

Pension Benefit Guaranty Corporation

81-18

June 29, 1981

REFERENCE:

4044 Allocation of Assets

4044(d)(1) Allocation of Assets. Distribution of Residual Assets to Employer

OPINION:

This is in reference to the distribution of the Plan's excess assets attributable to employer contributions. As we understand it, the Plan terminated on September 12, 1980, and the Plan's assets are more than sufficient to pay all Plan benefits through Category 6 of Section 4044 of ERISA and all other Plan liabilities.

Section 4044(d)(1) provides:

Any residual assets of a single employer plan may be distributed to the employer if--

- (A) all liabilities of the plan to participants and their beneficiaries have been satisfied,
- (B) the distribution does not contravene any provision of law, and
- (C) the plan provides for such a distribution in these circumstances.

The Plan was amended in 1976 to provide that "after satisfaction of all obligations to persons entitled to benefits upon termination of the Plan, any funds or property remaining in the Fund shall revert to the Company so long as such distribution to the Company does not contravene any statute." Thus, the Plan appears to permit a reversion as provided in Section 4044(d)(1)(C), [*2] although we express no opinion as to whether such distribution contravenes any other provision of law. Accordingly, PBGC has no objection to the reversion of excess assets attributable to employer contributions to the Company. Further, we express no opinion as to whether participants may have any rights, under laws not administered by PBGC, to excess assets attributable to employer contributions in view of prior provisions of the Plan which restrict the employer's power to amend the Plan.

Please contact * * * (202) 254-4895 if you have any questions.

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