

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OHIO**

PENSION BENEFIT GUARANTY)
CORPORATION,)
1200 K Street, NW)
Washington, DC 20005-4026,)

Plaintiff,)

v.)

FINDLAY INDUSTRIES, INC.)
c/o Philip J. Gardner)
831 Fox Run Road No. 11)
Findlay, OH 45480,)

PHILIP D. GARDNER INTER)
VIVOS TRUST AGREEMENT)
DATED JANUARY 20, 1987)
c/o Michael J. Gardner)
16067 SR 12 East)
Findlay, OH 45840,)

PHILIP D. GARDNER THIRD)
AMENDED AND RESTATED)
TRUST DATED APRIL 23, 2002)
c/o Philip J. Gardner)
831 Fox Run Road No. 11)
Findlay, OH 45480,)

HG3)
c/o Philip J. Gardner)
831 Fox Run Road No. 11)
Findlay, OH 45480,)

ESTATE OF PHILIP D. GARDNER)
c/o Philip J. Gardner)
831 Fox Run Road No. 11)
Findlay, OH 45480,)

PHILIP J. GARDNER, individually)
831 Fox Run Road No. 11)
Findlay, OH 45480,)

FIRST AMENDED COMPLAINT

Case 3:15-cv-01421

PHILIP J. GARDNER TRUST)
 c/o Philip J. Gardner)
 831 Fox Run Road No. 11)
 Findlay, OH 45480,)
)
 SEPTEMBER ENDS CO.)
 5225 Prosperity Drive)
 Springfield, OH 45502)
)
 BACK IN BLACK CO.)
 2100 Fostoria Road)
 Findlay, OH 45840)
)
 and)
)
 MICHAEL J. GARDNER, individually)
 16067 SR 12 East)
 Findlay, OH 45840,)
)
 Defendants.)
 _____)

PRELIMINARY STATEMENT

This action arises under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”), *as amended*, 29 U.S.C. §§ 1301-1461 (2012, Supp. I 2013) and the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 *et seq.* Plaintiff, Pension Benefit Guaranty Corporation (“PBGC”) brings this action to collect from Defendants Findlay Industries, Inc. (“FII”), Philip D. Gardner Inter Vivos Trust Agreement dated January 20, 1987 (“PDG Trust 1987”), Philip D. Gardner Third Amended and Restated Trust dated April 23, 2002 (“PDG Trust 2002”), HG3, Estate of Philip D. Gardner (“PDG Estate”), Philip J. Gardner (“PJG”), Philip J. Gardner Trust (“PJG Trust”), September Ends Co. (“September Ends”), and Back in Black Co. (“Back in Black”) (the foregoing Defendants, the “Title IV Defendants”) (1) the statutory liability arising under 29 U.S.C. § 1362 for unfunded benefit liabilities owed to PBGC as a result of termination of the Findlay Industries, Inc. Pension Plan (the “Plan”) and (2) the statutory

liability arising under 29 U.S.C. §§ 1306 and 1307 for termination premiums owed to PBGC. PBGC also brings this action to recover from Defendants PDG Trust 2002, PJG, Michael J. Gardner (“MJG”), and the PJG Trust, property fraudulently transferred to them by one or more of the Title IV Defendants, or the value thereof. PBGC commenced this action by filing a Complaint on July 17, 2015.

PARTIES

1. PBGC is the United States government agency that administers and regulates the defined benefit pension plan insurance program established by Title IV of ERISA. PBGC, a government-owned corporation, has independent litigation authority. 29 U.S.C. § 1302(b)(1).

2. Defendant FII is a corporation organized under the law of Ohio, which, before it ceased operations, had its principal place of business in Findlay, Ohio. PJG is the President and Chairman of the Board of Directors of FII.

3. Defendant PDG Trust 1987 is a trust settled by Philip D. Gardner (“PDG”), a deceased individual and the father of PJG and MJG. Before it ceased operations, the PDG Trust 1987 had its principal place of business in Findlay, Ohio. On information and belief, MJG is the trustee of the PDG Trust 1987.

4. Defendant PDG Trust 2002 is a trust settled by PDG, which, before it ceased operations, had its principal place of business in Findlay, Ohio. On information and belief, PJG is the trustee of the PDG Trust 2002.

5. Defendant HG3 is a general partnership, between PJG and the PDG Estate, organized under the law of Ohio, which, before it ceased operations, transacted business in Findlay, Ohio, and Bloomdale, Ohio.

6. Defendant PDG Estate is the estate of PDG, which was administered by the Probate Court of Hancock County, Ohio. PJG was the fiduciary of the Estate.

7. Defendant PJG is an individual residing in Findlay, Ohio.

8. Defendant Philip J. Gardner Trust (“PJG Trust”) is a revocable trust settled by PJG, of which PJG is the trustee.

9. Defendant September Ends is a corporation organized under the law of Ohio, with its principal place of business in Springfield, Ohio

10. Defendant Back in Black is a corporation organized under the law of Ohio, with its principal place of business in Findlay, Ohio,

11. Defendant MJG is an individual residing in Findlay, Ohio.

JURISDICTION AND VENUE

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

13. Venue in this district is proper under 28 U.S.C. § 1391 and 29 U.S.C. § 1303(e)(2).

STATUTORY AND REGULATORY BACKGROUND

14. Congress established PBGC to administer the federal defined benefit pension insurance program. Its mission is to: (1) encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants; (2) provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans covered by Title IV of ERISA (“Title IV Plans”); and (3) maintain Title IV Plan premiums at the lowest level possible. 29 U.S.C. § 1302(a).

15. PBGC may determine that a Title IV Plan should be terminated when the plan will be unable to pay benefits when due, *i.e.* because the plan is not being administered; or the sponsor cannot afford to maintain the plan, and no other member of its “controlled group” -- organizations related by certain levels of common ownership, as described below -- is willing and able to assume the plan. 29 U.S.C. § 1342(a)(2).

16. When a Title IV Plan terminates without sufficient assets to pay benefits, PBGC typically becomes trustee of the plan, takes over the plan’s assets, and pays guaranteed benefits to plan participants and their surviving beneficiaries, subject to statutory limitations. 29 U.S.C. §§ 1322, 1342, 1344, 1361.

17. The plan sponsor and each other member of its controlled group as of the date of plan termination (“DOPT”) are jointly and severally liable to PBGC for the amount of the plan’s unfunded benefit liabilities as of the termination date, plus interest. 29 U.S.C. § 1362(a)(1), (b)(1)(A).

18. The plan sponsor and each other member of its controlled group as of the day before DOPT are jointly and severally liable to PBGC for termination premiums, plus interest and penalties. 29 U.S.C. §§ 1306(a)(7)(A), 1307(e); 29 C.F.R. § 4007.13(g).

