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

APR 03 2003



Re: Appeal No. [redacted] Trans World Airlines, Inc.  
(TWA) Retirement Plan for Pilots (the Plan)

Dear [redacted]

The Appeals Board reviewed your appeal of PBGC's July 1, 2002 determination of your PBGC benefit. For the reasons stated below, we must deny your appeal.

***Determination and Appeal***

PBGC determined that you are entitled to a PBGC benefit of \$724.45 per month payable as a Modified Cash Refund Life Annuity (MCRLA).<sup>1</sup> PBGC noted that that was the same amount you were receiving when the Plan terminated.

Your August 5, 2002 form-letter appeal said that (1) PBGC did not provide you with sufficient information on the analysis that underlies the determination, and (2) without such information, it is difficult for you to know whether errors not apparent to you were made. Our *Discussion* below addresses those issues, and the other issues you raised.

***Discussion***

1. Request for Additional Information

Because your appeal requested more information about your benefit calculation, the Appeals Board sent your request to PBGC's Disclosure Officer and informed you in a letter dated August 14, 2002 that you had the option of supplementing your appeal within 30 days after his response. PBGC records show that the Disclosure Officer responded to your request on August 14, 2002 with copies of the documents in your personal PBGC file. One of those documents shows how your Plan-defined benefit was calculated. See **Enclosure 1**. The Appeals Board has not received any supplemental correspondence from you.

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<sup>1</sup> Your MCRLA provides a benefit for the rest of your life. Also, because the Plan's former sponsor made special contributions on your behalf, your beneficiary will receive a benefit if you die before you receive pension payments equal to the special contributions balance.

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2. The Issue Pending with the IRS

The Air Line Pilots Association (ALPA) specifically raised the issue of whether the freeze amendment violated the anti-cutback rule in the context of negotiation of the 1993 Comprehensive Settlement Agreement (CSA). (See **Enclosure 2** for an explanation of the benefits payable under the Plan before and after the 1993 benefit freeze.) In accordance with the CSA, Pichin requested a determination letter from the Brooklyn District Director (BDD) on March 30, 1993. The BDD forwarded the request to the National Office, which issued a Tax Advice Memorandum (TAM) on September 9, 1994, finding that the Plan did not, by its terms, violate the anti-cutback rule in section 411(d)(6) of the Internal Revenue Code (IRC). Thus, under the terms of the CSA, TWA was authorized, if not required under ERISA, to administer the Plan in accordance with the January 8, 1993 amendments.

On April 22, 1999, ALPA requested reconsideration of the 1994 TAM. We understand that the request was forwarded to the National Office, but after learning that the Plan had been terminated, the National Office halted its actions concerning the request.

3. Calculation of Your Plan-Defined Benefit and Your PBGC Benefit

After the Plan terminated on January 1, 2001, PBGC personnel conducted an audit of the procedures TWA used in administering the Plan and calculating participants' Plan-defined benefits. After calculating benefits for a sampling of participants and comparing the results with the amounts that TWA calculated and stored in TWA's pension database, PBGC auditors concluded that the benefit amounts in TWA's database were reliable. So, in most cases and in your case in particular, PBGC accepted TWA's calculations, and then adjusted them to account for (1) pre-age-62 supplements, (2) early or late retirement, (3) annuity types selected by participants and/or their spouses, and (4) limitations on benefits set by Congress under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Documents in PBGC files reveal that the Plan did not have sufficient assets when it terminated on January 1, 2001 to provide all benefits that PBGC guarantees under ERISA. Nevertheless, your Plan-defined vested benefit is fully guaranteed and payable to you. Thus, because you are receiving your full Plan-defined vested benefit, and because the Plan's final assets and ERISA § 4022(c) amount were insufficient to cover Category 3 benefits (see **Enclosure 3** for an explanation of ERISA's priority categories), PBGC's allocation of assets under ERISA § 4044, and PBGC's allocation of the ERISA § 4022(c) amount did not increase amount of

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your PBGC benefit.

