



**Christopher Wm. Dagg**  
Senior Staff Attorney  
Direct Line: (718) 237-5543  
E-mail: [cdagg@lsnyc.org](mailto:cdagg@lsnyc.org)

August 20, 2019

Pension Benefit Guaranty Corporation  
Standard Termination and Compliance Division  
1200 K Street NW, Ste. 930  
Washington, DC 20005-4026

Re: Plan Name: Nischwitz & Co. Pension Plan  
Participant Name: Patricia K. [REDACTED]  
Participant Date of Birth: March 24, 1954

Dear Sir or Madame:

This letter and accompanying exhibits comprise our claim for benefits on behalf of Patricia K. [REDACTED], a vested participant in the Nischwitz & Co. Pension Plan.

Statement of Facts

Patricia K. [REDACTED] was employed by Nischwitz & Co. from September 8, 1986, to January 30, 1997, and was a participant in the Nischwitz & Co. Pension Plan (the "Plan"). (K. [REDACTED] Decl. ¶ 2.) A few weeks after leaving Nischwitz & Co., Ms. K. [REDACTED] received an Estimated Statement of Benefits she had accrued in the Plan. (See Est. Statement of Benefits with letter from H.G. Popik to P. K. [REDACTED] of 3/17/97, attached as "Exhibit A"; K. [REDACTED] Decl. ¶ 3.) The Statement verified that Ms. K. [REDACTED] was 100% vested in the Plan and was entitled to a monthly pension benefit of \$564.67 when she turned 65. (See *id.*) A letter dated

**Brooklyn Legal Services**

Phone: 718-237-5500 [www.legalservicesnyc.org](http://www.legalservicesnyc.org)

105 Court Street, 4th Floor  
Brooklyn, NY 11201  
Fax: 718-855-0733

1360 Fulton Street, Suite 301  
Brooklyn, NY 11216  
Fax: 718-398-6414

900 Fulton Street, 2nd Floor  
Brooklyn, NY 11238  
Fax: 347-763-0097

1709 St. Marks Avenue  
2nd Floor  
Brooklyn, NY 11233



April 17, 1997, from Abar Pension Services, Inc., to Harry Popik, the owner of Nischwitz & Co., and trustee of the Pension Plan, reiterated that Ms. Kolodziejski was entitled to a monthly life annuity of \$564.67 beginning on April 1, 2019, when she would be 65 years old. (See letter from M. Uchitel to H. Popik of 4/17/97, attached as "Exhibit B.") The Social Security Administration corroborates Ms. Kolodziejski's claim that she is entitled to a monthly pension of approximately \$565.00 from the Nischwitz & Co. Pension Plan. (See Notice of Potential Private Retirement Benefit Information, attached as "Exhibit C.")

In early 2019, Ms. Kolodziejski contacted her former employer to apply for her pension. (Kolodziejski Decl. ¶ 4.) She was informed, for the first time, that the Plan had been terminated and that Nischwitz & Co. no longer had a pension plan. (*Id.*) The last Form 5500 was filed for the Plan year beginning June 1, 2001, and ending May 31, 2002. It disclosed that a resolution to terminate the Plan had been adopted, and that the Plan's assets were either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC. (See Form 5500 (2001) Annual Return/Report of Employee Benefit Plan at 4, attached as "Exhibit D.") When Ms. Kolodziejski contacted the PBGC for help, however, she was told to return to her former employer. (Kolodziejski Decl. ¶ 5.) Nischwitz & Co., however, would tell her only that the Plan's funds had been distributed to participants and beneficiaries in 2001 or 2002. (*Id.* at 4.) Although Ms. Kolodziejski was fully vested in the Plan and entitled to a pension of almost \$565.00 per month at normal retirement age, she received no such distribution, and no annuity was purchased for her benefit. (Kolodziejski Decl. ¶¶ 6-7.)

#### Argument

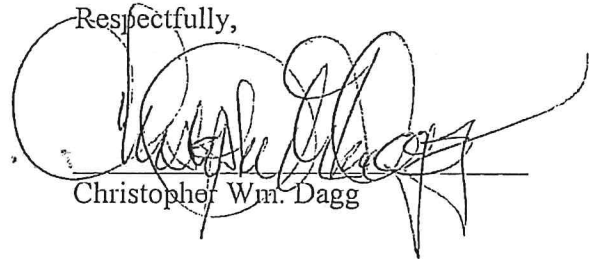
As the evidence clearly shows, Ms. Kolodziejski is entitled to benefits under the Plan. She has never received the benefits in question and no annuity was purchased on her behalf to pay deferred vested benefits. There is no successor entity that is legally responsible for payment of the benefits. As these benefits are guaranteed by the Pension Benefit Guaranty Corporation pursuant to ERISA, the PBGC must pay Ms. Kolodziejski the benefits to which she is entitled under the Nischwitz & Co. Pension Plan.

Section 4041 of ERISA, 29 U.S.C. § 1341, outlines the procedures for the standard termination of a single-employer plan. Notably, General Counsel has recognized that the PBGC remains obligated under ERISA § 4041 to insure the payment of guaranteed benefits if the plan administrator has not made a proper distribution, *i.e.*, if a participant is overlooked or paid an incorrect amount. Advisory Op. 91-1 n.2 (citing H.R. Rep. No. 99-241, Part 2 at 49 (1985), *reprinted in* 1986 U.S.C.C.A.N. 685, 706.) This conclusion is consistent with the legislative history of ERISA, which recognized that the "PBGC is still obligated to guarantee the payment of benefits . . . if it is subsequently determined that not all guaranteed benefits were in fact distributed under a standard termination . . . ." H.R. Rep. No. 99-241, Part 2 at 49 (1985), *reprinted in* 1986 U.S.C.C.A.N. 685, 706.

Therefore, the PBGC is obligated to pay Ms. Kolodziejski the benefits to which she is entitled but which she was not paid when the Plan was terminated and its assets distributed.

Thank you for your attention in this matter.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read 'Christopher Wm. Dagg', is written over a horizontal line.

Christopher Wm. Dagg

Encls.

cc: P. Kolodziejski (w/encls.)

## **Exhibit A**



NISCHWITZ & CO. Est. 1895

ANIMAL FEEDS • FUEL OIL • SALT  
223 FRONT STREET  
SOUTH PLAINFIELD, N.J. 07080

PHONE: (908) 756-0947 • FAX: (908) 756-1041

March 17, 1997

Ms. Patricia L. K. [REDACTED]  
[REDACTED]  
South Plainfield, NJ 07080

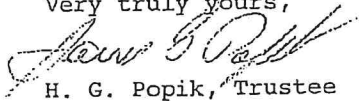
Attn: Ms. K. [REDACTED]

We are enclosing a copy of the following item that you requested regarding your pension account with the Nischwitz and Co. - Pension Plan.

1. Estimated Statement of Benefits as of June 1, 1996

You will still have quite a few years yet before you will be able to obtain yearly benefits from our plan as it is a Defined Pension Plan set at a retirement age of 65.

Very truly yours,



H. G. Popik, Trustee  
Nischwitz & Co. - Pension Plan  
Encl. - 1

ESTIMATED  
STATEMENT OF BENEFITS  
FOR  
PATRICIA K [REDACTED]  
UNDER THE  
NISCHWITZ & CO. PENSION PLAN  
AS OF  
6/1/96

.....

NORMAL RETIREMENT AGE	65
ACCRUED ANNUAL BENEFIT AT RETIREMENT	\$ 6,779
PROJECTED ANNUAL BENEFIT AT RETIREMENT	\$ 7,692
VESTING PERCENTAGE	100%

PREPARED BY ABAR PENSION SERVICES, INC. FOR  
ILLUSTRATIVE PURPOSES ONLY. SUBJECT IN ALL  
RESPECTS TO THE PROVISIONS OF THE PLAN, WHICH  
ARE AVAILABLE TO YOU, AND BASED ON DATA AS  
FURNISHED TO ABAR PENSION SERVICES, INC.

## **Exhibit B**

---

# Abar Pension Services, Inc.

CONSULTING ACTUARIES  
PENSION CONSULTANTS

MIKEL R. UCHITEL F.S.A.  
MARK SHEMTOB A.S.A.

70 SOUTH ORANGE AVENUE  
LIVINGSTON, NEW JERSEY 07039-4903  
(201) 994-0051  
FAX: (201) 994-7202

April 17, 1997

Mr. Harry Popik  
Nischwitz & Co.  
223 Front Street  
South Plainfield, NJ 07080

Re: Benefit for Patricia K. [REDACTED]  
under the Nischwitz & Co. Pension Plan

Dear Mr. Popik:

Ms. K. [REDACTED]'s accrued benefit is \$564.67 per month payable as a life annuity commencing on April 1, 2019. Additional monthly benefit options will be available at that time. Our calculations are based on a date of birth of March 24, 1954, for Ms. K. [REDACTED] a date of hire of September 8, 1986, and service through January 30, 1997.

Please note that no benefit payment options are available prior to the attainment of Normal Retirement Age under the terms of the Plan. The Plan defines Normal Retirement Age as the first day of the month following the attainment of age 65.

If you should have any questions, please do not hesitate to contact us.

Sincerely,

ABAR PENSION SERVICES, INC.



Mikel R. Uchitel, F.S.A.

MRU/wh

## **Exhibit C**



# Social Security Administration

## Potential Private Retirement Benefit Information

|||||  
PATRICIA L  
KODZIEFSKI  
160 REVERE RD  
STEWARTSVILLE NJ 08886-2630

Social Security Number: 149-48-384

Name: P. KODZIEFSKI

We are writing to tell you that you, or the worker whose Social Security number appears at the top of this form, MAY be entitled to some retirement benefits from a private employer. Also, your family, or the worker's family, may be entitled to retirement or survivor benefits.

### These Are Not Social Security Benefits

These potential benefits are NOT Social Security benefits. We do not make any decisions about the payment of these benefits. Please see below for basic information about these retirement benefits.

### Information About Retirement Benefits

You have, or the worker has, earned retirement benefits although no longer employed in a job covered by the retirement plan. These are called "deferred vested benefits." Private retirement plan administrators must provide information about such benefits to us through the Internal Revenue Service. We provide this reported information about the retirement plan when the individual asks for it or when a claim is filed for Social Security benefits. Social Security does not have any information about the benefits other than what appears below.

### If You Want to Apply for These Benefits

If you want to apply for these retirement benefits or have any questions, you should contact the Plan Administrator shown below. The Plan Administrator provided the information as of the date in the "Year Reported" field below. If you or the worker has already filed a claim and received payment from the plan below, you may not be eligible for any additional benefits. Include a copy of this notice when you contact the Plan Administrator.

Plan Name	Plan Number
NISCHWITZ & CO. PENSION PLAN	22-1606043-001
	Identification Number
	Year Reported 1997
	Estimated Amount \$565
Plan Administrator and Address	Type of Benefit
NISCHWITZ & CO. 223 FRONT ST S PLAINFIELD NJ 070803431	C
	Payment Frequency
	E
	Units or Shares
	Value of Account

**IMPORTANT:** See the other side of this page for an explanation of this information.

For SSA Use Only: MM981-211-90-4

2015238

Form SSA-L99-C1 (12-12) Destroy prior editions

0101NS00N000867NOTAF-P-21PLPRINT-S1RL50823-PAN

000000000

0226010035676082750102828263060

over

# EXPLANATION OF INFORMATION

## YEAR REPORTED

This is the year for which the Plan Administrator reported retirement plan information to the Internal Revenue Service.