19. The controlled group with respect to any person consists of that person and all other persons under “common control” with that person, as determined under PBGC regulations consistent and coextensive with Treasury regulations under Internal Revenue Code (“IRC”) § 414(b) and (c). 29 U.S.C. § 1301(a)(14)(A), (B).

20. Persons are under common control if they are “two or more trades or businesses under common control” as defined in regulations under IRC § 414(c). 29 C.F.R. § 4001.3(b)(2).

21. Persons are “two or more trades or businesses under common control” as defined in regulations under IRC § 414(c) if they are a “brother-sister group of trades under common control” as defined in Treas. Reg. 1.414(c)-2(c). Treas. Reg. 1.414(c)-2(a).

22. The term “brother-sister group of trades under common control”, as defined in Treas. Reg. 1.414(c)-2(c), means two or more organizations conducting trades or businesses if the same five or fewer individuals own (directly and by attribution) a controlling interest in each organization; and taking into account the ownership of each such individual only to the extent such ownership is identical with respect to each organization, such individuals are in effective control of the organization. Treas. Reg. 1.414(c)-2(c)(1).

23. For purposes of Treas. Reg. 1.414(c)-2(c), an “organization” includes, *inter alia*, a partnership, a trust, or a corporation. Treas. Reg. 1.414(c)-2(a).

24. For purposes of Treas. Reg. 1.414(c)-2(c), a “controlling interest” means:

- a. as to a corporation, ownership of stock possessing at least 80 percent of the total combined voting power of all stock of such corporation, Treas. Reg. 1.414(c)-2(b)(2)(i)(A);
- b. as to trust, ownership of an actuarial interest of at least 80 percent of such trust, Treas. Reg. 1.414(c)-2(b)(2)(i)(B), assuming the maximum exercise of discretion in favor of each beneficiary, and determined using the factors and methods prescribed in estate tax regulations, Treas. Reg. 1.414(c)-2(b)(2)(ii);
and
- c. as to a partnership, ownership of at least 80 percent of the profits interest or capital interest of such partnership, Treas. Reg. 1.414(c)-2(b)(2)(i)(C).

25. For purposes of Treas. Reg. 1.414(c)-2(c), “effective control” means:
- a. as to a corporation, ownership of stock possessing more than 50 percent of the total combined voting power of all stock of such corporation, Treas. Reg. 1.414(c)-2(c)(2)(i);
 - b. as to trust, ownership of an actuarial interest of more than 50 percent of such trust, Treas. Reg. 1.414(c)-2(c)(2)(ii), assuming the maximum exercise of discretion in favor of each beneficiary, and determined using the factors and methods prescribed in estate tax regulations, Treas. Reg. 1.414(c)-2(b)(2)(ii); and
 - c. as to a partnership, ownership of more than 50 percent of the profits interest or capital interest of such partnership, Treas. Reg. 1.414(c)-2(c)(2)(iii).

PENSION PLAN

26. The Plan was established by FII, effective June 1, 1964, to provide pension benefits for certain of its employees.
27. At all relevant times, the Plan has been a Title IV Plan.
28. At all relevant times, FII was the sponsor and administrator of the Plan.
29. By an agreement dated December 20, 2012, between PBGC and FII as the Plan administrator, the Plan was terminated pursuant to 29 U.S.C. § 1342(c). The agreement established July 18, 2009 as the DOPT under 29 U.S.C. § 1348. Under the agreement, PBGC was appointed statutory trustee of the Plan pursuant to 29 U.S.C. § 1342(c). PBGC is paying the benefits under the Plan, up to certain statutory limits.

COUNT I
FII LIABILITY FOR UNFUNDED BENEFIT LIABILITIES
(29 U.S.C. § 1362)

30. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

31. Upon termination of the Plan, FII as the Plan's contributing sponsor became liable to PBGC for the "amount of unfunded benefit liabilities" under the Plan, as that term is defined in 29 U.S.C. § 1301(a)(18), as of DOPT, plus interest calculated in accordance with PBGC's regulation at 29 C.F.R. § 4062.7. 29 U.S.C. § 1362(a), (b).

32. PBGC estimates that, as of the July 18, 2009, DOPT, the value of the benefit liabilities under the Plan, based on assumptions prescribed by PBGC for the purposes of 29 U.S.C. § 1344, was \$47,723,286.

33. PBGC estimates that as of the July 18, 2009, DOPT, the current value of the Plan's assets was \$27,240,726.

34. Accordingly, PBGC estimates that as of the July 18, 2009, DOPT, the "amount of unfunded benefit liabilities" under the Plan was \$20,482,560 ("DOPT UBL").

35. As of June 30, 2015, interest in the amount of \$4,486,723, calculated in accordance with 29 C.F.R. § 4062.7, had accrued on the DOPT UBL. Since June 30, 2015, interest has continued and continues to accrue.

36. Based on the foregoing, FII is liable to PBGC for \$24,969,283, plus interest from June 30, 2015 ("UBL Liability").

COUNT II
FII LIABILITY FOR TERMINATION PREMIUMS
(29 U.S.C. §§ 1306, 1307)

37. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

38. As the contributing sponsor of the Plan, FII is liable for PBGC insurance premiums, and interest and penalties on late-paid or unpaid premiums, with respect to the Plan. 29 U.S.C. § 1307.

39. Because the Plan terminated under 29 U.S.C. § 1342, the PBGC insurance premiums for the Plan include termination premiums at the rate of \$1,250 per Plan participant for each of the three years following the Plan's termination ("Termination Premiums"). *See* 29 U.S.C. § 1306(a)(7).

40. Neither FII nor any member of its Controlled Group filed a form with PBGC indicating the number of Plan participants on the day before DOPT. *See* 29 C.F.R. §§ 4006.7(b), 4007.13(b).

41. Based on the best available information, PBGC estimates that on the day before DOPT, the Plan had 1,319 participants. Accordingly, the estimated Termination Premium is \$1,648,750 per year for three years. *See* 29 U.S.C. § 1306(a)(7)(A).

42. The Termination Premiums were due on each of the following dates: January 30, 2013; January 30, 2014; and January 30, 2015. *See* 29 C.F.R. § 4007.13(f).

43. No part of any Termination Premium has been paid.

44. As of June 30, 2015, interest in the amount of \$215,562.61, calculated in accordance with 29 U.S.C. § 1307(b)(1), had accrued on the Termination Premiums. Since June 30, 2015, interest has continued and continues to accrue.

45. As of June 30, 2015, penalties in the amount of \$3,462,375, calculated in accordance with 29 C.F.R. § 4007.8, had accrued on the Termination Premiums. Since June 30, 2015, penalties have continued and continue to accrue.

46. Based on the foregoing, FII is liable to PBGC for \$8,624,187.61, plus interest and penalties from June 30, 2015 (“Termination Premiums Liability”, and with the UBL Liability, the “Termination Liabilities”).

