

Pension Benefit Guaranty Corporation

76-115

October 27, 1976

REFERENCE:

[*1] 4001(b) Definitions. Employer and Controlled Group
4062(a) Liability of Employer in Single Employer Plans. Applicability
4062(b) Liability of Employer in Single Employer Plans. Amount of Employer Liability
4062(d) Liability of Employer in Single Employer Plans. Corporate Reorganizations

OPINION:

This is in response to your letter to Mr. Kenneth L. Houck, Executive Director of the Pension Benefit Guaranty Corporation ("PBGC"), in which you requested this Corporation to rule that a purchaser of assets from an employer liable to PBGC under § 4062 of the Employee Retirement Income Security Act of 1974 (the "Act") does not succeed to the liability to the PBGC.

As I understand the facts, *** filed notices of intent to terminate the *** Pension Plan A ("Plan A"), which covers all non-union employees of *** and *** Pension Plan B ("Plan B"), which covers all union employees of ***. ** is the proposed date of termination for both plans. *** also maintains defined benefit pension plans. For purposes of this ruling, I assume that the plans maintained by both *** and *** are covered by Title IV of the Act.

*** was placed in receivership under Chapter XI of the Federal Bankruptcy [*2] Act in December of 1974; ** is also undergoing Chapter XI proceedings. By *** ceased its operations and discharged all of its employees except those needed to perform continuing administrative duties and maintain: *** physical plant.

***, unrelated to *** or ***, proposes to purchase for cash a substantial portion of the assets of ***. *** expects to hire some of the former employees of *** who were participants in Plan A or Plan B, but does not propose to reestablish either plan.

A ruling is requested to the effect that *** will not be subject to any liability resulting from the termination of Plan A, Plan B or the plans maintained by ***

Section 4062(a) of the Act provides that "any employer who maintained a plan . . . at the time it was terminated . . ." shall be liable to the Pension Benefit Guaranty Corporation for an amount determined under § 4062(b) of the Act. Under § 4001(b) of the Act, and Title 29, Chapter XXVI, Part 2612 of the Code of Federal Regulations (41 Fed. Reg. 12302, March 25, 1976), trades or businesses under common control are treated as a single employer for purposes of Title IV of the Act. Section 4062(d) establishes rules to [*3] determine the employer liable to PBGC is the case of certain corporate reorganizations.

In this case, assuming that the only business under common control with *** is ***, *** and *** would be jointly and severally liable to the PBGC for any liability determined under § 4062(b) of the Act resulting from the termination of Plan A, Plan B or the plans maintained by *** The purchase solely for cash of *** assets by *** is not a reorganization of the type described in § 4062(d) of the Act. Accordingly, under § 4062 of the Act, assuming the purchase is for fair market value, *** would not be subject to liability resulting from the termination of Plan A, Plan B or the plans maintained by ***

I hope this is of assistance.

Henry Rose
General Counsel