



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

October 2, 2008



Re: [redacted] Case Number 194465,
Vision Metals Inc. Salaried Employees Pension Plan (the "Vision Metals
Plan" or "Plan")

Dear [redacted]

We are responding to your April 20, 2007 appeal of PBGC's determination of your PBGC benefit. As explained below, we must deny your appeal.

PBGC's Benefit Determination and Your Appeal:

In its benefit determination letter dated March 28, 2007, PBGC determined that you are entitled to a monthly payment of \$1,414.96 in the form of a Joint and 50% Survivor ("J&50%S") Annuity. PBGC's determination letter informed you that you had been overpaid by \$22,280.67, and that your future monthly payments would be reduced by \$137.96 (9.75%) until you have repaid the total amount, without interest. A copy of the March 28, 2007 benefit determination and its enclosed benefit statement and recoupment summary are at Enclosure 1.

In your appeal letter dated April 20, 2007, you stated that your current monthly PBGC benefit of \$1,835.35 is the same as your pension benefit under the Vision Metals Plan and "is well below PBGC's maximum guaranteed benefit of \$2,231.84." You contend that the \$875.91 benefit you receive as an annuity from Aetna Insurance Company is not part of your Vision Metals Plan benefit.¹ Rather, it is a benefit purchased on your behalf when the Quanex Corporation terminated its Plan in 1985. Your appeal contends that this \$875.91 annuity benefit should not be used in PBGC's calculation of its maximum guaranteed benefit ("MGB") and that "the \$22,280.67 which PBGC

¹ Your appeal letter also states that a Vision Metals Plan manager, [redacted], relayed to you a message that a pension plan consultant at Watson Wyatt Company had checked with PBGC and "had been told that the Aetna annuity was a totally separate issue guaranteed by Aetna Insurance Company and not guaranteed by PBGC." The Appeals Board was unable to find any record of this conversation or who in PBGC, if anyone, provided this information to [redacted]

states that I owe them [should be] removed you're the records." A copy of your appeal and the two documents you provided supporting your appeal are at Enclosure 2.

Background

According to PBGC records, Vision Metals, Inc. ("Vision"), was in the business of manufacturing steel tubing. Originally, Vision began in 1927 as Michigan Seamless Tube and made several acquisitions and name changes over the years. Vision's headquarters were located in Ann Arbor, Michigan, but relocated to South Lyon, Michigan. Vision owned two plants, Gulf States Tube Facility located in Rosenberg, Texas and Michigan Specialty Tube, located in South Lyon, Michigan.

Vision was a wholly-owned subsidiary of Vision Metals Holding, Inc. ("VMHI"). Vision was the sponsor of the Vision Metals, Inc. Salaried Employees' Pension Plan and two other pension plans.² On November 13, 2000, Vision and VMHI filed petitions under Chapter 11 of the Bankruptcy Code. On November 9, 2001, employees at both facilities were notified by letter that their facility would be permanently closed and that all benefits would cease at closing. The expected final closing date according to the letter was December 31, 2001. The letter stated that employees' jobs would end between November 30, 2001 and December 13, 2001. On January 31, 2002, the Gulf States Tube Facility and Michigan Specialty Tube shut down their plants permanently.

Assets of Vision's Michigan facility were sold to Michigan Seamless Tube, an unrelated company, with a closing date of October 21, 2002. The sale, however, did not include the assumption of the pension plans. On January 13, 2003, PBGC provided a Notice of Determination ("NOD") to Vision under section 4042(a)(1) and (2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that the Vision Metals, Inc. Salaried Employees' Pension Plan (the "Plan") had not met minimum funding standards and would not be able to pay benefits when due. Accordingly, PBGC stated its intent to have the Plan terminated and have January 31, 2002 established as the Plan's termination date. While the NOD recommended a January 31, 2002 (date of plant shutdown) termination date, PBGC changed the date of Plan termination ("DOPT") to October 21, 2002, the date of the asset sale to Michigan Seamless Tube.³

The two most significant events in the history of the Plan for purposes of this appeal occurred in 1997 and 1985. The Vision Metals, Inc. Salaried Employees' Pension Plan was established effective December 3, 1997 and is a continuation of a portion of the Quanex Corporation

² Vision also sponsored the Michigan Specialty Tube Company Hourly Employee's Pension Plan (the "MST Plan") and the Pension Plan of Gulf States Tube Division of Vision Metals (the "GST Plan"). Neither of these plans is relevant to your appeal.