COUNT III
CONTROLLED GROUP LIABILITY OF PDG TRUST 1987
(29 U.S.C. §§ 1306, 1307, 1362)

47. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

48. When a pension plan terminates, the plan’s contributing sponsor and each member of its controlled group, as of DOPT and the day before DOPT, are jointly and severally liable for the Termination Liabilities. *See* 29 U.S.C. §§ 1362, 1306, 1307.

49. As of the July 18, 2009, DOPT, and the day before DOPT, July 17, 2009, PDG Trust 1987 was a member of FII’s controlled group, jointly and severally liable for the Termination Liabilities.

50. As of the July 18, 2009, DOPT, and the day before DOPT, July 17, 2009, direct ownership of FII’s voting stock was as follows: PDG Trust 2002, 58.57%; PJG Trust, 37.08%; and PJG, 4.35%.

51. PJG and MJG were equal beneficiaries of the PDG Trust 2002’s interest in FII’s voting stock, so 50% of the PDG Trust 2002’s ownership of FII was attributable to each brother. *See* Treas. Reg. § 1.414(c)-4(b)(3)(i). Through the PDG Trust 2002, 29.285% of the total ownership of FII was attributable to each brother.

52. The PJG Trust was entirely revocable by PJG, so he was a constructive owner of 100% of its FII stock, and 37.08% of total FII stock is attributable to PJG through the PJG Trust. *See* 26 U.S.C. § 676(a); Treas. Reg. § 1.414(c)-4(b)(3)(iii).

53. The PJG Trust provides that upon PJG's death, the PJG Trust's FII stock shall be distributed to trusts for the benefit of MJG's children and their descendants. As of July 17-18, 2009, MJG had two children; both were under the age of 21, so their interests in the PJG Trust's FII stock are attributable to him. *See* Treas. Reg. § 1.414(c)-4(b)(6)(i).

54. Remainder beneficiaries' actuarial interests are based on the life tenant's age at his birthday nearest to the date in question, and the interest rate under 26 U.S.C. § 7520 ("7520 Rate") on that date. Treas. Reg. § 20.2031-7(c).

55. PJG was 52 years old on his birthday nearest to July 17-18, 2009. The 7520 Rate was 3.4% throughout July 2009. Rev. Rul. 2009-20. Accordingly, the July 17-18, 2009, aggregate actuarial interest of MJG's children in the PJG Trust's FII stock was 41.945%. *See* Treas. Reg. § 20.2031-7, Table S.

56. Of total FII stock, 15.553206% was attributable to MJG's children in the aggregate, and through them to MJG, on July 17-18, 2009.

57. Thus, on July 17-18, 2009, about 71% of FII's voting stock -- 29.285% plus 37.08% plus 4.35% -- was attributable to PJG; and about 45% of FII's voting stock -- 29.285% plus 15.553206% -- was attributable to MJG.

58. Collectively, PJG and MJG owned a controlling interest in FII as of July 17-18, 2009. *See* Treas. Reg. 1.414(c)-2(b)(2)(i)(A).

59. The PDG Trust 1987 provided for the support of PDG's sisters during their lives, with the remainder going to PJG and MJG equally upon the death of PDG's last surviving sister.

60. Only one of PDG's sisters, Lois Newkirk, was a beneficiary of the PDG Trust 1987 on July 17-18, 2009.

61. Lois Newkirk was 86 years old on her birthday nearest to July 17-18, 2009. Accordingly, the DOPT aggregate actuarial interest of PJG and MJG in the PDG Trust 1987 was 83.089%. *See* Treas. Reg. § 20.2031-7, Table S.

62. Collectively, as of July 17-18, 2009, PJG and MJG owned a controlling interest in the PDG Trust 1987 as well as in FII. *See* Treas. Reg. 1.414(c)-2(b)(2)(i)(B).

63. Taking the ownership of PJG and MJG in FII and the PDG Trust 1987 into account only to the extent that each brother's interest in the two organizations was identical, as of July 17-18, 2009 they owned 83.089% of each organization, and thus were in effective control of each organization. *See* Treas. Reg. 1.414(c)-2(c).

64. The PDG Trust 1987 was leasing a parcel of real property to FII from no later than July 1, 1993, through at least November 2009.

65. The PDG Trust 1987's leasing activities had a substantial economic nexus with FII, such that including the PDG Trust 1987 in FII's controlled group would further the purpose of the controlled group rules, preventing employers from limiting their responsibilities by fractionalizing into separate entities.

66. The PDG Trust 1987 was conducting a trade or business for ERISA purposes.

67. FII was conducting a trade or business for ERISA purposes.

68. The PDG Trust 1987 was in a controlled group with FII as of July 17-18, 2009, and is liable for the Termination Liabilities, jointly and severally with FII and the other members of its controlled group.

COUNT IV
CONTROLLED GROUP LIABILITY OF PDG TRUST 2002
(29 U.S.C. §§ 1306, 1307, 1362)

69. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

70. When a pension plan terminates, the plan's contributing sponsor and each member of its controlled group, as of DOPT and the day before DOPT, are jointly and severally liable for the Termination Liabilities. *See* 29 U.S.C. §§ 1362, 1306, 1307.

71. As of the July 18, 2009, DOPT, and the day before DOPT, July 17, 2009, PDG Trust 2002 was a member of FII's controlled group, jointly and severally liable for the Termination Liabilities.

72. At some time before his death on January 21, 2006, PDG transferred the following real estate to the PDG Trust 2002 (collectively, the "PDG Trust 2002 Rental Real Estate"):

- a. Hancock County parcel numbered 57-0000211920, located at 2000-2100 Fostoria Avenue, Findlay, Ohio ("2000-2100 Fostoria");
- b. Hancock County parcel numbered 57-0000211900, located at 4000 Fostoria Avenue, Findlay, Ohio ("4000 Fostoria"); and
- c. Hancock County parcel numbered 57-0001003499, located at 5500 Fostoria Avenue, Findlay, Ohio ("5500 Fostoria").

73. The PDG Trust 2002 provided that upon the death of PDG, the PDG Trust 2002 Rental Real Estate was to be distributed to PJG.

74. The PDG Trust 2002 Rental Real Estate was not distributed to PJG until November 20, 2009.

75. Rents for the PDG Trust 2002 Rental Real Estate were paid to the PDG Trust 2002; were not segregated for the benefit of PJG; and were disclaimed by PJG.

76. Beginning no later than July 1, 1992, all of the PDG Trust 2002 Rental Real Estate was leased to FII.

77. 2000-2100 Fostoria was subdivided into three parts, 2000 Fostoria Bldg. A; 2000 Fostoria Bldg. B; and 2000 Fostoria Bldg. C and 2100 Fostoria.

78. 2000 Fostoria Bldg. A was leased to a tenant unrelated to FII for five years beginning on July 1, 2007.

79. 2000 Fostoria Bldg. B was leased to FII through October 2009.

80. 2000 Fostoria Bldg. C and 2100 Fostoria were leased to FII through May 2009; and since that time, have been leased to Back in Black.

