

Pension Benefit Guaranty Corporation

82-23

August 3, 1982

REFERENCE:

[*1] 4062 Liability of Employer in Single Employer Plans
4067 Arrangements for Payment of Employer Liability
29 CFR 2622 Employer Liability - Single Employer Plans

OPINION:

This is in response to your letter to me and to your subsequent correspondence with *** of my staff concerning a pension plan (the *** Plan") maintained by the above employer *** within the above aggregate of single pension Plans (the *** Plan"). You proposed that the Pension Benefit Guaranty Corporation (the "PBGC") and *** agree to certain deferred payment terms for the liability of *** to the PBGC pursuant to Section 4062 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1362.

As I understand the facts, there is an ongoing dispute as to the identity of the Plan Administrator of the *** Plan, which dispute has hitherto obstructed the submission to the PBGC of a Notice of Intent to Terminate. The Pension, Committee of the *** Plan, according to its counsel, *** maintains that *** has obligated itself to execute a plan document establishing another aggregate of single plans maintained by distributors formerly participating in the *** Plan (the "Distributors Plan"), thus making the [*2] ** Plan a member of that aggregate of single plans. You have denied that *** is obligated to execute the Distributors, Plan.

You have further indicated that *** desires that the *** Plan be terminated as of December 22, 1980, which you assert is the date of the cessation of operations by ***. However, *** (the "Union"), which represents the participants in the *** Plan, objects to a date of plan termination prior to July 1, 1982, the expiration date of the collective bargaining agreement between *** and the Union.

You have indicated to *** that if payment terms satisfactory to *** are made available by the PBGC, *** will agree to execute the Distributors' Plan and to request that the Distributors' Plan submit a termination notice to the PBGC for the *** Plan, proposing a date of plan termination of July 1, 1982. In your letter to *** of April 30, 1982, you proposed a payment period of ten years, payment to be made in equal annual installments with interest accruing at the annual rate of twelve percent. You also indicated that the *** Company, of which *** is a wholly-owned subsidiary, will guarantee payment of the liability, but will not provide [*3] financial data to the PBGC prior to the execution of a deferred payment agreement.

I regret that we cannot accept your proposal. An agreement embodying the terms you have requested would be inconsistent with several provisions of the PBGC's Employer Liability Regulation, 29 C.F.R. Part 2622 (1981). That Regulation specifies that the interest rate on employer liability shall be at the annual rate prescribed in Section 6621 of the Internal Revenue Code and shall vary with changes in that rate (29 C.F.R. § 2622.7(c)). In addition, eligibility for deferred payment terms requires, inter alia, an examination by the PBGC of employer financial data as described in 29 C.F.R. § 2622.8(c). Such data must be made available to the PBGC for the entire controlled group of which the plan sponsor is a member.

Should you provide the necessary financial data, as set forth in 29 C.F.R. Part 2622, with an estimate of the *** Plan's plan asset insufficiency, we may be able to advise as to whether deferred payment terms will be offered by the PBGC, and, if so, the general nature of such terms.

If you have any questions please contact *** at (202) 254-3010.

Henry Rose
General Counsel