## ESTIMATED AMOUNT

This was the amount that would be paid under the plan then in effect. The actual amount could differ. If you have already received payments from the plan, the amount shown on this notice should be disregarded.

## TYPE OF BENEFIT

The code listed identifies the type of annuity to be paid:

- A A single payment of a lump sum
- B Annuity payable over a fixed number of years
- ~~C Life annuity~~
- D Life annuity with period certain
- E Cash refund life annuity
- F Modified cash refund life annuity
- G Joint and last survivor annuity
- M Other (Type of annuity not reported)

## PAYMENT FREQUENCY

The code listed shows how often the estimated payments would be made under the plan:

- A Lump Sum
- B Annually
- C Semi-Annually
- D Quarterly
- ~~E Monthly~~
- M Other (Payment frequency not reported)

## UNITS OR SHARES

If the retirement amount is based on units or shares the number of units or shares will be shown. The number of shares will be shown followed by "S."

## VALUE OF ACCOUNT

If shown, this indicates the value of the account at the time the worker stopped working under the plan or at the time the Plan Administrator reported the information.

## QUESTIONS OR COMPLAINTS

If you have questions, you should contact the Plan Administrator. If you cannot locate the Plan Administrator, contact your former employer. If you cannot locate your former employer, check the reference department of your local library or contact your State's corporation commission. This agency should be in the State Government section of the telephone directory.

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) administers certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and may be of assistance in locating your plan administrator, or if you have a complaint about the way the private retirement plan has handled your claim. More information about your rights under ERISA is available at [www.dol.gov/ebsa/ssapotentialprivateretirement/](http://www.dol.gov/ebsa/ssapotentialprivateretirement/). You may also contact an EBSA Benefits Advisor at 1(866)444-3272.

## **Exhibit D**

freeERISA

Form 5500  
Department of the Treasury  
Internal Revenue Service  
Department of Labor  
Pension and Welfare Benefits  
Administration  
Pension Benefit Guaranty Corporation

## Annual Return/Report of Employee Benefit Plan

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6039D, 6047(e), 6057(b), and 6058(a) of the Internal Revenue Code (the Code).  
Complete all entries in accordance with the instructions to the Form 5500.

Official Use Only  
OMB Nos. 1210 - 0110  
1210 - 0089  
2001

This Form is Open to  
Public Inspection

### Part I Annual Report Identification Information

For the calendar plan year 2001 or fiscal plan year beginning June 01, 2001, and ending May 31, 2002

- A This return/report is for:
- (1) ☐ a multiemployer plan; (3) ☐ a multiple-employer plan;  
(2) ☒ a single-employer plan (other than a multiple-employer plan); (4) ☐ a DFE (specify)
- B This return/report is:
- (1) ☐ the first return/report filed for the plan; (3) ☐ the final return/report filed for the plan;  
(2) ☐ the amended return/report; (4) ☐ a short plan year return/report (less than 12 months).
- C If the plan is a collectively-bargained plan, check here ☐
- D If you filed for an extension of time to file, check the box and attach a copy of the extension application ☐

### Part II Basic Plan Information - enter all requested information.

#### 1a Name of plan

NISCHWITZ & CO. PENSION PLAN

1b Three-digit plan number (PN) 001

1c Effective date of plan (mo., day, yr.)  
June 01, 1987

#### 2a Plan sponsor's name and address (employer, if for a single-employer plan) (Address should include room or suite no.)

NISCHWITZ & CO.  
223 FRONT ST  
SOUTH PLAINFIELD NJ 07080-3431

2b Employer Identification Number (EIN)  
22-1606043

2c Sponsor's telephone number  
908-756-0947

2d Business code (see instructions)  
453990

**Caution:** A penalty for the late or incomplete filing of this return/report will be assessed unless reasonable cause is established. Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this return/report, including accompanying schedules, statements and attachments, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of plan administrator      07/18/2002      HARRY G. POPIK  
Date      Typed or printed name of individual signing as plan administrator

Signature of employer/plan sponsor/DFE      07/18/2002      HARRY G. POPIK  
Date      Typed or printed name of individual signing as employer, plan sponsor or DFE as applicable

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500.

v2.3 Form 5500 (2001)

#### 3a Plan administrator's name and address (if same as plan sponsor, enter "Same")

3b Administrator's EIN

SAME

3c Administrator's telephone number

#### 4 If the name and/or EIN of the plan sponsor has changed since the last return/report filed for this plan, enter the name, EIN and the plan number from the last return/report below:

b EIN

c PN

a Sponsor's name

5 Preparer information (optional) a Name (including firm name, if applicable) and address

b EIN  
22-2033301  
c Telephone no.

6 Total number of participants at the beginning of the plan year

6 7

7 Number of participants as of the end of the plan year (welfare plans complete only lines 7a, 7b, 7c, and 7d)

a Active participants

a

b Retired or separated participants receiving benefits

b

c Other retired or separated participants entitled to future benefits

c

d Subtotal. Add lines 7a, 7b, and 7c

d

e Deceased participants whose beneficiaries are receiving or are entitled to receive benefits

e

f Total. Add lines 7d and 7e

f

g Number of participants with account balances as of the end of the plan year (only defined contribution plans complete this item)

g

h Number of participants that terminated employment during the plan year with accrued benefits that were less than 100% vested

h

i If any participant(s) separated from service with a deferred vested benefit, enter the number of separated participants required to be reported on a Schedule SSA (Form 5500)

i 0

8 Benefits provided under the plan (complete 8a through 8c, as applicable)

a ☒ Pension benefits (check this box if the plan provides pension benefits and enter the applicable pension feature codes from the List of Plan Characteristics Codes (printed in the instructions));

1A 1B 3E

b ☐ Welfare benefits (check this box if the plan provides welfare benefits and enter the applicable welfare feature codes from the List of Plan Characteristics Codes (printed in the instructions));c ☐ Fringe benefits (check this box if the plan provides fringe benefits)