81. 4000 Fostoria was leased to FII through December 2009.

82. 5500 Fostoria was leased to FII through November 2009.

83. The PDG Trust 2002's leasing activities had a substantial economic nexus with FII, such that including the PDG Trust 2002 in FII's controlled group would further the purpose of the controlled group rules, preventing employers from limiting their responsibilities by fractionalizing into separate entities.

84. The PDG Trust 2002 was conducting a trade or business for ERISA purposes.

85. Based on the treatment of rents, as of July 17-18, 2009, PJG and MJG each owned half of the PDG Trust 2002's real estate leasing trade or business.

86. Collectively, as of July 17-18, 2009, PJG and MJG owned a controlling interest in the PDG Trust 2002 as well as in FII. *See* Treas. Reg. 1.414(c)-2(b)(2)(i).

87. Taking the ownership of PJG and MJG in FII and the PDG Trust 2002 into account only to the extent that each brother's interest in the two organizations was identical, as of July 17-18, 2009, they owned about 95% of each organization, and thus were in effective control of each organization. *See* Treas. Reg. 1.414(c)-2(c)(2).

88. The PDG Trust 2002 was in a controlled group with FII as of July 17-18, 2009, and is liable for the Termination Liabilities, jointly and severally with FII and the other members of its controlled group.

COUNT V
CONTROLLED GROUP LIABILITY OF HG3
(29 U.S.C. §§ 1306, 1307, 1362)

89. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

90. When a pension plan terminates, the plan's contributing sponsor and each member of its controlled group, as of DOPT and the day before DOPT, are jointly and severally liable for the Termination Liabilities. *See* 29 U.S.C. §§ 1362, 1306, 1307.

91. As of the July 18, 2009, DOPT, and the day before DOPT, July 17, 2009, HG3 was a member of FII's controlled group, jointly and severally liable for the Termination Liabilities.

92. HG3 was a general partnership of PJG and PDG; and after PDG's death on January 21, 2006, of PJG and the PDG Estate.

93. Each partner owned 50 percent of the profits interest in HG3, and 50 percent of the capital interest in HG3

94. Under PDG's Last Will and Testament, the residue of the PDG Estate was to pass to the PDG Trust 2002.

95. Under the PDG Trust 2002, its interest in HG3 was to be distributed to MJG.
96. As of July 17-18, 2009, PJG and MJG each owned half of HG3, directly or indirectly. *See* Treas. Reg. 1.414(c)-4(b)(3)(i).
97. Collectively, as of July 17-18, 2009, PJG and MJG owned a controlling interest in HG3 as well as in FII. *See* Treas. Reg. 1.414(c)-2(b)(2)(i).
98. Taking the ownership of PJG and MJG in FII and the HG3 into account only to the extent that each brother's interest in the two organizations was identical, as of July 17-18, 2009 they owned about 95% of each organization, and thus were in effective control of each organization. *See* Treas. Reg. 1.414(c)-2(c)(2).
99. HG3's 2009 tax return and partnership agreements refer repeatedly to the "business" and "profits" of HG3.
100. Real estate owned by HG3 was leased to Bloomdale Plastics Company ("Bloomdale Plastics"), from some time before PDG's death until HG3 transferred the real estate and dissolved in November 2009.
101. On information and belief, most of Bloomdale Plastics' revenues came from FII, from some time before PDG's death until FII ceased business operations.
102. In 2008, HG3 advanced \$4.7 million to FII (\$4 million directly, and \$700,000 through Centrex Plastics, LLC ("Centrex")), and was repaid \$5.7 million by FII's majority shareholder, the PDG Trust 2002.
103. HG3's leasing and lending activities had a substantial economic nexus with FII, such that including HG3 in FII's controlled group would further the purpose of the controlled group rules, preventing employers from limiting their responsibilities by fractionalizing into separate entities.

104. HG3 was conducting a trade or business for ERISA purposes.

105. HG3 was in a controlled group with FII as of July 17-18, 2009, and is liable for the Termination Liabilities, jointly and severally with FII and the other members of its controlled group.

COUNT VI
LIABILITY OF HG3'S PARTNERS UNDER OHIO LAW

106. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

107. HG3 was an Ohio general partnership.

108. All partners of an Ohio general partnership are liable jointly and severally for all obligations of the partnership incurred when they were partners. Ohio Rev. Code Ann. § 1776.36.

109. HG3 incurred the Termination Premiums Liability on July 17, 2009, the day before DOPT. 29 C.F.R. § 4007.13(g).

110. HG3 incurred the UBL Liability on the July 18, 2009, DOPT. 29 U.S.C. § 1362(a)(1).

111. As of July 17-18, 2009, the partners of HG3 were PJG and the PDG Estate.

112. Accordingly, PJG, individually, and the PDG Estate, are jointly and severally liable for the Termination Liabilities.

COUNT VII
PJG TRUST LIABILITY UNDER OHIO LAW

113. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

114. The PJG Trust is governed by the law of the State of Ohio.

115. Under Ohio law, during the life of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. Ohio Rev. Code Ann. § 5805.06(A)(1).

116. PJG is the settlor of the PJG Trust.

117. PJG is not deceased.

118. The PJG Trust is revocable.

119. The PJG Trust is liable for the Termination Liabilities, and for PJG's liability as a transferee of fraudulent transfers.

COUNT VIII
FRAUDULENT TRANSFERS BY FII
(28 U.S.C. §§ 3304, 3306, 3307)

120. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

121. A transfer is constructively fraudulent as to a debt to PBGC arising before or after the transfer, if the debtor makes the transfer without receiving a reasonably equivalent value in exchange, and believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due. 28 U.S.C. § 3304(b)(1)(B).

122. FII transferred property as follows (collectively, the "FII Transfers"):

- a. Cash payments were made to PJG in the amounts of \$160,000.02, on August 31, 2009; \$53,334.33, on October 13, 2009; and in additional amounts on later dates.
- b. Cash payments were made to the PDG Trust 2002 in the amounts of \$32,150, on August 31, 2009; \$32,150, on September 30, 2009; \$1,550,000, on October 22, 2009; \$29,500, on October 30, 2009; and \$22,500, on November 30, 2009.

123. Of the FII Transfers to PJG, payments of \$120,000 were rent for the months July 2009 through October 2009, on a facility in or near Lake Wales, Florida, where FII had ceased operating in April, 2009. On information and belief, FII paid additional rent to PJG for subsequent months on this facility.

124. Of the FII Transfers to PJG, payments of \$93,333.36 were rent for the months July 2009 through October 2009, on a facility in or near St. Louis, Missouri, where FII had ceased operating in or before September, 2008.

125. Of the FII Transfers to the PDG Trust 2002, payments of \$116,300 were rent for the months September 2009 through December 2009, on facilities in or near Findlay, Ohio, where FII had ceased operating in or before June, 2009 (collectively, with the rent paid on the facilities in Florida and Missouri, the “Rental Payments”).