³ The date of the NOD, January 13, 2003, remains the date from which overpayments are calculated. The Appeals Board does not have authority to review or change the DOPT. Having a date of Plan termination as October 21, 2002 as opposed to January 13, 2002 is more favorable to you as it lessens the reduction to the MGB based on age as discussed later in this opinion.

Salaried Employees' Pension Plan ("Quanex Corporation Salaried Plan" or "New Quanex Plan") without gap or lapse in time or coverage.

The establishment of the Plan was directly related to the December 3, 1997 agreement of the Quanex Corporation and Vision to a spin-off business transaction. The spin-off included the sale of Quanex Tube Group locations to Vision. As part of this December 3, 1997 spin-off transaction, Quanex Corporation transferred the assets and liabilities of its New Quanex Plan to Vision. Vision Metals, Inc. then adopted the Vision Metals Plan effective December 3, 1997 as a mirror image of the New Quanex Plan for the exclusive benefit of certain current and former employees of Michigan Seamless, Quanex Corporation, and Vision.

The other key transaction impacting this appeal occurred in 1985 at the Quanex Corporation. Quanex had since 1976 sponsored a Quanex Corporation Pension Plan for Salaried Employees (also referred to as "Old Quanex Plan"). The Old Quanex Plan terminated on October 31, 1985 and the new Quanex Corporation Salaried Plan ("New Quanex Plan") was re-established the following day, November 1, 1985.

Whether this 1985 termination of the Old Quanex Plan and the immediate re-establishment of the New Quanex Plan constituted a "successor plan" under ERISA section 4021(a) is the critical legal issue surrounding your appeal and is discussed later in this opinion.

Discussion

When the Vision Metals Plan terminated effective October 21, 2002, it did not have sufficient assets to provide all benefits PBGC guarantees under Title IV of ERISA. The terms of the Plan, the provisions of ERISA, and PBGC regulations and policies determine your entitlement to PBGC benefits.

PBGC is limited by law as to the pension benefits it guarantees. PBGC determined that one of these limits, the maximum guaranteed benefit ("MGB"), also known as the maximum insurance limit, requires a reduction in your monthly benefit payments from PBGC. Before discussing this key issue of how the MGB applies to your benefits, however, we first will discuss PBGC's determination of your Plan benefit amount.

A. Your Plan benefit amount.

1. Your Quanex Plan Service.

PBGC records show that you were hired on 1968 and participated in the Old Quanex Plan. The Old Quanex Plan:

- terminated on October 31, 1985;
- purchased accrued benefits such as your Aetna-provided benefit; and
- was reestablished with the same name on November 1, 1985 (which we refer to as the "New Quanex Plan").

2. *The Re-established New Quanex Plan Offset for Your Aetna Benefit*

For employees, like you, active through the 1985 termination and reestablishment, Continuous Service and Participation continued uninterrupted.⁴ The reestablished New Quanex Plan, however, required "offsetting" (reducing) for such an employee's benefits already provided by the terminated Quanex Plan.⁵ Thus, under the reestablished New Quanex Plan, your benefit was calculated using all Quanex service, but reduced for your Aetna benefit.

3. *Plan Assets and Liabilities Spun-Off to Vision Metals Plan*

Effective December 3, 1997, the Quanex Corporation:

- sold all of its Tube Group locations to Vision Metals, Inc.; and
- spun-off from the New Quanex Plan to the Vision Metals Plan assets and liabilities for affected employees, such as you.

Vision Metals, Inc. established the Vision Metals Plan effective December 3, 1997 as a mirror image of the New Quanex Plan for the exclusive benefit of certain current and former employees of Michigan Seamless, Quanex Corporation, and Vision.

4. *How Vision Metals Determined Your Benefit*

The Vision Metals Plan also uses all of your Quanex employment, but reduces for your Prior Plan benefit.⁶ The Prior Plan is the Old Quanex Plan that was terminated effective October 31, 1985. Vision Metals calculated your total Plan benefit as:

- \$3,007.50⁷ per month if paid as a Straight Life Annuity; or
- \$2,711.26⁸ per month in your Joint and 50% Survivor Annuity form.

The Vision Metals Plan's Worksheet calculation of your benefit is at Enclosure 4. Vision used 33.32 [17.155 + 16.165] years total service, from September 5, 1968 through December 31, 2001.

⁴ November 1, 1985 New Quanex Plan sections 3.01 and 3.02.

⁵ November 1, 1985 New Quanex Plan section 14.01.

⁶ See Enclosure 3 page IV-2, Plan section 4.04.

⁷ 17.155 years pre-11/1/85 x \$7,784.05 x 1.5% - \$30.90 fee + 16.165 years (11/1/85 - 12/31/2001) x (1% x \$7,784.05 earnings + .5% x \$3,636.05 earnings above "covered compensation") x 0.667 reduction for starting early. The .667 (1 - 60 months x 5/9%) adjustment for post-11/1/1985 service is required by Plan section 4.04(B) - See also calculations at Enclosure 4, pages 3 and 4.

⁸ \$3,007.5 x .9015 annuity form adjustment.

The Plan administrators further concluded that, after applying the Plan's offset for the \$875.91⁹ monthly benefits provided by the terminated Quanex Plan (which are being paid through your Aetna Life Insurance Company contract), you would receive \$1,835.35 [\$2,711.26 - \$875.91] per month as a J&50%S annuity. You did not appeal the manner in which Vision calculated your Plan benefit, and we found no error in its calculation.

B. Your PBGC benefit (after application of the MGB limit).

As discussed above, the MGB limits the benefit amounts PBGC may guarantee with respect to a terminated single-employer pension plan. The MGB, which is a specified dollar amount that PBGC applies to all pension plans that terminate within the same calendar year, is established in ERISA section 4022 and sections 4022.22 and 4022.23 of the Title 29 Code of Federal Regulations ("the Code"). Since the Plan terminated in 2002, under ERISA's provisions the MGB is \$3,579.55 per month payable at age 65 as a Straight Life Annuity with no Survivor Benefit. Generally, under ERISA and PBGC regulations, the MGB also must be adjusted for early retirement and form of benefits.

You retired on January 1, 2002, over nine months before DOPT. When you retired you were 60 years old and you elected a J&50%S Annuity. PBGC determined that the MGB applicable for you, as a participant retired at DOPT with a J&50%S Annuity, is equal to \$2,231.84. We independently verified that your MGB, in the form of a J&50%S Annuity, is \$2,231.84.¹⁰

⁹ (\$1,115.31 - \$60 early commencement fee) x .83 annuity form adjustment. See line C6 On page 3 of Enclosure 4.

¹⁰ Congress expressly delegated to PBGC the authority to determine the actuarial values of benefits for purposes of the MGB. See U.S.C. section 1322(b)(4). Based on this express delegation, PBGC issued a regulation that establishes the MGB age reduction factors and form factors for benefits that start before age 65. See 29 Code of Federal Regulations section 4022.23(c). Under this regulation, the MGB shall be reduced by 7/12% per month for each full month between a participant's 60th and 65th birthdays, or 7% per year. The number of whole months for which the reduction applies is counted from the later of the participant's age at DOPT or age that he begins to receive benefits. In your case, the MGB age reduction is counted from DOPT (October 21, 2002) because that is later than your actual retirement date.

PBGC and Plan records show your date of birth as _____, 1941. On October 21, 2002 you had 49 full months until your 65th birthday. Thus, PBGC further determined that the MGB age adjustment factor is 0.7142 [1 - (7/12 of 1% per month x 49 months)].

The MGB form adjustment factor is .90 for a J&50%S benefit. Because the value of a J&50%S Annuity differs depending on the age of the spouse, PBGC increases or decreases the form adjustment factor based on whether the spouse is younger or older than the participant. On DOPT, you were nearest your 61st birthday and your spouse (_____) was nearest her 58th birthday. Under PBGC regulations, for a spouse 3 years younger than the participant, the J&50%S benefit is

In determining your PBGC benefits, PBGC concluded that your Vision Metals Plan benefit of \$2,711.2 – which included your \$875.91 monthly benefit paid by Aetna – exceeded your MGB of \$2,231.84 per month. PBGC further concluded that your \$2,231.84 MGB should be reduced by the \$875.91 amount paid by Aetna, resulting in a PBGC-guaranteed benefit of \$1,355.93 per month [$\$2,231.84 \text{ MGB} - \$875.91 \text{ Aetna-paid benefit} = \$1,355.93$]. PBGC also concluded that, under ERISA section 4022(c), legal recoveries funded an additional \$59.03 per month of your benefit. Therefore, your total PBGC benefit is \$1,414.96 [$1,355.93 + \59.03] per month. We note that your appeal did not question the ERISA section 4022(c) portion of your benefit, and we found it was correct.

