

Pension Benefit Guaranty Corporation

78-9

June 19, 1978

REFERENCE:

[*1] 4041 Termination by Plan Administrator
4062 Liability of Employer in Single Employer Plans

OPINION:

This is in response to your letter to * * * of the Pension Benefit Guaranty Corporation (the "PBGC"), requesting a ruling regarding employer liability under the Employee Retirement Income Security Act of 1974 ("ERISA").

The facts, as we understand them, are as follows.

Pursuant to an agreement dated November 19, 1977, * * *, and its wholly-owned subsidiary, * * * * * sold substantially all of their assets to * * * and two subsidiaries formed by * * *. Such two subsidiaries are known as * * *, and * * * ("Buyers"). Prior to the sale * * * and * * * ("Sellers") maintained a pension plan (the "Plan") covered by Title IV of ERISA. According to the November 29 agreement, at the closing, the Buyers would become successor employers to the Sellers, and assume the Plan and all of the Sellers' liabilities under the Plan. The closing date was December 29, 1977.

We further understand that on December 29, 1977, the Buyers executed an agreement adopting and agreeing to maintain the Plan.

You asked whether the above described events constitute a termination of the Plan. You also asked whether, assuming [*2] there was no termination, the Sellers would encounter any liability to the PBGC if the Plan should terminate subsequent to the Buyers' adoption of the Plan.

Assuming the facts to be as described above, there has been no termination of the Plan. Moreover, according to the letter dated January 4, 1978, from the Plan's actuaries and your own representations, on the closing date of the sale, the Plan had sufficient assets to pay all guaranteed benefits. Therefore, assuming that the information which you have supplied the PBGC is correct, if the Plan should terminate in the future with insufficient assets to pay guaranteed benefits, the Sellers would not be responsible to the PBGC for any liabilities of the Plan.

I trust this has been of assistance.

Henry Rose
General Counsel