126. The remaining FII Transfer to the PDG Trust 2002, the payment of \$1,550,000, on October 22, 2009, was made in settlement of an alleged antecedent debt based on advances by the PDG Trust 2002 to FII, and on repayments by the PDG Trust 2002 of HG3’s advances to FII (“Alleged Debt”). However, the Alleged Debt should be recharacterized as equity, for the following reasons:

- a. There was no instrument evidencing indebtedness of FII to the PDG Trust 2002.
- b. There was no fixed maturity date or schedule of payments for the Alleged Debt.
- c. There was no fixed rate for the accrual of interest, there were no payments of interest, and the PDG Trust 2002 did not even claim interest, on the Alleged Debt.

- d. FII was inadequately capitalized.
- e. There was substantial identity of interest between the alleged creditor, the PDG Trust 2002, whose only beneficiaries were PJG and MJG; and the ultimate owners of the alleged debtor, FII, again only PJG and MJG.
- f. The Alleged Debt was not secured.
- g. FII could not have obtained financing from unrelated lenders.
- h. Unlike most of FII's debts, the Alleged Debt was neither guaranteed by FII insiders, nor assumed by the MJG-owned purchasers of FII's assets.
- i. There was no sinking fund to provide repayments of the Alleged Debt.

127. On information and belief, FII received little or no value in exchange for any of the Rental Payments.

128. FII received no value in exchange for the payment on the Alleged Debt ("Alleged Debt Payment").

129. As of each of the dates of the FII Transfers, FII believed or reasonably should have believed that it would incur the Termination Liabilities.

130. As of each of the dates of the FII Transfers, FII believed or reasonably should have believed that the Termination Liabilities were beyond its ability to pay as they became due.

131. On information and belief, each of the Rental Payments was constructively fraudulent as to the Termination Liabilities.

132. The Alleged Debt Payment was constructively fraudulent as to the Termination Liabilities.

133. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other

property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

134. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT IX
FRAUDULENT TRANSFERS BY PDG TRUST 1987
(28 U.S.C. §§ 3304, 3306, 3307)

135. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

136. A transfer is constructively fraudulent as to a pre-existing debt to PBGC if the debtor makes the transfer without receiving a reasonably equivalent value in exchange, and is insolvent at the time of the transfer. 28 U.S.C. § 3304(a)(1).

137. The PDG Trust 1987's debts to PBGC for the Termination Liabilities arose no later than December 20, 2012, when the agreement terminating the Plan was executed.

138. Lois Newkirk, the last life beneficiary of the PDG Trust 1987, died on March 19, 2014.

139. On April 24, 2014, a Trustees' Deed, transferring the following real property (collectively, the "PDG Trust 1987 Real Estate") to PJG and MJG, was recorded:

- a. Hancock County parcel numbered 57-0000221560, located at Lynn Street, Findlay, Ohio; and
- b. Hancock County parcel numbered 61-0000342050, located at 400 Walnut Street, Findlay, Ohio.

140. On information and belief, the PDG Trust 1987 also transferred cash or other personal property to PJG and MJG at some time after March 19, 2014 (such transfers, with the transfer of the PDG Trust 1987 Real Estate, the “PDG Trust 1987 Transfers”).

141. On information and belief, the PDG Trust 1987 received no value in exchange for the PDG Trust 1987 Transfers.

142. At the times of the PDG Trust 1987 Transfers, the PDG Trust 1987 was indebted to PBGC for over \$24,000,000 in UBL Liability, and over \$7 million in Termination Premiums Liability.

143. On information and belief, at the times of the PDG Trust 1987 Transfers, the assets of PDG Trust 1987 were worth much less than the Termination Liabilities.

144. On information and belief, at the times of the PDG Trust 1987 Transfers, the PDG Trust 1987 was insolvent.

145. On information and belief, the PDG Trust 1987 Transfers were constructively fraudulent as to the Termination Liabilities.

146. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

147. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT X
FRAUDULENT TRANSFERS BY HG3
(28 U.S.C. §§ 3304, 3306, 3307)

148. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

149. A transfer is constructively fraudulent as to a debt to PBGC arising before or after the transfer, if the debtor makes the transfer without receiving a reasonably equivalent value in exchange, and believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due. 28 U.S.C. § 3304(b)(1)(B).

150. HG3 transferred property as follows (collectively, the “HG3 Transfers”):

- a. A cash distribution of \$72,087.73 was made to the PDG Trust 2002, on November 30, 2009;
- b. A cash distribution of \$72,087.73 was made to PJG, on or about November 30, 2009.
- c. A deed transferring Wood County parcels numbered A04-311-350419005000, A04-311-350419005001, A04-311-350419010000, A04-311-350419011000, A04-311-350419012000, A04-311-350419013000, A04-311-350419014000, A04-311-350419015000, A04-311-350419016000, A04-311-350419017000, A04-311-350419018000, and A04-311-350419019000 (collectively, the “Wood County Real Estate”), to PJG and MJG, was recorded December 22, 2009. On the same date, pursuant to a previous agreement, PJG transferred his half-interest in the Wood County Real Estate to MJG, such that MJG was a subsequent transferee of PJG’s half-interest, if not the initial transferee of the entire interest, in the Wood County Real Estate.

151. HG3 received no value in exchange for any of the HG3 Transfers.

152. As of each of the dates of the HG3 Transfers, HG3 believed or reasonably should have believed that FII's controlled group would incur the Termination Liabilities.

153. As of each of the dates of the HG3 Transfers, HG3 believed or reasonably should have believed that HG3 was a member of FII's controlled group.

154. As of each of the dates of the HG3 Transfers, HG3 believed or reasonably should have believed that the Termination Liabilities were beyond its ability to pay as they became due.

155. Each of the HG3 Transfers was constructively fraudulent as to the Termination Liabilities.

156. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

157. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT XI
FRAUDULENT TRANSFERS BY PDG ESTATE
(28 U.S.C. §§ 3304, 3306, 3307)

158. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

159. A transfer is constructively fraudulent as to a debt to PBGC arising before or after the transfer, if the debtor makes the transfer without receiving a reasonably equivalent value in

exchange, and believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due. 28 U.S.C. § 3304(b)(1)(B).

160. The PDG Estate transferred property as follows (collectively, the “PDG Estate Transfers”):

- a. PDG’s former interest in Findlay Inn LP (“Findlay Inn Interest”) was transferred to the PDG Trust 2002, in August or September, 2009.
- b. PDG’s former interest in Main Cross Development, Inc. (“Main Cross Interest”) was transferred to the PDG Trust 2002, on September 11, 2009.
- c. A cash distribution of \$954,337 was made to the PDG Trust 2002, on September 23, 2009.
- d. PDG’s former interest in Centrex Plastics, LLC (“Centrex Interest”), was transferred to the PDG Trust 2002, on September 29, 2009.
- e. PDG’s former interest in Bloomdale Plastics (“Bloomdale Interest”) was transferred to the PDG Trust 2002, on or before December 31, 2009; or to MJG, on or after October 15, 2009.