PBGC is not authorized to guarantee or pay benefits larger than those provided under the terms of a terminated Plan.

PLEASE NOTE that PBGC will always, even after an appeal is closed, consider any new, specific evidence that you present showing that you may be entitled to a higher benefit. If you have or obtain any such evidence, PBGC will certainly review it. Please send any such information to PBGC's Insurance Operations Department, Attention: Trusteeship Processing Division #1, at P.O. Box 19153, Washington D.C. 20036. If you need additional information from PBGC, please call the Customer Service Center at 1-800-400-7242.

### 3. Federal Litigation

Your form-letter appeal includes claims that are being litigated against PBGC and other parties in two federal courts. The plaintiffs in the court cases allege among other things that the Plan was improperly terminated under ERISA. The form letter says that you are raising these issues in order "to ensure that all my rights with respect to the issues in contention in those litigations are fully preserved."

By way of background, Carl Icahn was the former controlling shareholder of TWA. TWA filed a bankruptcy petition in 1992 in the Bankruptcy Division of United States District Court for the District of Delaware. One of the issues involved in the bankruptcy was the status of TWA's underfunded pension plans, and the extent of Carl Icahn's liability, if any, in the event the plans terminated. Among other things, Mr. Icahn conditioned his willingness to provide TWA with a \$200 million loan (which was necessary for TWA to survive and emerge from bankruptcy) upon some provision that fixed the amount of liability that he might incur towards the pension plan. Throughout these proceedings, the interests of the retired and active pilots were represented by the Air Line Pilots Association (ALPA).

On January 5, 1993, TWA, ALPA (and other unions that represented TWA employees), and PBGC signed a "Comprehensive Settlement Agreement" (CSA) under which: (1) Carl Icahn would loan TWA \$200 million; (2) an Icahn-owned concern called Pichin took over sponsorship of the TWA Pension Plans, and agreed to become responsible for any minimum funding costs of the Plans that were not covered by a \$300 million payment guaranteed by TWA; (3) it was agreed that the Plans would terminate if certain events occurred after 1993; and (4) if the Plans were thereafter terminated by

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PBGC, it was agreed that Icahn would pay PBGC \$240 million dollars. The Bankruptcy Court approved the CSA, and it was later incorporated in a Plan of Reorganization approved by the Bankruptcy Court. Neither ALPA nor any other party took an appeal from that decision, which became final and binding.

The TWA Pension Plans were terminated in 2001. Even though ALPA was one of the parties that negotiated and signed the CSA, it filed a suit to stop the termination and void its own settlement agreement. Judge Ricardo Urbina of the United States District Court for the District of Columbia dismissed the case on March 29, 2002. Also, the Allied Pilots Association has assumed representation of former TWA pilots, and it is now litigating the appeal of Judge Urbina's ruling<sup>1</sup>. Furthermore, on May 15, 2002, eight former TWA pilots filed another lawsuit challenging the termination, also in Washington, D.C. The judge postponed litigation in the second case until the appeal of the first case is decided.

While your appeal briefly summarizes the claims in these cases, it does not identify any errors in PBGC's determination of your PBGC benefit based on either (1) your personal data, (2) the Plan's provisions, or (3) ERISA provisions, given the Plan's actual status as a terminated, PBGC-trusteed plan. Please note that the Appeals Board does not have the authority to decide whether the Plan's termination was proper, or to change the termination date. In any event, the Board declines to decide the claims that are in litigation.

**Decision**

Having applied the law and PBGC's rules to the facts in this case, the Appeals Board decided that we must deny your appeal. This decision is the agency's final action regarding your September 19, 2002 appeal. You may, if you wish, seek court review of this decision.

Sincerely,



Michel Louis  
Appeals Board Member

Enclosures (3)

<sup>1</sup> A copy of Judge Urbina's decision (<http://www.dcd.uscourts.gov/00-3113.pdf>) is available on the court's website (<http://www.dcd.uscourts.gov/>).