9a Plan funding arrangement (check all that apply)

- (1) ☐ Insurance  
 (2) ☐ Section 412(i) insurance contracts  
 (3) ☐ Trust  
 (4) ☐ General assets of the sponsor

9b Plan benefit arrangement (check all that apply)

- (1) ☐ Insurance  
 (2) ☐ Section 412(i) insurance contracts  
 (3) ☐ Trust  
 (4) ☐ General assets of the sponsor

10 Schedules attached (Check all applicable boxes and, where indicated, enter the number attached. See instructions.)

a Pension Benefit Schedules

- (1) ☒ R (Retirement Plan Information)  
 (2) ☒ T (Qualified Pension Plan Coverage Information)

If a Schedule T is not attached because the plan is relying on coverage testing information for a prior year, enter the year

- (3) ☐ B (Actuarial Information)  
 (4) ☐ E (ESOP Annual Information)  
 (5) ☐ SSA (Separated Vested participant Information)

b Financial Schedules

- (1) ☐ H (Financial Information)  
 (2) ☒ I (Financial Information – Small Plan)  
 (3) ☐ O A (Insurance Information)  
 (4) ☐ C (Service Provider Information)  
 (5) ☐ D (DFE/Participating Plan Information)  
 (6) ☐ G (Financial Transaction Schedules)  
 (7) ☒ 1 P (Trust Fiduciary Information)

c Fringe Benefit Schedule

- ☐ F (Fringe Benefit Plan Annual Information)



Schedule I

## Financial Information – Small Plan

Official Use Only

For the calendar plan year 2001 or fiscal plan year beginning June 01, 2001, and ending May 31, 2002

A Name of plan  
NISCHWITZ & CO. PENSION PLANB Three-digit  
plan number 001C Plan sponsor's name as shown on line 2a of Form 5500 or 5500-EZ  
NISCHWITZ & COD Employer Identification Number  
22-1605013

Complete Schedule I if the plan covered fewer than 100 participants as of the beginning of the plan year. You may also complete Schedule I if you are filing as a small plan under the 80-120 participant rule (see instructions). Complete Schedule H if reporting as a large plan or DFE.

## Part I Small Plan Financial Information

Report below the current value of assets and liabilities, income, expenses, transfers and changes in net assets during the plan year. Combine the value of plan assets held in more than one trust. Do not enter the value of the portion of an insurance contract that guarantees during this plan year to pay a specific dollar benefit at a future date. Include all income and expenses of the plan including any trust(s) or separately maintained fund(s) and any payments/receipts to/from insurance carriers. Round off amounts to the nearest dollar.

	(a) Beginning of Year	(b) End of Year
1 Plan Assets and Liabilities:		
a Total plan assets.....	1a \$451,936	
b Total Plan liabilities.....	1b	
c Net plan assets (subtract line 1b from line 1a).....	1c \$451,936	
2 Income, Expenses, and Transfers for this Plan Year:	(a) Amount	(b) Total
a Contributions received or receivable		
(1) Employers.....	2a(1)	
(2) Participants.....	2a(2)	
(3) Others (Including Rollovers).....	2a(3)	
b Noncash contributions.....	2b	
c Other Income.....	2c (\$46,855)	
d Total income (add lines 2a(1), 2a(2), 2a(3), 2b, and 2c).....	2d	(\$46,855)
e Benefits paid (including direct rollovers).....	2e \$405,081	
f Corrective distributions (see instructions).....	2f	
g Certain deemed distributions of participant loans (see instructions).....	2g	
h Other expenses.....	2h	
i Total expenses (add lines 2e, 2f, 2g, and 2h).....	2i	\$405,081
j Net income (loss) (subtract line 2i from line 2d).....	2j	(\$451,936)
k Net transfers.....	2k	

3 Specific Assets: If the plan held any assets in one or more of the following specific categories, check yes and enter the current value as of the end of the plan year. Allocate the value of the plan's interest in a commingled trust containing the assets of more than one plan on a line-by-line basis unless the trust meets one of the specific exceptions described in the instructions.

	Yes	No	Amount
a Partnership/joint venture interests.....	3a <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b Employer real property.....	3b <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
c Real estate (other than employer real property).....	3c <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
d Employer securities.....	3d <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
e Participant loans.....	3e <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
f Loans (other than to participants).....	3f <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g Tangible personal property.....	3g <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

## Part II Transactions During Plan Year

	Yes	No	Amount
4 During the Plan Year:			
a Did the employer fail to transmit to the plan any participant contributions within the maximum time period described in 29 CFR 2510.3-102? (See instructions).....	4a <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
b Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by the participants' account balance.....	4b <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
c Were any leases to which the plan was a party in default or classified during the year as uncollectible?.....	4c <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
d Did the plan engage in any nonexempt transaction with any party-in-interest?.....	4d <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
e Was the plan covered by a fidelity bond?.....	4e <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	\$35,000	
f Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty?.....	4f <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
g Did the plan hold any assets whose current value was neither readily determinable on an			

- established market nor set by an independent third party appraiser?..... 4g ☐ Yes ☒ No
- h Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser?..... 4h ☐ Yes ☒ No
- i Did the plan at any time hold 20% or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interest?..... 4i ☐ Yes ☒ No
- j Were all the plan assets either distributed to participants or beneficiaries, transferred to another plan, or brought under the control of the PBGC?..... 4j ☒ Yes ☐ No
- k Are you claiming a waiver of the annual examination and report of an independent qualified public accountant (IQPA) under 29 CFR 2520.104-46? If no, attach the IQPA's report. (See instructions for conditions to be eligible for waiver.)..... 4k ☐ Yes ☒ No
- 5a Has a resolution to terminate the plan been adopted during the plan year or any prior plan year? If yes, enter the amount of any plan assets that reverted to the employer this year ..... ☒ Yes ☐ No Amount
- 5b If during this plan year, any assets or liabilities were transferred from this plan to another plan(s), identify the plan(s) to which assets or liabilities were transferred. (See instructions.)
- 5b(1) Name of Plans 5b(2) EIN(s) 5b(3) PN(s)

