills, California.

6. Defendant National Piano-Florida was incorporated on January 27, 2003 under the laws of the State of Florida. National Piano-Florida's primary place of business is in Pembroke Park, Florida.

### **STATUTORY BACKGROUND**

7. As the insurer of pension plans covered by Title IV of ERISA, PBGC generally becomes trustee of a pension plan when a pension plan terminates without sufficient assets to pay benefits and, subject to certain statutory limitations, pays the pension plan's unfunded benefits from PBGC's insurance funds. *See* 29 U.S.C. §§ 1321, 1322, 1361.

8. Title IV of ERISA constitutes the exclusive means by which a pension plan covered by its provisions may be terminated. *See* 29 U.S.C. § 1341.

9. If a pension plan lacks sufficient assets to pay accrued benefits, and PBGC determines that certain statutory criteria have been met, PBGC may initiate termination under 29 U.S.C. § 1342.

10. Under 29 U.S.C. §§ 1306, 1307, 1362, each person who is, on the effective plan termination date, a contributing sponsor of a pension plan covered under Title IV of ERISA, as that term is defined in 29 U.S.C. § 1301(a)(13), or a member of the contributing sponsor's controlled group, as that term is defined in 29 U.S.C. § 1301(a)(14), incurs joint and several liability to PBGC for (1) the total amount of the pension plan's unfunded benefit liabilities, as that term is defined in 29 U.S.C. § 1301(a)(18) and 29 C.F.R. § 4062.3(a), plus interest ("Employer Liability"); (2) the total amount of missed minimum funding contributions under arising under 29 U.S.C. §§ 1082, 1083, plus interest; (3) the total amount of insurance premiums, under 29 U.S.C. § 1306(a)(3), ("Insurance Premiums"), plus interest; and (4) the total amount of termination premiums, under 29 U.S.C. § 1306(a)(7) ("Termination Premiums"), plus interest.

### **THE PENSION PLAN**

11. Effective October 1, 2002, National Piano-California established the Pension Plan to provide retirement benefits for certain of its employees.

12. At all relevant times, National Piano-California was the contributing sponsor of the Pension Plan, within the meaning of 29 U.S.C. § 1301(a)(1), (13).

13. At all relevant times, the Pension Plan has been a single-employer pension plan within the meaning of 29 U.S.C. § 1301(a)(15), and has been covered by the pension plan termination insurance program established under Title IV of ERISA. *See* 29 U.S.C. § 1321(a).

14. At all relevant times, Mr. Anthony Siciliano owned 100% of National Piano-California and National Piano-Florida.

15. National Piano-Florida is a member of National Piano-California's controlled group within the meaning of 29 U.S.C. § 1301(a)(14).

16. Under ERISA, the contributing sponsor of a pension plan and each member of its controlled group are jointly and severally liable for the amount of any and all contributions due the pension plan. *See* 26 U.S.C. § 412(b)(1) & (2); *see also* 29 U.S.C. § 1082(b)(1) & (2).

17. As a member of National Piano-California's controlled group, Defendant National Piano-Florida is jointly and severally liable for the amount of any and all minimum funding contributions due the Pension Plan.

18. On April 15, 2014, PBGC issued notice to National Piano-California of PBGC's determination pursuant to 29 U.S.C. § 1342(a) that the Pension Plan should be terminated.

19. By agreement between PBGC and National Piano-California entered into May 7, 2014, the Pension Plan was terminated under 29 U.S.C. §§ 1342 and 1348, with an effective termination date of February 18, 2009, and PBGC was appointed trustee of the Pension Plan under 29 U.S.C. § 1342(c).

**COUNT I**  
**STATUTORY LIABILITY FOR UNFUNDED BENEFITS**  
**PROMISED UNDER THE PLAN**

20. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 19 of this Complaint.

