

Pension Benefit Guaranty Corporation

75-28

February 27, 1975

REFERENCE:

[\*1] 4062(b) Liability of Employer in Single Employer Plans. Amount of Employer Liability

OPINION:

This is in response to your letter of October 31, 1974, wherein you advise that you are considering the termination of the \* \* \* Pension Plan. You requested that we confirm your understanding as to the legality and consequences [sic] of your proposed distribution of the assets of the plan. We regret that our response has been delayed so long.

In your letter you state that the plan's assets are sufficient to fund all vested liabilities and ask whether, assuming a proper distribution, you would be liable to this Corporation on termination. Where a plan terminates and assets are sufficient to fund all vested liabilities, those assets are also ordinarily sufficient to pay all benefits guaranteed under Section 4022(a) of the Employee Retirement Income Security Act of 1974 (hereinafter the "Act"). The liability to this Corporation of an employer upon the termination of a covered pension plan is limited to the excess of the current value of the plan's benefits guaranteed under this Title on the date of termination over the current value of the plan's assets allocable on the date of termination. [\*2] Act, Section 4062(b)(1). Accordingly, on the facts stated in your letter, it appears that your company would probably not be liable to this Corporation upon termination of its pension plan.

Should you decide to terminate the plan, as your letter indicated you intend to do, please be advised that you must first file a Notice of Termination with this Corporation pursuant to Section 4041(a) of the Act. When that notice is filed, we will make a specific determination concerning the sufficiency of your plan on the date of termination and advise you finally as to whether the proposed distributions may be made without violating Title IV of the Act.

You have also asked whether certain distributions,[sic] including payments to "two of the top twenty-five, highest paid employees [who] . . . have restricted benefits under the plan" could be made. We feel constrained not to answer that inquiry because such distribution may, depending on the circumstances, have tax consequences which the Internal Revenue Service, rather than this Corporation, must determine. Should you terminate your plan, your local Internal Revenue Service Office will, we are confident, assist you in obtaining whatever [\*3] tax information you may require.

I trust this answers your inquiry.

George B. Driesen  
Deputy General Counsel