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500.v2.3 Schedule R Form 5500 (2001)

## Schedule P

## Annual Return of Fiduciary

## Official Use Only

For the calendar plan year 2001 or fiscal plan year beginning June 01, 2001 and ending May 31, 2002

1a Name of trustee or custodian HARRY G. POPIK

b Number, street, and room or suite no. (If a P.O. box, see the instructions for Form 5500 or 5500-EZ.)  
223 FRONT STREET

c City or town, state, and ZIP code SOUTH PLAINFIELD, NJ 07080

2a Name of trust NISCHWITZ & CO. PENSION TRUST

b Trust's employer identification number 22-2858191

3 Name of plan if different from name of trust NISCHWITZ & CO. PENSION PLAN

4 Have you furnished the participating employee benefit plan(s) with the trust financial information required to be reported by the plan(s)? ..... ☒ Yes ☐ No

5 Enter the plan sponsor's employer identification number as shown on Form 5500 or 5500-EZ 221606043

Under penalties of perjury, I declare that I have examined this schedule, and to the best of my knowledge and belief it is true, correct, and complete.

Signature of fiduciary

Date July 18, 2002

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500 or 5500-EZ

v2.3

Schedule P Form 5500 (2001)

Schedule R

## Retirement Plan Information

Official Use Only

For the calendar plan year 2001 or fiscal plan year beginning June 01, 2001 and ending May 31, 2002

## A Name of plan

NISCHWITZ &amp; CO. PENSION PLAN

## B Three-digit

001

## C Plan sponsor's name as shown on line 2a of Form 5500 or 5500-EZ

NISCHWITZ &amp; CO

## plan number

## D Employer Identification Number

22-1606043

## Part I Distributions

All references to distributions relate only to payments of benefits during the plan year.

1 Total value of distributions paid in property other than in cash, annuity contracts, or publicly traded employer securities 1

2 Enter the EIN(s) of payor(s) who paid benefits on behalf of the plan to participants or beneficiaries during the year (if more than two, enter EINs of the two payors who paid the greatest dollar amounts of benefits). 22-2858191

Profit-sharing plans, ESOPs, and stock bonus plans, skip line 3.

3 Number of participants (living or deceased) whose benefits were distributed in a single sum, during the plan year 3 7

## Part II Funding Information (If the plan is not subject to the minimum funding requirements of section 412 of the Internal Revenue Code or ERISA section 302, skip this Part)

4 Is the plan administrator making an election under Code section 412(c)(8) or ERISA section 302(c)(8)? ☐ Yes ☐ No ☐ N/A  
If the plan is a defined benefit plan, go to line 7.

5 If a waiver of the minimum funding standard for a prior year is being amortized in this plan year, see instructions, and enter the date of the ruling letter granting the waiver.

If you completed line 5, complete lines 3, 9, and 10 of Schedule B and do not complete the remainder of this schedule.

6 a Enter the minimum required contribution for this plan year 6a

b Enter the amount contributed by the employer to the plan for this plan year 6b

c Subtract the amount in line 6b from the amount in line 6a. Enter the result (enter a minus sign to the left of a negative amount)

If you completed line 6c, do not complete the remainder of this schedule 6c

7 If a change in actuarial cost method was made for this plan year pursuant to a revenue procedure providing automatic approval for the change, does the plan sponsor or plan administrator agree with the change? ☐ Yes ☐ No ☐ N/A

Do not complete line 8, if the plan is a multiemployer plan or a plan with 100 or fewer participants during the prior plan year (see inst.)

8 Is the employer electing to compute minimum funding for this plan year using the transitional rule provided in Code section 412(l)(11) and ERISA section 302(d)(11)? ☐ Yes ☐ N/A

## Part III Amendments

9 If this is a defined benefit pension plan, were any amendments adopted during this plan year that increased the value of benefits? (see instructions)? ☐ Yes ☐ No

For Paperwork Reduction Act Notice and OMB Control Numbers, see the instructions for Form 5500.v2.3 Schedule R Form 5500 (2001)

Schedule T

# Qualified Pension Plan Coverage Information

Official Use

For the calendar plan year 2001 or fiscal plan year beginning June 01, 2001, and ending May 31, 2002

**A** Name of plan

MISCHWITZ &amp; CO. PENSION PLAN

**B** Three-digit  
plan number

001

**C** Plan sponsor's name as shown on line 2a of Form 5500

MISCHWITZ &amp; CO

**D** Employer Identification Number  
221606043

Note: If the plan is maintained by:

More than one employer and benefits employees who are not collectively-bargained employees, a separate Schedule T may be required for each employer (see the instruction for line 1).

An employer that operates qualified separate lines of business (QSLOBs) under Code section 414(r), a separate Schedule T may be required for each QSLOB (see the instruction for line 2).

1 If this schedule is being filed to provide coverage information regarding the noncollectively bargained employees of an employer participating in a plan maintained by more than one employer, enter the name and EIN of the participating employer:

1 a Name of participating employer

1 b Employer Identification Number

2 If the employer maintaining the plan operates QSLOBs, enter the following information:

a The number of QSLOBs that the employer operates is 0.

b The number of such QSLOBs that have employees benefiting under this plan is 0.

c Does the employer apply the minimum coverage requirements to this plan on an employer-wide rather than a QSLOB basis?

☐ Yes ☐ No

d If the entry on line 2b is two or more and line 2c is "No," identify the QSLOB to which the coverage information given on line 3 or 4 relates.

3 Exceptions - Check the box before each statement that describes the plan or the employer.

If you check any box, do not complete the rest of this Schedule.

a ☐ The employer employs only highly compensated employees (HCEs).b ☐ No HCEs benefited under the plan at anytime during the plan year.c ☐ The plan benefits only collectively-bargained employees.d ☒ The plan benefits all nonexcludable nonhighly compensated employees of the employer (as defined in Code sections 414(b), (c), and (m)), including leased employees and self-employed individuals.e ☐ The plan is treated as satisfying the minimum coverage requirements under Code section 410(b)(6)(C).For Paperwork Reduction Act Notice and OMB Control Numbers,  
see the instructions for Form 5500.v2.3

Schedule T Form 5500 (2001)

4 Enter the date the plan year began for which coverage data is being submitted.

a Did any leased employees perform services for the employer at any time during the plan year?

☐ Yes ☐ No

b In testing whether the plan satisfies the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4), does the employer aggregate plans?

☐ Yes ☐ No

c Complete the following:

(1) Total number of employees of the employer (as defined in Code section 414(b), (c), and (m)), including leased employees and self-employed individuals

c(1) 0

(2) Number of excludable employees as defined in IRS regulations (see instructions)

c(2) 0

(3) Number of nonexcludable employees. (Subtract line 4c(2) from line 4c(1))

c(3) 0

(4) Number of nonexcludable employees (line 4c(3)) who are HCEs

c(4) 0

(5) Number of nonexcludable employees (line 4c(3)) who benefit under the plan

c(5) 0

(6) Number of benefiting nonexcludable employees (line 4c(5)) who are HCEs

c(6) 0

	Disaggregation Part:	Ratio Percentage:	Exception:
(1)			
(2)			
(3)			

f This plan satisfies the coverage requirements on the basis of (check one): ☐ the ratio percentage test ☐ average benefit test





[illegible]

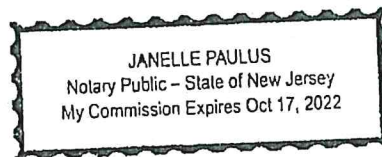
1. I am over the age of eighteen and reside at 160 Revere Road, Stewartsville, New Jersey 08886.
2. I was a receptionist at Nischwitz & Co., at 223 Front Street, South Plainfield, New Jersey 07080, from September 8, 1986, to January 30, 1997. Part of the benefits package was a defined benefit pension.
3. After I left Nischwitz & Co., I asked for an estimate of my pension. H.G. Popik, the owner, sent me the estimate in March 1997. It said I would receive a monthly pension of \$564.67 when I turned 65 in March 2019. My date of birth is March 24, 1954.
4. Earlier this year, I contacted Nischwitz & Co. so I would receive my pension when I turned 65. I was told that the Pension Plan was terminated and that there was no money for me.
5. I contacted the PBGC for help, but was only told to go back to Nischwitz & Co.
6. I never received the value of my pension benefit in the form of a lump sum distribution from the Plan.

7. I have not received any benefits from the Plan in the form of monthly payments or otherwise.
8. I hereby declare under penalty of perjury that all information provided on this declaration and any attachment hereto is, to the best of my knowledge and belief, true, complete and correct.

Signature: Patricia Solodzyuk

Subscribed and sworn to before me this  
14 day of AUGUST, 2019.

Janelle Paulus  
NOTARY PUBLIC



## Chris Dagg

---

**From:** LaPiana Suzanne <LaPiana.Suzanne@pbgc.gov>  
**Sent:** Wednesday, September 18, 2019 12:40 PM  
**To:** Chris Dagg  
**Cc:** Hardesty Heather; Davis Carrie  
**Subject:** Patricia K ~~kolodziejski~~

Good after Mr. Dagg,

PBGC has very little information about this plan so the documentation you provided is very helpful. The only question is whether your client received a lump sum distribution prior to the date of plan termination. In cases such as these, we request tax returns and 1099s for the year of termination and the year afterward. A copy of the 1099Rs or tax returns that do not show a lump sum distribution is helpful documentation. We can rely upon other information in the file to determine whether or not it was likely or not whether she received a distribution.

We are preparing a letter requesting this information and will be sending it shortly.

Please let me know if you have any additional questions.

Suzanne M. LaPiana  
Senior Advisor, Participant Services Division  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, DC 20005  
Office phone number: (202) 326-4100, ext. 3215  
Alternative phone number: (202) 744-8509

---

**From:** Chris Dagg <cdagg@lsnyc.org>  
**Sent:** Friday, September 6, 2019 1:51 PM  
**To:** LaPiana Suzanne <LaPiana.Suzanne@pbgc.gov>  
**Subject:** RE: Patricia K ~~kolodziejski~~

Thank you.



*This e-mail is sent by a law firm and contains information that may be privileged and confidential and may also be covered by the Health Insurance Portability and Accountability Act (HIPAA). If you are not the intended recipient, do not disseminate; please delete the e-mail and notify us immediately.*

*Please consider the environment before printing this email message.*

---

**From:** LaPiana Suzanne [<mailto:LaPiana.Suzanne@pbgc.gov>]  
**Sent:** Friday, September 06, 2019 1:41 PM  
**To:** Chris Dagg  
**Subject:** RE: Patricia K ~~kolodziejski~~

Hello Mr. Dagg,

Yes – this works. I'll be reviewing the case file and the material you submitted next week and will be back in touch with any questions.

Suzanne M. LaPiana  
Senior Advisor, Participant Services Division  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, DC 20005  
Office phone number: (202) 326-4100, ext. 3215  
Alternative phone number: (202) 744-8509

From: Chris Dagg <[cdagg@lsnyc.org](mailto:cdagg@lsnyc.org)>  
Sent: Friday, September 6, 2019 1:38 PM  
To: LaPiana Suzanne <[LaPiana.Suzanne@pbgc.gov](mailto:LaPiana.Suzanne@pbgc.gov)>  
Subject: Patricia K. [REDACTED]

Dear Ms. Lapiana:

Thank you for your message. I hope the link for my e-mail works.