PBGC also determined that your overpayments through June 2007 total \$22,280.67.¹¹ You are not being charged interest on your overpayments. To repay your overpayments, PBGC will temporarily reduce your \$1,414.96 PBGC benefit by not more than 10%. If you and your wife die before your overpayments are repaid, PBGC will not seek further repayment from your estate or your wife's estate.

PBGC's Actuarial Case Memo for the Plan notes that the MGB legal limit affected a total of 9 of the 277 Plan participants. You are one of the 9 participants who had their benefit reduced by the MGB. As is discussed in detail below and in the appendix to this decision, your PBGC benefits are reduced by the MGB because PBGC treated the New Quanex Plan, established on November 1, 1985, as a successor plan to the Old Quanex Plan, which terminated a day earlier on October 31, 1985. We also explain in detail below the reasons why we are affirming PBGC's determination on this successor plan issue.

C. PBGC's Successor Plan Analysis.

1. A Predecessor Plan and a Successor Plan are a single plan for purposes of the MGB.

In making benefit determinations for terminated pension plans, PBGC consistently has treated a successor plan and its predecessor plan (or predecessors) as one plan in applying the MGB. In so concluding, PBGC has relied upon the following language in section 4021(a) of ERISA:

For purposes of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, unless otherwise specifically indicated in this title, a successor plan is a plan which covers a group of employees which includes

further adjusted by a factor of .97. Thus, your MGB, adjusted for your age at DOPT, your J&50%S form of benefit, and the age of your spouse is \$2,231.84 [$\$3,579.55 \times .7142 \times .90 \times .97$].

¹¹ $(\$1,835.35 - \$1,414.96) \times 53$ months 2/1/2003 - 6/1/2007. The Plan terminated on October 21, 2002. However, PBGC is recouping overpayments following January 13, 2003 (starting February 1, 2003), when PBGC issued its Notice of Determination that the Plan would be terminated. See 29 CFR 4002.81(c)(1). Because you appealed, PBGC has continued paying you the \$1,835.35 per month and your overpayments have grown.

substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided. 29 U.S.C. § 1321(a).

This statutory language accordingly indicates that a successor plan and its predecessor(s) are to be treated as a single entity. We also note that the phrase “for purposes of this title” in the above provision refers to Title IV of ERISA, which (among other things) includes the MGB provision.

PBGC’s experience is that successor plans often are created by “termination/re-establishment” transactions, in which the plan sponsor terminates a sufficient defined benefit pension plan and then establishes a new plan covering substantially the same employees and providing substantially the same benefits.¹² PBGC concluded that it is reasonable for participants in “termination/re-establishment” transactions to be treated similarly regarding the MGB to participants in plans that have remained ongoing. Such consistent treatment will occur only if the successor and predecessor plans are treated as one entity. We note that the termination of the Old Quanex Plan and the creation of the New Quanex Plan occurred as a result of such “termination/re-establishment” transactions.

2. ***The PBGC and Appeals Board conclusion that the Vision Metals Plan is a successor to the Old Quanex Plan.***

PBGC considered Vision Metals Plan effective December 3, 1997 to be a successor to the Quanex Corporation Salaried Employee’s Pension Plan (the New Quanex Plan) and made this determination in April 2005. The finding is documented in the Actuarial Case Memorandum dated March 7, 2007 (excerpt at Enclosure 5).

An implicit finding in PBGC’s determination of your benefit is also that the New Quanex Plan is a successor to the Old Quanex Plan in 1985. We note that the determination that a new plan is a successor to a former plan increases participants’ benefits in some cases and reduces them in others.¹³ In the circumstances of your case, the determination that the New Quanex Plan is a successor to the

¹² Generally, employers have engaged in “termination/re-establishment” transactions for the purpose of recovering surplus assets in the predecessor plan upon its termination. If the employer complies with the legal requirements governing such transactions, recovery of surplus assets is permitted under ERISA and the Internal Revenue Code.

¹³ In the case of the Vision Metals Plan, a handful of participants had their maximum guaranteeable benefits reduced because of a determination that the New Quanex Plan is a successor to the Old Quanex Plan. But, had the New Quanex Plan terminated in an unfunded condition less than five years after it was created, a determination that the new plan is a successor could avoid benefit cutbacks based on ERISA’s guarantee limits, such as reductions due to the phase-in of benefits under a newly-established pension plan (see 29 United States Code (“U.S.C.”) section 1322(b)(1), (2), and (7)), and under the five-year lookback provision that governs the allocation of certain plan assets (see 29 U.S.C. section 1344(b)(3)).