21. When a pension plan terminates under 29 U.S.C. § 1342, the pension plan's contributing sponsor and each member of its controlled group, as of the plan's termination date, are jointly and severally liable for the Employer Liability. *See* 29 U.S.C. § 1362(a).

22. On February 18, 2009, Anthony Siciliano owned 100% of National Piano-California.

23. On February 18, 2009, Anthony Siciliano owned 100% of National Piano-Florida.

24. On February 18, 2009, National Piano-Florida was in the controlled group of National Piano-California. *See* 29 U.S.C. § 1301(a)(14)(A), (B); 29 C.F.R. § 4001.3(b); 26 C.F.R. § 1.414(c)-2(c).

25. PBGC estimates that on February 18, 2009, the amount of the Pension Plan's Employer Liability was \$464,710. PBGC estimated that, as of February 18, 2009, benefit liabilities were \$525,680 and plan assets were \$120,970.

26. National Piano-California is liable to PBGC for \$464,710 for Employer Liability plus interest accruing since the date the Pension Plan terminated at the rate prescribed in section 6601 of the Internal Revenue Code ("IRC"). *See* C.F.R. § 4062.7.

27. National Piano-Florida is in the controlled group of National Piano-California within the meaning of 29 U.S.C. § 1301(a)(14). Therefore, National Piano-Florida is jointly and severally liable for the Employer Liability plus interest. *See* 29 U.S.C. § 1362(a), (b).

28. On February 9, 2015, PBGC sent a letter to National Piano-California demanding payment of the Employer Liability, plus accrued interest. A copy of the letter is attached as Exhibit A hereto.

**COUNT II**  
**STATUTORY LIABILITY FOR UNPAID MINIMUM FUNDING CONTRIBUTIONS**

29. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 28 of this Complaint.

30. National Piano-California, as contributing sponsor of the Pension Plan, was required to pay contributions necessary to satisfy the minimum funding standards under IRC sections 412 and 430 and ERISA sections 302 and 303. *See* 26 U.S.C. §§ 412, 430 and 29 U.S.C. §§ 1082, 1083.

31. National Piano-Florida, as a member of National Piano-California's controlled group, is also jointly and severally liable for missed minimum funding contributions. *See id.*

32. As of February 18, 2009, the amount of unpaid minimum funding contributions due to the Pension Plan is \$16,847.

33. The liability for missed minimum funding contributions, plus interest as applicable, is owed by Defendants to PBGC as trustee of the Pension Plan. *See* 29 U.S.C. §§ 1342(d)(1)(B)(ii) and 1362(c).

**COUNT III**  
**STATUTORY LIABILITY FOR UNPAID INSURANCE PREMIUMS**

34. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 33 of this Complaint.

35. National Piano-California, as contributing sponsor of the Pension Plan, was required to pay insurance premiums to PBGC through the pension plan year in which PBGC became trustee of the Pension Plan. *See* 29 U.S.C. §§ 1306, 1307(a), (e); *see also* 29 C.F.R. § 4007.11(d). National Piano-Florida, as a member of National Piano-California's controlled group, is jointly and severally liable to PBGC for premiums due. *See* 29 U.S.C. § 1307(e)(2).

36. Under regulations prescribed by PBGC, interest on the unpaid insurance premiums is compounded daily and accrues at the rate prescribed in section 6601(a) of the IRC. *See* 29 C.F.R. § 4007.7.

37. Also, under regulations prescribed by PBGC, if any premium payment due is not paid by the due date, PBGC will assess a late payment penalty charge. *See* 29 C.F.R. § 4007.8.

38. Defendants have failed to pay insurance premiums totaling \$11,122.32, including interest and penalties accrued as of October 1, 2012. Interest and penalties continue to accrue.

**COUNT IV**  
**STATUTORY LIABILITY FOR UNPAID TERMINATION PREMIUMS**

39. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 38 of this Complaint.