Regards,

Christopher Wm. Dagg  
Senior Staff Attorney  
Brooklyn Legal Services  
105 Court Street, 4<sup>th</sup> Floor  
Brooklyn NY 11201  
Tel.: (718) 237-5543  
Fax: (646) 859-8225  
E-mail: [cdagg@lsnyc.org](mailto:cdagg@lsnyc.org)



*This e-mail is sent by a law firm and contains information that may be privileged and confidential and may also be covered by the Health Insurance Portability and Accountability Act (HIPAA). If you are not the intended recipient, do not disseminate; please delete the e-mail and notify us immediately.*

*♻ Please consider the environment before printing this email message.*

*This e-mail, including any attachments, may constitute a Federal record or other Government property that is intended only for the addressed individuals. This message may also contain information that is sensitive, confidential, or otherwise protected from disclosure under applicable law. If you are not a named addressee you must not disseminate, distribute or copy this e-mail. If you have received this e-mail in error, please notify the sender immediately and delete this e-mail from your system.*



## Chris Dagg

---

**From:** Chris Dagg  
**Sent:** Wednesday, September 18, 2019 3:22 PM  
**To:** 'LaPiana Suzanne'  
**Cc:** Hardesty Heather; Davis Carrie  
**Subject:** RE: Patricia K [REDACTED]

Dear Ms. LaPiana,

Thank you for your response and consideration of Ms. K [REDACTED]'s claim. In her Declaration, Ms. K [REDACTED] stated that she never received a lump sum distribution of her pension benefits, but she does not have any documents from the time of the plan's termination circa 2002 or 2003.

I see many cases, and I imagine you do as well, where neither the claimant nor the IRS has any tax returns, 1099s, etc., from the time of the plan's termination, which in this case would be nearly 20 years ago. My colleagues from the other Pension Counseling Projects have even raised this recurring issue with the PBGC Participant & Plan Sponsor Advocate Constance Donovan, specifically the problem of proving an event did not occur where the claimant, the IRS, and the plan might not have any relevant documents. I am, therefore, very grateful that you are willing to consider other evidence to determine if Ms. K [REDACTED] was cashed out of the plan.

That said, when your letter arrives, I will be sure to ask Ms. K [REDACTED] again if she was able to locate any tax returns or other papers that might be useful.

Thank you again.

Sincerely,

Chris Dagg

---

**From:** LaPiana Suzanne [mailto:LaPiana.Suzanne@pbgc.gov]  
**Sent:** Wednesday, September 18, 2019 12:40 PM  
**To:** Chris Dagg  
**Cc:** Hardesty Heather; Davis Carrie  
**Subject:** Patricia K [REDACTED]

Good after Mr. Dagg,

PBGC has very little information about this plan so the documentation you provided is very helpful. The only question is whether your client received a lump sum distribution prior to the date of plan termination. In cases such as these, we request tax returns and 1099s for the year of termination and the year afterward. A copy of the 1099Rs or tax returns that do not show a lump sum distribution is helpful documentation. We can rely upon other information in the file to determine whether or not it was likely or not whether she received a distribution.

We are preparing a letter requesting this information and will be sending it shortly.

Please let me know if you have any additional questions.

Suzanne M. LaPiana

## Chris Dagg

---

**From:** LaPiana Suzanne <LaPiana.Suzanne@pbgc.gov>  
**Sent:** Wednesday, September 18, 2019 3:51 PM  
**To:** Chris Dagg  
**Cc:** Hardesty Heather; Davis Carrie  
**Subject:** RE: Patricia K [REDACTED]

Hello Mr. Dagg,

I work closely with Connie Donovan and have discussed this issue with her from time to time. I believe the concern in the past was that the potentially-omitted participant would be required to provide these documents. Now, we request them in our effort to do due diligence and ensure we gather all available documents, **however they are not required**. All of the information available is analyzed to determine what was most likely to have occurred as we rarely have all the pieces of the puzzle. Ms. K [REDACTED] has a strong case based on the documents she provided and the plan records I was able to obtain from the Federal Record Center. I will be submitting a service request to the Actuarial Services Department for an actuarial review. This may take several weeks, however please feel free to contact me if you have any questions in the meantime.

Regards,

Suzanne M. LaPiana  
Senior Advisor, Participant Services Division  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington, DC 20005  
Office phone number: (202) 326-4100, ext. 3215  
Alternative phone number: (202) 744-8509

---

**From:** Chris Dagg <cdagg@lsnyc.org>  
**Sent:** Wednesday, September 18, 2019 3:22 PM  
**To:** LaPiana Suzanne <LaPiana.Suzanne@pbgc.gov>  
**Cc:** Hardesty Heather <Hardesty.Heather@pbgc.gov>; Davis Carrie <Davis.Carrie@pbgc.gov>  
**Subject:** RE: Patricia K [REDACTED]

Dear Ms. LaPiana,

Thank you for your response and consideration of Ms. K [REDACTED]'s claim. In her Declaration, Ms. K [REDACTED] stated that she never received a lump sum distribution of her pension benefits, but she does not have any documents from the time of the plan's termination circa 2002 or 2003.

I see many cases, and I imagine you do as well, where neither the claimant nor the IRS has any tax returns, 1099s, etc., from the time of the plan's termination, which in this case would be nearly 20 years ago. My colleagues from the other Pension Counseling Projects have even raised this recurring issue with the PBGC Participant & Plan Sponsor Advocate Constance Donovan, specifically the problem of proving an event did not occur where the claimant, the IRS, and the plan might not have any relevant documents. I am, therefore, very grateful that you are willing to consider other evidence to determine if Ms. K [REDACTED] was cashed out of the plan.