Old Quanex Plan results in benefits reductions because it means your Plan benefit exceeds the amount PBGC can lawfully pay based on the MGB (maximum insurance limit).¹⁴

Under PBGC's usual procedures in cases where a successor plan may exist, PBGC's Office of Chief Counsel ("OCC") prepares a legal opinion analyzing the successor plan issue. PBGC's Benefits Payment and Administration Department ("BAPD") then implements OCC's successor plan opinion in determining the benefits PBGC pays to participants in the pension plan. Furthermore, if a participant raises a successor plan issue in the appeal of his or her benefit determination, the OCC legal opinion on the successor plan issue will be part of the record for purposes of the Appeals Board's review.

In this case, however, OCC had not prepared a legal opinion on the issue of whether the New Quanex Plan was a successor to the Old Successor Plan. The Appeals Board therefore asked appropriate officials in OCC to prepare a successor plan opinion in advance of the Appeals Board's consideration of this issue. We further delayed answering your appeal until we received OCC's analysis on this issue. The analysis by OCC concluded that the New Quanex Plan is a successor to the Old Quanex Plan.

We have carefully reviewed the OCC legal opinion, as well as previous PBGC precedents, in our analysis of this matter. The Appeals Board has determined the New Quanex Plan is a successor to the Old Quanex Plan. Our full findings are in the Appendix to this decision. The Appeals Board also finds that the Vision Metals Plan, created in the spinoff transaction in December 1997, is a successor to the New Quanex Plan. The Appeals Board, thus, determined that your accrued benefit under the Old Quanex Plan, represented by the portion of your benefit payable by Aetna, is part of your Vision Metals Plan benefit and is subject to PBGC's maximum guaranteed benefit.

3. *PBGC's offset of your Aetna annuity benefit is consistent with PBGC precedents.*

In Opinion Letter 86-28 (Enclosure 6), PBGC rejected an argument, similar to the one raised in your appeal, made in a case that also involved a pension plan's purchase of insurance annuities. In that case, the annuity provided the individual with a monthly benefit that exceeded the MGB. PBGC concluded in the opinion letter that the purchased annuity had to be taken into account for purposes of the MGB limitation. PBGC noted that "the fact that the Plan assets used to purchase the annuity contract . . . are not available to pay other outstanding Plan liabilities upon Plan termination

¹⁴ We note that, if the New Quanex Plan was not a successor to the Old Quanex Plan, then your benefit accrued under the Old Quanex Plan (and now paid by Aetna) would not be used in calculating your benefit under the New Quanex Plan's successor (i.e., the Vision Metals Plan). The Aetna annuity would not be offset because the MGB limits the benefits "under a single-employer plan which terminates . . ." Thus, if the Old Quanex Plan is considered to be a separate plan from the Vision Metals Plan (rather than part of a successor plan relationship), then the Aetna annuity distributed to you by the Old Quanex Plan would not be deducted from the Vision Metal Plan's MGB.

does not affect the application of [the MGB limit] to benefits under the Plan.” Accordingly, since the purchased annuity was already providing more than the maximum guaranteed amount, the letter stated that it would be “inconsistent with both the statute's maximum guarantee limitation and with the PBGC's statutory mandate” for PBGC to provide this participant with additional guaranteed payments. Furthermore, PBGC’s position in Opinion Letter 86-28 was upheld by the court’s decision in Lami v. PBGC, 1989 U.S. Dist. LEXIS 19153 (W.D. Pa. 1989).

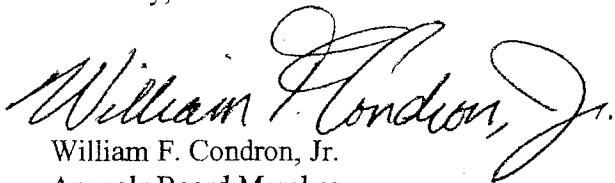
PBGC has applied the holding in Opinion Letter 86-28 to cases where the insurance annuity was purchased by a predecessor plan. Specifically, PBGC has concluded that when a “continued” successor plan is created through “spin-off termination” or “termination/re-establishment transactions, it is appropriate to apply a single MGB that takes into account the insurance annuities purchased in those transactions.

Thus, PBGC’s MGB limit applies to your full, combined benefits under the Vision Metals Plan and its predecessor plans, which includes both the portion of your benefits that were paid by the Vision Metals Plan (\$1,835.35) and the portion that is paid by your Aetna annuity (\$875.91). We further found that the two documents you submitted with your appeal (at Enclosure 2) do not provide a basis for changing PBGC’s decision concerning how the MGB should be applied. In fact, language in both documents is consistent with the Plan language of calculating the total pension benefit based on total service under all prior plans) and then using the Aetna annuity (already purchased) as part of the total pension benefit.

