

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THOMAS E. PEREZ, SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

LARRY PORTER, SUSAN PORTER, :
SEABOARD MANAGEMENT, LLC, and :
SEABOARD MANAGEMENT INC. :
MONEY PURCHASE PENSION PLAN, :

Defendants. :

Civil Action

No. 16-4054

COMPLAINT

Thomas E. Perez, Secretary of Labor, United States Department of Labor, hereby alleges:

Jurisdiction and Venue

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, and is brought by the Secretary under Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate relief for breaches of fiduciary duty under ERISA Section 409, 29 U.S.C. § 1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of Title I of ERISA.

2. This Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. The Seaboard Management Money Purchase Pension Plan (the “Plan”) is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. §

1003(a). The Plan is administered in Baltimore, Maryland.

4. Venue with respect to this action lies in the District of Maryland, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

The Parties

5. The Secretary, pursuant to Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

6. At all relevant times, Seaboard Management, LLC (“the Company”) has been the Plan Sponsor and Plan Administrator of the Plan. At all relevant times, the Company has exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets and had discretionary authority or discretionary responsibility in the administration of the Plan. The Company, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (C) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (C).

7. At all relevant times, Larry Porter (“Porter”) has been an officer and owner of the Company, and a plan trustee. Larry Porter made decisions regarding the Plan, including decisions as to the disposition of plan assets, and performed functions of the Plan Administrator. At all relevant times, Larry Porter has exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets and had discretionary authority or discretionary responsibility in the administration of the Plan. Larry Porter, therefore, is a fiduciary of the Plan within the

meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (H) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (H).

8. At all relevant times Susan Porter was an officer and owner of the Company, and a plan trustee. On her own and as the spouse of Larry Porter, Susan Porter exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets and had discretionary authority or discretionary responsibility in the administration of the Plan. Susan Porter, therefore, is a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) and (H) of ERISA, 29 U.S.C. §§ 1002(14) (A) and (H).

9. The Plan is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

General Allegations

10. The Company established the Plan on or about 1985.

11. The Plan was funded by annual contributions made by the Company equal to 2 percent of employee wages for the year.

12. Starting on January 1, 2003, Larry Porter established a line of credit between the Plan and the Company, promising to repay borrowed funds at 10 percent annual interest. The funds were drawn from the plan as a whole, not Porter's individual balance. Starting on December 16, 2003, the Company borrowed funds using this line of credit. In total \$125,185 was borrowed over the following year.

13. Larry Porter kept track of interest that the Company owed to the Plan through 2010, when he calculated that \$179,292.57 in interest and principal was owed (with a reduction

of interest to 8 percent in 2009).

14. Through November 2015, and with continuing interest, the plan is owed at least \$332,544.43 for the loan to the Company. This amount is due under terms of the loan but has not been paid.

15. On July 13, 2005, Larry Porter caused the Plan to loan \$263,220.80 in Plan funds to Waskey Investments (“Waskey”), a partnership in which he held a 50 percent share. As with the 2003 loan, these funds came from the plan as a whole, not Porter’s individual balance.

16. The terms of the loan did not require the payment of any interest, or the payment of principal pursuant to a payment schedule. Rather, the loan terms stated that the Plan would receive a percentage of the profits from the sale of 830 S. Kenwood Avenue, a home in the city of Baltimore, Maryland. No timetable was set for the sale of the home.

17. The home remains owned by Waskey. It is currently rented to an individual who is not a member of the Porter family. The home has not been sold, no rental proceeds have been paid to the Plan and the loan has not otherwise been repaid.

18. Susan Porter was aware of the actions of Larry Porter as co-principal of the company, Plan participant in her own right, and the Plan’s designated contact for the Company’s bankruptcy. She took no actions to recover Plan funds or remedy Larry Porter’s breach of fiduciary liability.

19. The value of principal and lost opportunity costs to the Plan for the Waskey loan is at least \$423,485.79.

20. Larry Porter, Susan Porter, and the Company have not attempted to collect on either loan on behalf of the Plan.

21. Larry Porter and the Company participated knowingly in or knowingly undertook

to conceal each other's acts or omissions that they knew to be violations of ERISA.

22. Larry Porter, Susan Porter, and the Company failed to comply with Section 404(a)(1) of ERISA in the administration of their specific fiduciary responsibilities and each enabled the other to commit breaches of ERISA.

23. Larry Porter, Susan Porter, and the Company knew that the other had violated ERISA, but did not make reasonable efforts under the circumstances to remedy the other's breaches.

Violations

24. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-23 inclusive.

25. By the actions and conduct described above, Defendants Larry Porter and the Company, as fiduciaries of the Plan:

- a. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);
- b. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like

aims, in violation of Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);

- c. lent plan assets to a party in interest in violation of Section 406(a)(1)(B) of ERISA, 29 U.S.C. § 1106(a)(1)(B); and
- d. transferred or used Plan assets for the benefit of a party in interest in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D); and
- e. engaged in self-dealing with assets of the plan in their own interest in violation of ERISA, 29 U.S.C. § 1106(b).

26. By participating knowingly in the fiduciary breaches of the others, knowing such acts or omissions to be breaches of fiduciary duty, Larry Porter and the Company are each liable for the others' breaches of fiduciary responsibility, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

27. By failing to make reasonable efforts under the circumstances to remedy the others breaches of which they had knowledge, Larry Porter, Susan Porter, and the Company, as fiduciaries of the Plan, are liable for each other's' fiduciary breaches, pursuant to Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

Prayer for Relief

28. WHEREFORE, the Secretary prays that this Court issue an order:
- a. Ordering Larry Porter, Susan Porter, and the Company to restore to the Plan all losses, including interest or lost opportunity costs, which were caused by their fiduciary misconduct;

- b. Ordering the defendants, their agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;
- c. Ordering Larry Porter and Susan Porter to forfeit their plan balances;
- d. Removing Larry Porter and Susan Porter as fiduciaries of the Plan and any other employee benefit plan for which they act as fiduciaries;
- e. Permanently enjoining Larry Porter and Susan Porter from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
- f. Permanently enjoining Larry Porter and Susan Porter from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
- g. Appointing an independent fiduciary with plenary authority and control with respect to the management and administration of the Plan, including the authority to marshal assets on behalf of the Plan, to pursue claims on behalf of the Plan, and to take all appropriate action for the termination of the Plan and the distribution of benefits to the Plan's participants and beneficiaries, with all costs to be borne by the defendants;
- h. Ordering the defendants, their agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary and the independent

fiduciary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary and to the independent fiduciary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;

- i. Awarding plaintiff, Secretary of Labor, the costs of this action; and
- j. Awarding such other relief as is equitable and just.

Respectfully submitted,

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