

Pension Benefit Guaranty Corporation

76-92

July 12, 1976

REFERENCE:

[*1] 4062(d) Liability of Employer in Single Employer Plans. Corporate Reorganizations

OPINION:

This is in response to your letter of April 7, 1976, requesting a determination by the Pension Benefit Guaranty Corporation (the "PBGC") as to whether the termination of the * * * (the "Plan") is covered under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act"). You also inquired whether * * * may be liable to the PBGC pursuant to § 4062 of the Act in the event that the assets of the Plan are insufficient to satisfy benefits guaranteed by the PBGC under the Act.

As I understand the pertinent facts, * * * merged into * * * on August 3, 1975. You stated that * * * learned of the Plan only after the merger with * * * and that * * * then reviewed the Plan and decided not to continue it. Accordingly, a notice of intent to terminate, which specified April 28, 1976 as the date of termination, was filed with the PBGC.

You indicated in your letter that there have been no contributions to the Plan since 1969. However, it is our understanding that accruals and vesting under the Plan never ceased and that until March 1976, full benefits were paid to eligible participants at retirement [*2] based on their entire period of service with Williamsport. You further indicated that one Plan participant retired on March 1, 1975, and received benefits under the Plan based upon accruals until the time of his retirement.

The information you submitted disclosed that the Internal Revenue Service (the "IRS"), in a letter dated November 4, 1964, determined the Plan to be qualified under § 401(a) of the Internal Revenue Code. You indicated, however, that because of a subsequent Plan amendment, * * * requested a new determination of qualification from the IRS in April 1967 and that, although this request was renewed in October 1970, and March 1974, the IRS neither issued a new letter nor revoked the prior one.

Based on our review of the foregoing information, it is the opinion of this Office that the Plan was in existence on September 2, 1974 and is a plan to which § 4021 of the Act applies. As such, the Plan's termination is subject to termination procedures contained in Title IV of the Act, and benefits provided by the Plan will be guaranteed to the extent provided in § 4022.

Section 4062 of the Act provides that any employer who maintained a plan, other than a multiemployer [*3] plan, at the time it was terminated shall be liable to the PBGC up to 30% of its net worth, for the amount by which the value of plan benefits guaranteed by the PBGC under § 4022 of the Act exceeds the value of plan assets on the date of termination. In those instances where the employer who maintained a plan merged into a separate entity, * * * § 4062(d)(3) provides:

"If an employer ceases to exist by reason of a merger, consolidation or division, the successor corporation or corporations shall be treated as the employer to whom this section applies."

Accordingly, since * * * merged into * * * will be liable to the PBGC to the extent provided in § 4062 of the Act.

Henry Rose
General Counsel