Decision

You have presented no basis to change PBGC’s determination dated March 28, 2007 and, thus, your appeal is denied. This letter concludes your administrative remedies with respect to PBGC’s March 28, 2007 determination. You may, if you wish, seek review in federal district court of PBGC’s determination with respect to the issue you raised.

Sincerely,



William F. Condron, Jr.
Appeals Board Member

Appendix - Appeals Board Analysis of the Successor Plan Issue

7 Enclosures:

- (1) Benefit Determination dated March 28, 2007 with Benefit Statement and Recoupment Summary (5 pages)
- (2) Your appeal (3 pages)
- (3) Excerpt, Vision Metals, Inc. Salaried Employees’ Pension Plan document (14 pages)
- (4) Vision Metals Plan Calculation Worksheet (7 pages)
- (5) Excerpt, Actuarial Case Memorandum dated 3/7/2007 (2 pages)
- (6) PBGC Opinion Letter 86-28, dated December 31, 1986 (3 pages)
- (7) Joint Implementation Guidelines (5 pages)

APPENDIX

Appeals Board's Determination Concerning the Successor Plan Issue in Vision Metals

As is stated in the main part our decision, the Appeals Board has determined the New Quanex Plan is a successor to the Old Quanex Plan. Our full findings and conclusions on this issue are presented below.

1. *Legal Framework for our analysis of the successor plan issue*

Your appeal involves three plans: the Old Quanex Plan, the New Quanex Plan, and the Vision Metals Plan. It is clear that the Vision Metals Plan, created as the result of the spin-off transaction between Quanex and Vision Metals, Inc., is a successor plan to the New Quanex Plan; it was an exact continuation of the previous plan, covered the same participants, and provided the same benefits. Your appeal does not dispute this fact. The key issue in your appeal is whether the New Quanex Plan is a successor to the Old Quanex Plan.

Our analysis of whether the New Quanex Plan is a successor plan to the Old Quanex Plan begins with the language of ERISA section 4021, which is the section of ERISA that addresses PBGC's coverage of pension plans under Title IV of ERISA. Specifically, ERISA section 4021(a) provides:

For purposes of this title, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, unless otherwise specifically indicated in this title, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

In accordance with this statutory language, PBGC has consistently applied the following three tests in determining whether a plan is a successor plan:

- (1) Does it cover substantially the same employees?
- (2) Does it provide substantially the same benefits? and
- (3) Is there continuity between the two plans.

We further note that PBGC has considerable experience analyzing whether a pension plan is a successor plan. This successor plan analysis frequently is fact-dependent, and therefore often must be decided on a case-by-case basis. Accordingly, in deciding the successor plan issue in this appeal, we have carefully analyzed the relevant facts in applying the above three tests.¹

¹ We also have examined many of the successor plan determinations that PBGC has made for other pension plans. Based on this examination, we concluded that our determination that the New Quanex Plan is a successor to the Old Quanex Plan is in accordance with PBGC's prior precedent in similar cases.

In the case of the Old Quanex Plan and the New Quanex Plan, there is no doubt that the first and third tests are met. The New Quanex Plan explicitly provides that any participant in the Old Quanex Plan who was in the active employ of Quanex Corporation on the New Quanex Plan's effective date is a participant in the New Quanex Plan. Continuity between the two plans is also amply evident, since the New Quanex Plan became effective on November 1, 1985, immediately after the October 31, 1985 termination date of the Old Quanex Plan, and service under the Old Quanex Plan was counted for purposes of computing benefits under the New Quanex Plan.

The remaining issue, which we address in detail below, is whether the two plans (i.e., the New Quanex Plan and the Vision Metals Plan) satisfy the second test of providing substantially the same benefits as the Old Quanex Plan.

2. *Successor plan status in cases involving "termination/re-establishment" transactions*

Many of the successor plan determinations previously made by PBGC have involved "termination/re-establishment" transactions that are similar to how the Old Quanex Plan was terminated and how the New Quanex Plan was created. We note that, in 1984, PBGC and the Departments of Treasury and Labor issued "Implementation Guidelines" (Enclosure 7 to this decision) that specifically addressed the successor status of a new pension plan that was created in such transactions. The Implementation Guidelines stated:

An employer that terminates a sufficient defined benefit pension plan may establish a new defined benefit plan covering the same group of employees. The new plan may grant past service credit for the period during which an employee was covered by the terminated plan (subject to the limitations of Section 415 of the Internal Revenue Code). The prior plan and the new plan, in combination, may provide benefits for each participant equivalent to those to which the participant would have been entitled if the prior plan had continued without interruption. The PBGC will clarify the fact that a successor plan is exempt from the five year phase-in of benefit guarantees that applies to newly established plans. The above is one example of what will be deemed a successor plan by the PBGC.

