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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

[Redacted]

FEB 25 2004

Re: [Redacted]
Case 164909, Accurate Die Casting Co. Non-Bargaining Unit
Retirement Plan (the Plan)

Dear [Redacted]

The Appeals Board has reviewed the appeal you filed for your client, [Redacted] concerning PBGC's February 20, 2002 determination of [Redacted] benefit under the Plan and PBGC's later correspondence with [Redacted]. For the reasons stated below, the Board decided that a benefit is payable with respect to [Redacted] under Plan section 7.09.

Determination, Correspondence and Appeal

Without knowing that [Redacted] died on March 31, 1989, PBGC's determination letter stated that he was entitled to a monthly benefit of \$349.33 per month payable as a Ten-Year Certain and Continuous Annuity (10C&CA) if payments started on the first of the month coincident with or next following his attainment of age 65. The letter explained that a 10C&CA would provide a benefit for [Redacted] lifetime and if he died before receiving 120 payments, his beneficiary or estate would continue to receive the same monthly benefit until a total of 120 payments would have been made. PBGC included a Benefit Statement showing some of [Redacted] personal data and stating that PBGC had accepted the accrued benefit calculated for [Redacted] by the former Plan administrator.

PBGC received a March 7, 2002 letter from [Redacted] of the Law Offices of [Redacted] on behalf of [Redacted] as sole beneficiary under the Last Will and Testament of [Redacted]. The letter requested the documents necessary to process a claim on behalf of [Redacted] and included a copy of [Redacted] death certificate.

PBGC received a May 10, 2002 letter from [Redacted] an attorney in your law firm, stating that [Redacted] had retained your firm to continue the inquiry into [Redacted] "possible inheritance from [Redacted] through the" Plan, and indicating that [Redacted] was no longer the attorney of record.

Your November 18, 2002 appeal described various communications

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with PBGC after PBGC's issuance of the February 20, 2002 determination. You asserted that, based on the content and timing of PBGC communications, [redacted] is "entitled to an open appeal period" and she "is indeed eligible for benefits under [redacted] plan."

Given the fact that [redacted] March 7, 2002 letter was mailed within 45 days of PBGC's February 20, 2002 determination letter, and the fact that PBGC did not send a new benefit determination to the [redacted] when PBGC learned of [redacted] death, the Appeals Board decided to accept your appeal as being timely filed.

Discussion

1. Benefit Payable under the Plan

[redacted] was born on [redacted]. He terminated his employment at age 55 on June 28, 1985, and died on March 31, 1989 at age 58 and 10 months.

The 1985 Plan (generally effective May 1, 1985; formally adopted on April 25, 1986) was retroactively in effect when [redacted] quit working for Accurate Die. Although he met the Plan's service requirement for early retirement, he did not meet the Plan's age requirement (60) for early retirement from active service, and he died before reaching the earliest commencement date for his deferred vested benefit.

Based on records of PBGC's communications with your office, it appears that PBGC relied on the interplay of Plan sections 4.06(e) and 7.02 in determining that no benefit was payable. Plan § 4.06(e) states that: "The VESTED BENEFIT shall be payable in accordance with Paragraph 7.02." Section 7.02 provides as follows:

"7.02 TERMINATION OF EMPLOYMENT. The VESTED BENEFIT shall be a deferred benefit commencing . . . at the election of the PARTICIPANT on either

(a) the PARTICIPANT'S EARLY RETIREMENT DATE (if applicable), if a PARTICIPANT eligible for a VESTED BENEFIT terminates employment after completing all requirements for an EARLY RETIREMENT BENEFIT except the age requirement. In such case the benefit payable shall be the VESTED BENEFIT actuarially reduced for each year the PARTICIPANT'S EARLY RETIREMENT DATE precedes his NORMAL RETIREMENT DATE, or

¹ The Benefit Statement erroneously listed his Date of Birth as [redacted] due to a data entry error. His death certificate states that he was born on [redacted] and documents that PBGC received from the former Plan administrator confirm that date.

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(b) the PARTICIPANT'S NORMAL RETIREMENT DATE."

It appears that PBGC concluded that since [] did not survive to his earliest commencement date, no benefit was payable to him under the Plan.

After a review of the Plan's provisions, including the Plan's definitions of "PARTICIPANT" and "FORMER PARTICIPANT" and how these terms were employed under the various provisions of the Plan, the Appeals Board decided that a benefit is payable with respect to [] under Plan § 7.09(b). Section 7.09 reads as follows:

"7.09 DEATH DISTRIBUTION PROVISIONS. Subject to Section 16, upon the death of the PARTICIPANT, the following distribution provisions shall take effect:

(a) If the PARTICIPANT dies after distribution of his or her VESTED BENEFIT has commenced, ...