161. The PDG Estate received no value in exchange for any of the PDG Estate Transfers.

162. As of each of the dates of the PDG Estate Transfers, the PDG Estate believed or reasonably should have believed that FII’s controlled group would incur the Termination Liabilities.

163. As of each of the dates of the PDG Estate Transfers, the PDG Estate believed or reasonably should have believed that HG3 was a member of FII’s controlled group.

164. As of each of the dates of the PDG Estate Transfers, the PDG Estate believed or reasonably should have believed that it would be liable for HG3's debts for the Termination Liabilities.

165. As of each of the dates of the PDG Estate Transfers, the PDG Estate believed or reasonably should have believed that the Termination Liabilities were beyond its ability to pay as they became due.

166. Each of the PDG Estate Transfers was constructively fraudulent as to the Termination Liabilities.

167. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

168. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT XII
FRAUDULENT TRANSFERS BY PDG TRUST 2002
(28 U.S.C. §§ 3304, 3306, 3307)

169. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

170. A transfer is constructively fraudulent as to a debt to PBGC arising before or after the transfer, if the debtor makes the transfer without receiving a reasonably equivalent value in

exchange, and believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due. 28 U.S.C. § 3304(b)(1)(B).

171. The PDG Trust 2002 transferred property as follows (collectively, the “PDG Trust 2002 Transfers”):

- a. The Findlay Inn Interest was transferred to PJG, on or after October 15, 2009.
- b. The Main Cross Interest was transferred to PJG, on or after October 15, 2009.
- c. A deed transferring the PDG Trust 2002 Rental Real Estate, and Hancock County parcels numbered 07-0001007212, 07-0000015790, and 57-0001003498 (these three parcels collectively, the “PDG Trust 2002 Undeveloped Land”), to PJG, was recorded December 22, 2009.
- d. A deed transferring Hancock County parcel numbered 63-0001021442, located on County Road 236, Findlay, Ohio, to MJG, was recorded December 22, 2009.
- e. On information and belief, if the Bloomdale Interest was owned by the PDG Trust 2002, it was transferred to MJG, between January 1, 2010, and June 30, 2010.
- f. Cash distributions were made to PJG in the amounts of \$70,000, on February 3, 2010; and \$81,881.55, on or about June 30, 2010.
- g. Cash distributions were made to MJG in the amounts of \$70,000, on February 4, 2010; and \$81,881.55, on or about June 30, 2010.

172. On information and belief, the PDG Trust 2002 received no value in exchange for any of the PDG Trust 2002 Transfers.

173. As of each of the dates of the PDG Trust 2002 Transfers, the PDG Trust 2002 believed or reasonably should have believed that FII's controlled group would incur the Termination Liabilities.

174. As of each of the dates of the PDG Trust 2002 Transfers, the PDG Trust 2002 believed or reasonably should have believed that the PDG Trust 2002 was a member of FII's controlled group.

175. As of each of the dates of the PDG Trust 2002 Transfers, the PDG Trust 2002 believed or reasonably should have believed that the Termination Liabilities were beyond its ability to pay as they became due.

176. On information and belief, each of the PDG Trust 2002 Transfers was constructively fraudulent as to the Termination Liabilities.

177. As of each of the dates of the PDG Trust 2002 Transfers, the PDG Trust 2002 believed or reasonably should have believed that each pre-existing PDG Estate Transfer of which it was the transferee was fraudulent as to the Termination Liabilities, such that the PDG Trust 2002 was liable to the PDG Estate or PBGC ("PDG Estate Transfer Liability").

178. As of each of the dates of the PDG Trust 2002 Transfers, the PDG Trust 2002 believed or reasonably should have believed that the PDG Estate Transfer Liability was beyond its ability to pay as it became due.

179. On information and belief, each of the PDG Trust 2002 Transfers was constructively fraudulent as to the PDG Estate Transfer Liability.

180. The PDG Trust 2002 believed or reasonably should have believed that the Alleged Debt Payment was fraudulent as to the Termination Liabilities, such that the PDG Trust

2002 was liable to FII or PBGC (“Alleged Debt Payment Liability”) as of the date that the payment was made, October 22, 2009.

181. The PDG Trust 2002 believed or reasonably should have believed that the Alleged Debt Payment Liability was beyond its ability to pay as it became due, as of October 22, 2009.

182. On information and belief, each of the PDG Trust 2002 Transfers occurring on or after October 22, 2009, was constructively fraudulent as to the Alleged Debt Payment Liability.

183. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

184. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT XIII
CONSTRUCTIVELY FRAUDULENT TRANSFERS BY PJG
(28 U.S.C. §§ 3304, 3306, 3307)

185. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

186. A transfer is constructively fraudulent as to a debt to PBGC arising before or after the transfer, if the debtor makes the transfer without receiving a reasonably equivalent value in exchange, and believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due. 28 U.S.C. § 3304(b)(1)(B).

187. PJG transferred property as follows (collectively, the “PJG Transfers”; and with the FII Transfers, the PDG Trust 1987 Transfers, the HG3 Transfers, the PDG Estate Transfers, and the PDG Trust 2002 Transfers, the “Fraudulent Transfers”):

- a. The Findlay Inn Interest was transferred to the PJG Trust, between October 15, 2009, and December 31, 2009.
- b. The Main Cross Interest was transferred to the PJG Trust, between October 15, 2009, and December 31, 2009.
- c. The Centrex Interest, which had been transferred from the PDG Trust 2002 to PJG for reasonably equivalent value, was transferred to the PJG Trust, between January 11, 2010, and December 31, 2010.
- d. A deed transferring the PDG Trust 2002 Rental Real Estate, and the PDG Trust 2002 Undeveloped Land, to the PJG Trust, was recorded February 3, 2010.
- e. A deed transferring Hancock County parcel numbered 33-0001012688, located on Township Road 201, Findlay, Ohio, to the PJG Trust, was recorded March 2, 2011.
- f. On information and belief, PJG transferred additional valuable property to the PJG Trust after he believed or reasonably should have believed that he would incur debts beyond his ability to pay as they became due.

188. On information and belief, PJG received no value in exchange for any of the PJG Transfers.

189. As of each of the dates of the PJG Transfers, PJG believed or reasonably should have believed that FII’s controlled group would incur the Termination Liabilities.

190. As of each of the dates of the PJG Transfers, PJG believed or reasonably should have believed that HG3 was a member of FII's controlled group.

191. As of each of the dates of the PJG Transfers, PJG believed or reasonably should have believed that he would be liable for HG3's debts for the Termination Liabilities.

192. On information and belief, as of each of the dates of the PJG Transfers, PJG believed or reasonably should have believed that the Termination Liabilities were beyond his ability to pay as they became due.

193. On information and belief, each of the PJG Transfers was constructively fraudulent as to the Termination Liabilities.

194. On information and belief, each of the dates of the PJG Transfers, PJG believed or reasonably should have believed that each PDG Trust 2002 Transfer of which he was the transferee was fraudulent as to the Termination Liabilities, such that PJG was liable to the PDG Trust 2002 or PBGC ("PDG Trust 2002 Transfer Liability").

195. On information and belief, after he transferred the PDG Trust 2002 Rental Real Estate, PJG believed or reasonably should have believed that the PDG Trust 2002 Transfer Liability was beyond his ability to pay as it became due.

196. On information and belief, PJG's transfer of the PDG Trust 2002 Rental Real Estate, and each subsequent PJG Transfer, was constructively fraudulent as to the PDG Trust 2002 Transfer Liability.

197. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

198. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT XIV
ACTUALLY FRAUDULENT TRANSFERS BY PJG
(28 U.S.C. §§ 3304, 3306, 3307)

199. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

200. A transfer is actually fraudulent as to a debt to PBGC arising before or after the transfer, if the debtor makes the transfer with actual intent to hinder, delay, or defraud a creditor. 28 U.S.C. § 3304(b)(1)(A).

201. In determining actual intent to hinder, delay, or defraud a creditor, a court may consider, *inter alia*, the factors listed in 28 U.S.C. § 3304(b)(2), known as “badges of fraud”.

202. The following badges of fraud are present with respect to the PJG Transfers:

- a. Because PJG is the trustee of the PJG Trust, and has reserved the right to revoke the PJG Trust, he retained possession and control of the property transferred. *See* 28 U.S.C. § 3304(b)(2)(B).
- b. PJG has concealed the PJG Transfers by not producing documents regarding the PJG Transfers in response to a PBGC administrative subpoena issued to him on July 2, 2012. *See* 28 U.S.C. § 3304(b)(2)(C).
- c. The PJG Trust, through its trustee PJG, has concealed the PJG Transfers by not producing documents regarding the PJG Transfers in response to PBGC

administrative subpoenas issued to the PJG Trust on November 13, 2014, and June 1, 2015. *See* 28 U.S.C. § 3304(b)(2)(C).

- d. On information and belief, PJG, the settlor of the PJG Trust, received no value in exchange for any of the PJG Transfers. *See* 28 U.S.C. § 3304(b)(2)(H).
- e. On information and belief, because of the Termination Liabilities, PJG was insolvent at the time of the PJG Transfers, or became insolvent shortly after the PJG Transfers. *See* 28 U.S.C. § 3304(b)(2)(I).
- f. The PJG Transfers occurred shortly after FII ceased operations, giving rise to grounds for Plan termination, *see* 29 U.S.C. § 1342(a)(2), and thus also to contingent Termination Liabilities of HG3 and the PDG Trust 2002, *see* 29 U.S.C. §§ 1306(a)(7)(A), 1362(a)(1), 29 C.F.R. § 4007.13(g), and HG3's partners, *see* Ohio Rev. Code Ann. § 1776.36, and the PDG Trust 2002 Transfer Liability, *see* 28 U.S.C. § 3304(b)(1)(B). *See* 28 U.S.C. § 3304(b)(2)(J).

203. On information and belief, PJG made each of the PJG Transfers with actual intent to hinder, delay, or defraud a creditor.

204. On information and belief, each of the PJG Transfers was actually fraudulent as to the Termination Liabilities and the PDG Trust 2002 Transfer Liability.

205. As a remedy for a fraudulent transfer, PBGC may obtain the avoidance of the transfer to the extent of the debts to PBGC, a remedy against the asset transferred or other property of the transferee, or any other relief the circumstances may require. 28 U.S.C. § 3306(a).

206. To the extent a transfer is voidable under 28 U.S.C. § 3306(a)(1), PBGC may recover a money judgment for the value of the asset transferred against the first transferee; or against any subsequent transferee other than a good faith transferee who took for value, and subsequent transferees. 28 U.S.C. § 3307(b).

COUNT XV
SUCCESSOR LIABILITY UNDER FEDERAL COMMON LAW

207. PBGC repeats and realleges each and every allegation contained in the preceding paragraphs.

208. On May 8, 2009, F I Asset Acquisition LLC (“FIAA”) purchased FII’s equipment, inventory, and receivables associated with the plants known as “Springfield” and “Molded Products” (“Purchased Assets”) for approximately \$2.2 million in cash and \$1.2 million in assumed trade debt (“Sale Price”; the sale, the “Asset Sale”).

209. Although documentation is lacking, the Purchased Assets apparently were transferred by FIAA to MJG and Milstein, Jaffe & Goldman Inc. (“MJG Inc”), incorporated several months after the Asset Sale, and 100% owned by MJG; and then by MJG and MJG Inc. to September Ends and Back in Black.

210. Since the Asset Sale, September Ends has operated at Springfield, and Back in Black (collectively with September Ends, the “Operating Entities”) has operated at Molded Products.

211. The Operating Entities should be subject to the Termination Liabilities if they had notice of the Termination Liabilities, FII was unable to pay the Termination Liabilities, and there was substantial continuity of operations between FII and the Operating Entities.

Notice of the Termination Liabilities

212. At all times, MJG has been President of each of the Operating Entities.

213. At all times, MJG has owned 52% of the stock of each of the Operating Entities, and his minor sons have owned the remaining 48% of the stock.

214. MJG's actual and constructive knowledge should be imputed to the Operating Entities.

215. FII's financial statements showed a "Pension Benefit Obligation" of \$11.4 million on December 31, 2005; \$6.4 million on December 31, 2006; \$2.6 million on December 31, 2007; \$18.1 million on December 31, 2008; \$18.2 million on January 31, 2009; and \$18.3 million on February 28, 2009.

216. In addition to being the direct or indirect owner of almost 45% of FII's stock, from September or October, 2008, until March 31, 2009, MJG was FII's CEO and one of its directors.

217. By letter dated December 22, 2008, Hawthorn Manufacturing Corporation ("Hawthorn") informed FII's Board of Directors of its interest in acquiring most of FII's assets.

218. MJG, as a member of FIAA, signed a letter dated December 22, 2008, conveying FIAA's offer to purchase all of FII's assets, subject to, *inter alia*, "a determination of no undisclosed liability under any employee benefit or similar plan of [FII]."

219. MJG, as a member of FI Asset Acquisition 2 LLC ("FIAA 2"), signed a letter dated December 30, 2008, conveying FIAA 2's offer to purchase FII's assets in Florida, subject to, *inter alia*, "a determination of no undisclosed liability under any employee benefit or similar plan of [FII]."

220. Although MJG recused himself from the consideration of other bids for FII's assets one day after his letter on behalf of FIAA 2, he apparently received an email of March 9,

2009, referring to Hawthorn's request for assurances regarding Plan liabilities, *i.e.* indemnification from shareholders; and a letter from PBGC.