PBGC has concluded that the above statement suggests that a new plan created through such termination/reestablishment transactions generally should be considered a successor plan. Additionally, PBGC has concluded that there are good reasons for generally finding that a successor plan relationship exists in such cases. In so concluding, PBGC took into account that the purpose of "termination/re-establishment" transactions ordinarily had been to allow the pension plan sponsor to obtain a reversion of the excess assets in the plan (the amount of assets beyond the level needed to provide accrued benefits).² Such a reversion has been (and is) permitted under ERISA if the sponsor

² PBGC records do not show whether Quanex in fact received a reversion of excess plan assets. PBGC's legal position concerning whether a successor plan exists, however, is not dependent upon whether a reversion was received. Accordingly, we conclude that whether or not Quanex actually received a reversion is immaterial to our successor plan analysis.

terminated the plan, but employers have wanted to take reversions without terminating their plans.

The Implementation Guidelines effected a compromise to address this desire by plan sponsors while protecting participants. Under the Guidelines, a sponsor would be allowed to terminate its plan, take a reversion, and then re-establish the plan in such a way that left participants in a similar position than if the plan had not terminated. PBGC has concluded that the successor plan language in the Implementation Guidelines provided protections to participants consistent with this intent, since successor plan status (as stated in the Guidelines) allowed PBGC to guarantee benefits in the same manner as if the prior plan had not terminated. For example, if a plan created through "termination/re-establishment" transactions is a successor plan and subsequently terminates within five years, it would not be subject to the five-year phase-in for benefits guaranteed in newly-established pension plans. Accordingly, in evaluating the successor plan issues in this appeal, the Appeals Board has applied PBGC's long-standing position concerning the interpretation of the Implementation Guidelines' language.

3. *Comparison of the Benefits under the Old Quanex Plan and the New Quanex Plan*

The Old Quanex Plan follows the design of many defined benefits plans, with benefits based on "high-5" earnings times years of service with Quanex Corporation (or its predecessor, Michigan Seamless Tube Company). The normal retirement age for participants was age 65, and participants could retire at age 55 with 10 years of service. The benefit amount was 1.5% of average earnings during the five consecutive calendar years during which earnings were the highest multiplied times years of continuous service. At a minimum, the benefit could not be less than \$9 per month times years of continuous service. The early retirement benefit was the normal retirement benefit, actuarially reduced to reflect early commencement of benefits. The Old Quanex Plan provided a "30-and-out" benefit, which permitted participants to retire at any age with 30 years of service. The "30-and-out" benefit was equal to the normal retirement benefit minus a flat \$60. For example, if the normal retirement benefit was \$2,400/month, the 30-year pension would be \$2,340/month. The Old Quanex Plan also had a disability benefit that applied to any participant employed for at least six consecutive months, if that individual became totally and permanently disabled. Employees in the Old Quanex Plan became participants when hired and vesting was "cliff" vesting upon reaching 10 years of continuous service. The plan year was November 1 through October 31.

The New Quanex Plan continued the same basic structure as the Old Quanex Plan. As under the Old Quanex Plan, benefits were based on the same "high-5" average earnings method (typically the final 5 years of employment) that were counted under the Old Quanex Plan. Average earnings, as before, were the highest average earnings over any five-consecutive-year period. Thus, the "high-five" earnings used in the formula for all years of service would, in most cases, be the final five years. Benefits were reduced by the amount payable from the Old Quanex Plan. There were no changes to the normal retirement age and the early retirement age under the New Quanex Plan; they remained age 65 and 55 respectively, with 10 years of continuous service still required for early retirement and an actuarially reduced benefit for early retirement. Finally, the New Quanex Plan continued with the immediate participation upon hiring rule, its cliff' vesting upon reaching 10 years of continuous service, and a plan year that ran from November 1 through October 31.

There were some differences, however, in the New Quanex Plan. The flat 1.5% formula continued to apply to service before the effective date of the New Quanex Plan (November 1, 1985).