(b) If the PARTICIPANT dies before distribution of his or her VESTED BENEFIT commences, the PARTICIPANT'S entire VESTED BENEFIT will be distributed no later than five (5) years after the PARTICIPANT'S death except to the extent an election is made to receive distributions in accordance with (i) or (ii) below:

Because [] died before his earliest commencement date, he necessarily died before "distribution of his or her VESTED BENEFIT" commenced. Thus, the Board concluded that his benefit should have been paid under Plan § 7.09(b).

The Board noted [] vested benefit was included in the Plan's May 1, 1991 actuarial valuation, which was prepared on February 16, 1993, and concluded that Accurate Die was likely never informed of [] death. Please note that if PBGC discovers that a death benefit was already paid by Accurate Die, then no benefit would be payable by PBGC.

2. To Whom a Benefit is Payable

Plan § 7.09(b)(i) states that "if any portion of the PARTICIPANT'S VESTED BENEFIT is payable to a designated BENEFICIARY, distributions may be made in substantially equal installments over the life or life expectancy of the designated BENEFICIARY commencing no later than one (1) year after the PARTICIPANT'S death."

Plan section 1.07 contains the Plan's definition of "BENEFICIARY." It provides as follows:

"1.07 "BENEFICIARY" shall mean any person or persons, natural or otherwise,

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designated by a PARTICIPATING EMPLOYEE as herein prescribed and provided to receive the benefits which are payable under the PLAN upon or after the death of a PARTICIPANT. If no such designation is made, or if the BENEFICIARY shall predecease the PARTICIPANT or FORMER PARTICIPANT, payment shall be made in accordance with the most recent beneficiary designation on file with the PLAN ADMINISTRATOR, otherwise payment shall be made by the TRUSTEE as directed by the PLAN ADMINISTRATOR to one of the following in the priority of the order listed:

(a) The trustee of any then existing inter vivos trust . . . established by the PARTICIPANT for the benefit of the PARTICIPANT'S surviving spouse and/or children and/or issue.

(b) If there be no such then existing inter vivos trust, then such PARTICIPANT'S surviving spouse, if any,

(c) If there be no such then existing inter vivos trust and if there be no such surviving spouse, then any testamentary trust established by court order in the PARTICIPANT'S estate,

(d) If there be no such then existing inter vivos trust and if there be no such surviving spouse, and if there be no such testamentary trust, then the PARTICIPANT'S lawful living issue (including adopted issue) who survive such PARTICIPANT, per stirpes,

(e) Otherwise, the PARTICIPANT'S estate."

For participants like [redacted] who died before June 1, 2002, PBGC's policy on payments owed with respect to a deceased participant indicates that PBGC will pay the benefit to the beneficiary designated by the participant, if any. PBGC files do not contain a designation of beneficiary for [redacted] vested benefit under the Plan.

In absence of a designated beneficiary, the policy states that PBGC will pay the person or persons, if any, that the Plan document states will receive the money.

Thus, after appropriate research, PBGC will issue a new determination letter to the appropriate beneficiary as described in Plan § 1.07.

3. Note Regarding the Amount of the Benefit Payable by PBGC

Under PBGC policy, payments that became due and payable before a plan's termination date but were not actually paid by the former plan administrator are payable by PBGC only to the extent that there were assets in the plan as of the plan's termination date to cover the payments.

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In a plan whose final asset amount is \$0.00 as of the plan's termination date, for example, if a lump-sum death benefit was due and payable before the plan's termination, but the benefit was not paid by the plan's prior administrator, no benefit would be payable by PBGC. Similarly, if an annuity death benefit should have commenced before a plan's termination but did not, then any periodic annuity payments that were due and payable before the plan's termination date would not be payable by PBGC if the plan had \$0.00 in assets as of the plan's termination date.

PBGC records reveal that, for this Plan, the final Plan asset amount as of the Plan's termination date was equal to \$1,539.

Decision

Having applied provisions of the Plan to the facts in this case, the Appeals Board found that a benefit is payable with respect to under Plan section 7.09.

When PBGC's Insurance Operation Department, the office responsible for issuing benefit determinations, receives a copy of this decision, they will issue to the appropriate beneficiary a new benefit determination, in which they will specify the form and starting date of the benefit payable by PBGC. The new determination will include a new 45-day right to appeal regarding issues not decided in this letter.

In the meantime, if you need more information about the benefit payable by PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Michel Louis
Appeals Board Member

cc: