

Pension Benefit Guaranty Corporation

80-18

November 3, 1980

REFERENCE:
4047 Restoration of Plans

OPINION:

This letter is written to you as representative of * * * Inc. * * *, the sponsor of the referenced plan (the Plan").

Pursuant to an October 31, 1979 agreement between the Pension Benefit Guaranty Corporation (the "PBGC") and the Retirement Committee of the Plan (the "Committee"), the Plan terminated and PBGC was appointed Plan trustee. You have requested that PBGC restore the Plan pursuant to Section 4047 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1347.

As you know, ERISA § 4047 provides that

. . . (i) in the case of a plan which has been terminated under Section 4042 (PBGC) is authorized in any such case in which (PBGC) determines such action to be appropriate and consistent with its duties under this title, to take such action as may be necessary to restore the plan to its pre-termination status.

You propose that the Plan be restored to its pre-termination status as a frozen plan. Consequently, no additional benefits would accrue. Should the Plan continue long enough, there are three participants who could be credited with sufficient years of service to vest in their benefit. All of [*2] the other three hundred twenty participants are fully vested. Further, * * * has curtailed its business operations and has incurred substantial losses; its ability to maintain the Plan has not been demonstrated. Restoration could involve the risk of a decrease in the value of Plan assets and in the circumstances of this case, PBGC does not believe that restoration of the Plan would be appropriate.

In several telephone conversations in the period encompassing April to July of this year, * * * of this Office indicated to you that your proposal was unacceptable to PBGC, but that PBGC was working to formulate a compromise proposal. We have been unable to create an acceptable compromise proposal and have concluded that, for the reasons stated above, the Plan's current post-termination status should continue.

Should you have any questions, please address them to * * * of this Office, by mail at the above address or by telephone at (202) 254-4873.

Henry Rose
General Counsel