But for service on and after that date, the normal retirement benefit changed to a two-tier formula: 1% of high 5 average earnings up to the "Covered Compensation Level," and 1.5% of high-5 average earnings in excess of that level. The Covered Compensation Level was defined in reference to Table II results in Revenue Ruling 71-446 and any subsequent revisions. The \$9 per month minimum benefit formula continued to apply to all service, unchanged from the Old Quanex Plan. Thus, the new two-tiered benefit formula was somewhat less generous than the old 1.5% formula.

The New Quanex Plan eliminated the 30-and-out retirement benefit for any participant hired after November 1, 1985. For participants hired before the New Quanex Plan took effect, the retirement was still permitted at any age with 30 years of continuous service. The amount of the 30-and-out benefit remained the same as under the Old Quanex Plan with the exception that the benefit based on service after the effective date was subject to the same less generous formula as discussed above. In addition, the benefit based on service after November 1, 1985 was subject to the same actuarial reduction as the early retirement benefit (capped at a 50% reduction). Thus, the New Quanex Plan also made the 30-and-out retirement provision less generous to the employees hired prior to November 1, 1985. Finally, the New Quanex Plan eliminated the disability pension, though we do not know if it was replaced by a disability benefit payable from a separate plan.

4. *Appeals Board's conclusion that benefits in the two plans are "substantially the same"*

In analyzing whether the New Quanex Plan is a successor to the Old Quanex Plan, we considered the basic structure of the two plans in determining whether the benefits were substantially the same. In comparing the benefits, we accorded significant weight to the fact that the basic structure of the Old Quanex Plan was carried forward in the New Quanex Plan. Benefits in both were based on a high-5 average earnings formula and years of continuous service with the Quanex Corporation. The high-5 average earnings formula that applied all years of service was based on the highest five consecutive years of earnings; there was not one high-5 average earnings amount for service under the Old Quanex Plan and another high-5 average earnings amount for years after the re-establishment. Both plans provided for normal retirement at age 65 and an actuarially reduce early retirement at age 55 with 10 years of service. Both plans permitted retirement after 30 years of service, regardless of age, for those hired before the establishment of the New Quanex Plan. Finally, both plans provided for immediate participation of new hires, 10-year cliff vesting, and the same plan years.

While we also are aware that there were some differences in the retirement formulas as discussed above, we found it significant that, in at least one important respect, the continuity between the Old Quanex Plan and the New Quanex Plan benefitted employees. As discussed above, an employee's high-5 earnings, taking into account all years of employment with Quanex (or its predecessor) is used in the New Quanex Plan in determining the pension benefit accruing for service prior to November 1, 1985 and for the pension benefit accruing for service after November 1, 1985. For most employees, average earnings over the last five years of employment are much higher than their average earnings earlier in their career. Thus, this kind of final-earnings formula used in the New Quanex Plan generally produces a much higher benefit than if a completely unrelated new plan had been established, disregarding prior years of service.

The Appeals Board also accorded weight to fact that the Quanex Corporation followed the classic termination/re-establishment model, as envisioned in the Implementation Guidelines, in creating the New Quanex Plan. While a minor deviation from this classic model occurred in that the

New Quanex Plan was slightly less generous in its benefit formula for service after November 1, 1985, we nevertheless concluded that, overall, the benefits provided by the combination of the New Quanex Plan and the Old Quanex Plan were substantially “equivalent” to the benefits that would have been provided had the Old Quanex Plan continued.³

5. *Summary of Our Successor Plan Determination*

In summary, the Appeals Board’s found that New Quanex Plan is a successor plan, as defined in ERISA section 4021(a), to the Old Quanex Plan because the two plans (1) covered substantially the same employees; (2) provided substantially the same benefits; and (3) there was continuity between the two plans.

³ In making this finding, we take into account the sponsor’s option at any time of reducing future accruals and/or eliminating or changing the 30-and-out retirement provision. We also take into account that the change to the 1.5% benefit formula and the 30-and-out benefit were effectively phased in over time. These changes had little impact on participants near retirement in 1985, though they did impact participants hired closer in time to the New Quanex Plan. While we note that the reduction from 1.5% to 1% is of significance to some participants, the reduction is mitigated in that the 1.5% multiplier still applied to average earnings above the “Covered Compensation Level” and many participants (including you) had significant earnings above that level. Thus, the effective multiplier was somewhere between 1.0 and 1.5%. Finally, while the New Quanex Plan eliminated the disability benefit, the effects of this change would impact only a limited number of participants.