221. MJG, as a member of FIAA, signed a letter dated April 9, 2009, conveying FIAA's offer to purchase assets of FII without assuming, *inter alia*, "liabilities related to the company's defined benefit pension plan".

222. At some time before the Asset Sale, MJG learned that the only FII machinery and equipment of any value was located at Springfield and Molded Products.

223. The Asset Purchase Agreement between FII and FIAA, signed on FIAA's behalf by MJG as its managing member, specifically provided that FIAA did not assume liabilities related to the Plan.

224. From May 2009 through December 2013, the Operating Entities' net income was \$11,924,725, over three times greater than the Sale Price.

225. The disparity between the Operating Entities' net income and the Sale Price suggests that the Sale Price accounted for the risk of successor liability for the Plan.

226. Based on the foregoing facts, at the time of the Asset Sale, MJG knew or should have known that FII would cease operations shortly after the Asset Sale.

227. Based on the foregoing facts, at the time of the Asset Sale, MJG knew or should have known that the Plan was underfunded by over \$18 million on an ongoing basis.

228. Based on the foregoing facts, at the time of the Asset Sale, MJG knew or should have known that the Plan would terminate, giving rise to the Termination Liabilities.

229. The Operating Entities had notice of the Termination Liabilities.

FII's Inability to Pay the Termination Liabilities

230. Without the Purchased Assets, FII could not pay the Termination Liabilities.

231. As the direct or indirect owner of almost 45% of FII's stock, the CEO and a director of FII in late 2008 and early 2009, and the representative of two companies making offers for FII's assets, MJG knew or should have known that without the Purchased Assets, FII could not pay the Termination Liabilities.

Substantial Continuity between FII and the Operating Entities

232. Until the Asset Sale, FII operated at the Springfield and Molded Plastics plants.

233. Since the Asset Sale, September Ends has operated at the Springfield plant, and Back in Black has operated at the Molded Plastics plant.

234. There is substantial continuity between FII and the Operating Entities regarding locations.

235. At the time of the Asset Sale, all of FII's machinery and equipment of value was located at Springfield and Molded Products.

236. Since the Asset Sale, September Ends has operated with the former FII machinery and equipment located at Springfield.

237. Since the Asset Sale, Back in Black has operated with the former FII machinery and equipment located at Molded Products.

238. There is substantial continuity between FII and the Operating Entities regarding machinery and equipment.

239. As part of the Asset Sale, the Operating Entities assumed FII trade debts of about \$1.2 million.

240. There is substantial continuity between FII and the Operating Entities regarding obligations.

241. At the time of the Asset Sale, MJG was the direct or indirect owner of almost 45% of FII's stock.

242. Since the Asset Sale, MJG has been the direct or indirect owner of 100% of the stock of each of the Operating Entities.

243. There is substantial continuity between FII and the Operating Entities regarding ownership.

244. Shortly before the Asset Sale, MJG was the CEO of FII.

245. Since the Asset Sale, MJG has been the President of each of the Operating Entities.

246. There is substantial continuity between FII and the Operating Entities regarding management.

247. Substantially all of FII's salaried employees at Springfield were hired by September Ends.

248. Of FII's nine salaried employees at Molded Products as of sometime before the Asset Sale, six were hired by Back in Black.

249. There is substantial continuity between FII and the Operating Entities regarding supervision.

250. Substantially all of FII's non-salaried employees at Springfield were hired by September Ends.

251. Fifteen of FII's twenty-five non-salaried employees at Molded Products were hired by Back in Black.

252. There is substantial continuity between FII and the Operating Entities regarding workforce.

253. Navistar was FII's largest customer based on 2008 forecasted production sales, accounting for 76% of heavy truck forecasted sales and 33% of total forecasted sales. In each of the years 2009 through 2013, Navistar accounted for at least 33% of each of the Operating Entities' sales.

254. There is substantial continuity between FII and the Operating Entities regarding customers.

255. Because the Operating Entities used FII's former suppliers, and FII's former machinery and equipment, at FII's former plants, to make products for FII's former largest customer, on information and belief, there is substantial continuity between FII and the Operating Entities regarding methods of production.

256. Because the Operating Entities used FII's former suppliers, and FII's former machinery and equipment, at FII's former plants, to make products for FII's former largest customer, on information and belief, there is substantial continuity between FII and the Operating Entities regarding methods of production.

257. There is substantial continuity between FII and the Operating Entities.

Conclusion

258. The Operating Entities had notice of the Termination Liabilities, FII was unable to pay the Termination Liabilities, and there was substantial continuity of operations between FII and the Operating Entities.

259. The Operating Entities are liable for the Termination Liabilities.

RELIEF REQUESTED

WHEREFORE, PBGC respectfully requests that this Court enter the following relief:

1. Judgment in PBGC's favor against each of the Title IV Defendants, jointly and severally, in the amount of \$24,969,283, plus interest thereon from June 30, 2015, through the date of judgment, calculated in accordance with 29 C.F.R. § 4062.7, for their UBL Liability to PBGC;

2. Judgment in PBGC's favor against each of the Title IV Defendants, jointly and severally, in the amount of \$8,624,187.61, plus interest thereon from June 30, 2015, through the date of judgment, and penalties, both calculated in accordance with 29 U.S.C. § 1307(b), for their Termination Premiums Liability to PBGC;

3. Judgment declaring (a) each of the Fraudulent Transfers to be fraudulent as to the Termination Liabilities; (b) each of the PDG Trust 2002 Transfers to be fraudulent as to the PDG Estate Transfer Liability; (c) each of the PDG Trust 2002 Transfers occurring on or after October 22, 2009, to be fraudulent as to the Alleged Debt Payment Liability; and (d) PJG's transfer of the PDG Trust 2002 Rental Real Estate, and each subsequent PJG Transfer, to be fraudulent as to the PDG Trust 2002 Transfer Liability.

4. Judgment ordering, with regard to each Fraudulent Transfer, as is most appropriate under the circumstances, either (a) rescission of the Fraudulent Transfer and the return of the transferred property, plus rents, dividends, or interest, to the Title IV Defendant transferor; or (b) transfer of the transferred property, plus rents, dividends, or interest, to PBGC; or (c) judgment against the first or any subsequent transferee, awarding damages to PBGC for the amount of the value of the property transferred, at the time of the transfer; or (d) such other relief as is equitable under the circumstances;

5. Award PBGC all of its costs of litigation in this case pursuant to 29 U.S.C. § 1303(e)(5);

6. Award PBGC post-judgment interest under 28 U.S.C. § 1961; and
7. Grant PBGC such other legal and equitable relief as shall be just and proper.

Dated: August 27, 2015
Washington, D.C.

Respectfully submitted,

/s/ Merrill D. Boone
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Attorney

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