Pension Benefit Guaranty Corporation  
P.O.Box 151750  
Alexandria VA 22315-1750

Account Information  
Customer ID: 7700865  
Case Number: 8627300  
Plan Name: PBGC NON-TRUSTEED PLAN ACCOUNT

404  
November 4, 2019

21899590-8074784

PATRICIA K. KOLODZIEJSKI

160 REVERE RD

STEWARTSVILLE NJ 08886-2630

Dear PATRICIA K. KOLODZIEJSKI:

We have finished our review of the plan and your benefit. This is our formal determination of your benefit entitlement under the plan. Please read this letter and the enclosed *Benefit Determination Statement* carefully. This letter also provides information about your appeal rights.

### Your Benefit Entitlement

You are entitled to a monthly benefit of **\$564.67** beginning on April 1, 2019, in the form of a Straight Life Annuity. A Straight Life Annuity provides you with a monthly benefit for the rest of your life, but does not provide survivor benefits.

You can choose when to begin your benefit. The actual pension payment you will receive will depend on:

- The date your benefits begin.
- The form of benefit you choose.

### Your Retirement Options

Please see the attached Benefit Determination Statement for your early retirement benefit options, if available.

#### Normal Retirement

Please see your *Benefit Determination Statement* for your Normal Retirement Date and normal retirement amount.

#### Early Retirement

If your plan allows you to begin your benefit before your Normal Retirement Date and you retire early, your benefit will be lower. Please look closely at your *Benefit Determination Statement* to see your early retirement options.



## Late Retirement

If you choose to retire after your Normal Retirement Date your benefit will be increased. If you are currently past your Normal Retirement Date, your benefit shown in the earlier section, Your Benefit Entitlement, has already been adjusted to reflect a Late Retirement Date.

## Form of Benefit Options

When you apply for your benefit, we will tell you what forms of benefit are available to you, and what your benefit amount will be in each form. You can choose either your plan's automatic form of benefit or one of PBGC's optional forms of benefit. The election you make at that time will determine your benefit amount.

## Retroactive Annuity Start Date

Your benefit statement reflects a retroactive annuity start date(s).

## **Your Benefit Determination Statement**

Please read the enclosed *Benefit Determination Statement* carefully as it explains how we calculated your benefit and shows the date(s) you are eligible to retire.

## **What Happens If You Die before Retiring**

- If you are married, your spouse will receive a monthly survivor benefit.
- If you are single, no benefits will be payable.

CC: Chris Dagg

## **Your Right to Appeal This Benefit Determination**

This is PBGC's formal determination of your benefit. You have the right to appeal this determination if you provide a specific reason that the determination is wrong. Your appeal must be in writing and filed with PBGC's Appeals Board within 45 days of the date of this letter. If you simply have a question about how your benefit was calculated, you should call us for an explanation instead of filing an appeal. But please note that the time you have to file an appeal will not be extended unless you specifically request an extension within the 45-day period. The enclosed pamphlet, *Your Right to Appeal*, provides more detailed information on how to file an appeal.

## **Health Coverage Tax Credit (HCTC)**

The HCTC is an IRS tax credit that pays 72.5% of qualified health insurance premiums for eligible individuals and their families. If you are 55 – 65 years old and are receiving benefits from PBGC, you may be eligible for this tax credit. For more information, please visit the IRS web site at [www.irs.gov/HCTC](http://www.irs.gov/HCTC).

## **Contact Us**





Please call us at **1 (800) 400-7242** about four months before you are ready to begin receiving your benefit. We will send you an application for pension benefits. Call anytime if you have any questions or need assistance. If you use a TTY/ASCII, call **1 (800) 877-8339**, and give the relay operator our telephone number. Or you may write to us at the address on this letter. Include your customer ID number: 7700865, PBGC case number: 8627300, and a daytime telephone number.

Please keep this letter in your records for future reference.

Sincerely,

**PBGC Customer Service Representative**  
Office of Benefits Administration

Enclosure(s):

Benefit Statement  
Your Right to Appeal





Privacy Act Data

**Benefit Determination Statement**

10/04/2019 10:12 AM

PATRICIA K [REDACTED]

Page 1 of 2

**NISCHWITZ & CO. PENSION PLAN****PBGC Case Number:****19824800****Date of Plan Termination (DOPT):****May 31, 2002**

Please verify the following information. If you find discrepancies, contact PBGC at 1-800-400-7242.

**YOUR BENEFIT SUMMARY****Participant's Information**

Name:	PATRICIA K [REDACTED]
Social Security Number:	XXX-XX-8847
Gender:	Female
Date of Birth:	03/24/1954
Date of Hire:	09/08/1986
Date of Termination of Employment:	01/30/1997

**Summary of Participant's Benefits**

You may begin receiving your monthly benefit on 04/01/2019 or on and after 11/01/2019. Your monthly benefit shown below is payable as a Straight Life Annuity. Other forms of benefit are available to you.

Normal Retirement Date (NRD):	04/01/2019
Monthly Benefit at NRD:	\$564.67
PBGC Late Retirement Date (LRD):	11/01/2019
Monthly Benefit at EBSD:	\$597.59

Your benefit has not been affected by any PBGC limitations.





## Benefit Determination Statement

Privacy Act Data

10/04/2019 10:12 AM

PATRICIA K ~~ODZIELSKI~~

Page 2 of 2

### YOUR BENEFIT CALCULATION

- |   |          |
|---|----------|
| (1) PBGC Monthly Benefit payable at NRD as Straight Life Annuity as Calculated by the Prior Plan Administrator: | \$564.67 |
| (2) PBGC Adjustment Factor for Late Retirement at EBSD:   | 1.0583   |
| (3) PBGC Monthly Benefit at LRD as a Straight Life Annuity:<br>(1) x (2) = \$564.67 x 1.0583 =                  | \$597.59 |