

# *Pacific Fishermen Shipyard and Electric, LLC*

## **Pacific Fishermen Shipyard**

Three Marine Railways and Lift Dock to 160 ft. x 600 Tons  
Professional Ship and Yacht Repair Since 1946

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## **PFI Marine Electric**

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29 July 2020

The Honorable Gordon Hartogensis  
Director  
Pension Benefit Guaranty Corporation  
1200 K St., NW  
Washington, DC 2005  
Re: Special Financial Assistance Program for Troubled Pension Plans

Dear Director Hartogensis:

We appreciate the opportunity to work with the Pension Benefit Guaranty Corporation (PBGC) as it develops needed guidance to implement the Special Financial Assistance Program for Financially Troubled Multiemployer Plans pursuant to Section 9704 of the American Rescue Plan Act (ARPA).

We are writing this letter on behalf of Pacific Fishermen Shipyard and Electric, LLC (PFI), a small working shipyard located in Seattle, WA, and other small yards and businesses in the Pacific Northwest struggling to maintain their contributions to multiemployer pension plans and remain viable business enterprises. ARPA is only the first step that may be needed to accomplish both goals.

We would like to bring two matters to your attention that we respectfully request be addressed in your upcoming guidance. The first item is the availability of funds for all "critical and declining" plans; the second issue is the crediting of these funds once paid to the calculation of withdrawal liability – a critical matter for our firms, and in general, for the small business community.

PFI's shipyard employees are represented by five unions. The pension plans for three of the five unions are each in "critical" financial status according to their most recent annual Form 5500 reporting. One additional union plans is currently in "critical and declining" status and therefore eligible to apply for funds under the law. This plan covers the Shipwrights Union, and because of the size of the union, it may be one of the smaller plans eligible for assistance. We are concerned that this union's plan could be at the end of the list for funding. Therefore, we request that PBGC withhold sufficient funds from appropriations made available to cover all of the plans in the "critical and declining" category to ensure that none of these plans are denied needed financial assistance.

In the meantime, since our other pension plans are in "critical" status, there may well be a need for more funding for these plans, too. It is possible that some of the unions may agree to replace contributions to these plans with contributions into 401(k) defined contribution plans, a conversion which might benefit not only the employers, but also the employees who currently depend on continuing contributions to pension plans that may become insolvent in the near future. In any event, should these "critical" plans fall to "critical and declining" status, we respectfully request that PBGC support providing additional financial assistance.

Our second request is to address the issue of withdrawal liability under ARPA. We believe the only fair interpretation of the statute is that funds granted under the law should be immediately recognized as assets of the plan which must be taken account of in determining employers' withdrawal liabilities. Such a calculation is needed in order to ensure that employees will continue to be paid their pensions while also ensuring that employers are treated equitably under the law.

As the PBGC is well aware, the economic costs of prior legislative attempts to improve multiemployer plan funding, have been largely borne by participating employers in the form of increased contributions under "funding improvement plans" and "rehabilitation plans" that plans were required to adopt under the Pension Protection Act of 2006 – even though the employers were not responsible for creating the funding shortfalls. In many cases, employers' required contributions are now 2 to 3 times higher than negotiated through the collective bargaining process. These increases, which do not purchase any additional benefits for the employees, render contributing employers unable to compete with non-union employers and strongly disincentivize hiring.

Further, when an employer's obligation to contribute to a multiemployer plan ends, and despite having already paid significantly increased contributions, the employer is then also required to pay withdrawal liability. Withdrawal liability is an employer's share of a plan's "unfunded vested benefits," a term which refers to the difference between the vested benefits due under the plan and the value of the plan's assets. Because the amount of withdrawal liability is often crippling, particularly for smaller employers, companies are faced with an insoluble dilemma: they can neither afford to continue contributing at ever-escalating rates, nor can they afford to withdraw. It would be particularly unfair to employers to continue measuring withdrawal liability based on a plan's pre-ARPA funding level after the plan has received ARPA relief, and Congress has made clear its intent that withdrawing employers should no longer bear the entire burden for multiemployer pension underfunding. The Multiemployer Pension Reform Act of 2014, which ARPA left in place, explicitly provides that the contribution increases to which employers have been subjected are not to be included in determining withdrawal liability payments. It would be inconsistent to now reverse course and deny any relief to employers.

We appreciate your kind consideration of these issues as the PBGC develops its critical guidance for implementing the reforms and financial assistance provisions under ARPA. We stand ready to work with PBGC to shore up and sustain multi-employer pensions now and into the future.  
Sincerely,

Pacific Fishermen Shipyard and Electric, LLC

A handwritten signature in black ink, appearing to read "Doug Dixon". The signature is fluid and cursive, written in a professional style.

Doug Dixon  
Corporate Secretary