40. As a result of the termination of the Plan, National Piano-California, as contributing sponsor of the Plan, is required to pay termination premiums ("Termination Premiums") to PBGC. *See* 29 U.S.C. § 1306(a)(7).

41. National Piano-Florida, as a member of National Piano-California's controlled group, is jointly and severally liable to PBGC for unpaid Termination Premiums, plus interest. *See* 29 C.F.R. § 1307.13(g).

42. Under regulations prescribed by PBGC, interest on the Termination Premiums is compounded daily and accrues at the rate prescribed in section 6601(a) of the IRC. *See* 29 C.F.R. § 4007.7.

43. Also, under regulations prescribed by PBGC, if any required termination premium payment is not filed by the due date, PBGC may assess a late payment penalty charge. *See* 29 C.F.R. § 4007.13(c).

44. National Piano-California failed to pay Termination Premiums totaling \$23,750 due on June 30, 2014. Interest and Penalties continue to accrue.

45. National Piano-California also failed to pay Terminations Premium totaling \$23,750 due on June 30, 2015. Interest and Penalties continue to accrue.

**COUNT V**  
**JUDGMENT FOR FEES AND COSTS INCURRED BY PBGC**  
**IN CONNECTION WITH THIS ACTION**

46. PBGC hereby realleges and incorporates by reference each and every allegation in paragraphs 1 through 45 of this Complaint.

47. PBGC will devote substantial time and expense to the pursuit and presentation of its claims in this action. Under 29 U.S.C. § 1303(e)(5), the Court may award PBGC all or a portion of its costs of litigation incurred in any action. PBGC seeks such costs in connection with the pursuit and presentation of its claims in this action.



## **RELIEF REQUESTED**

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1. Judgment in PBGC's favor against the Defendants, jointly and severally, on account of the Defendants' failure to pay the Employer Liability for the Pension Plan, in the amount of \$464,710, plus interest that continues to accrue through the date of judgment, calculated in accordance with 29 C.F.R. § 4062.7(a), (c);
2. Judgment in PBGC's favor against Defendants, jointly and severally, on account of the Defendants' failure to pay the outstanding minimum funding contributions of \$16,847 in accordance with 29 U.S.C. §§ 1082, 1083, plus interest as applicable;
3. Judgment in PBGC's favor against the Defendants, jointly and severally, on account of the Defendant's failure to pay the insurance premiums owed to PBGC for the Pension Plan, in the amount of \$11,122.32, plus any additional interest and penalties that continue to accrue through the date of judgment, calculated in accordance with 29 C.F.R. §§ 4007.7, 4007.8;
4. Judgment in PBGC's favor against the Defendants, jointly and severally, on account of the Defendants' failure to pay Termination Premiums owed to PBGC, in the amount of \$47,500, plus any additional unpaid Termination Premium installments and any interest and penalties that accrue through the date of judgment, calculated in accordance with 29 C.F.R. §§ 4007.7, 4007.13(c);
5. Award PBGC all of its costs of litigation in this case pursuant to 29 U.S.C. § 1303(e)(5); and
6. Award such other further relief that is just and proper.

Respectfully submitted,

Dated: June 22, 2016

/s/ Kelly R. Cusick  
ISRAEL GOLDOWITZ  
Chief Counsel  
CHARLES L. FINKE  
Deputy Chief Counsel  
JOEL W. RUDERMAN  
Assistant Chief Counsel  
KELLY R. CUSICK  
Attorney, Special Bar ID A5502019  
PENSION BENEFIT GUARANTY  
CORPORATION  
Office of the Chief Counsel  
1200 K Street, N.W.  
Washington, D.C. 20005  
Phone: (202) 326-4020 ext. 6206  
Fax: (202) 326-4112  
Emails: [cusick.kelly@pbgc.gov](mailto:cusick.kelly@pbgc.gov) and  
[efile@pbgc.gov](mailto:efile@pbgc.gov)

Attorneys for Plaintiff  
Pension Benefit Guaranty Corporation