

Pension Benefit Guaranty Corporation

76-62

April 30, 1976

REFERENCE:

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

OPINION:

Your letter of April 13, 1976, requested the Pension Benefit Guaranty Corporation ("PBGC") to respond to two questions concerning the above-mentioned pension plans maintained by the \* \* \* Company. Notices of intent to terminate the two plans have been submitted to PBGC.

With respect to your first question, PBGC has no objection to the establishment of a termination date for both plans as of a day not later than April 30, 1976.

Your second question concerns the application of the net worth limitation on employer liability to PBGC contained in § 4062(b)(2) of the Employee Retirement Income Security Act of 1974 (the "Act"). You ask whether the net worth limitation of § 4062(b)(2) operates to limit an employer's aggregate liability arising from the simultaneous termination of two plans to a total amount not to exceed 30 percent of the employer's net worth. We have reviewed the subsection in question and the legislative history of the employer liability provision and conclude that Congress intended that we apply this interpretation. Accordingly, upon the termination of the two plans maintained by [\*2] the \* \* \* Company, the Company will be liable to PBGC for the lesser of the sum of the amounts of underfunding of each plan or an amount equal to 30 percent of the net worth of the Company.

Section 4062(b) of the Act provides as follows:

(b) Any employer to which this section applies shall be liable to the corporation in an amount equal to the lesser of --

(1) the excess of --

(A) the current value of the plan's benefits guaranteed under this title on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

The manner in which § 4062(b) is to be applied in a situation in which an employer terminates two plans simultaneously is not entirely clear from the face of the subsection. Viewed in isolation, the subsection could be construed to provide that the limitation expressed in subdivision (2) operates to limit an employer's liability to the extent of 30 percent of the employer's net worth [\*3] for each of the two simultaneously terminated plans. It would follow that an employer who maintained more than one plan would be exposed to the imposition of multiple liabilities upon the simultaneous termination of several plans, and that such an employer's aggregate liability to PBGC could far exceed the employer's net worth. We think such a construction is contrary to the intent of Congress.

Congress recognized that some provision for the imposition of employer liability had to be included in the plan termination insurance program in order to preclude abuse of the program. See, e.g., S. Rep. No. 93-127, 93d Cong., 1st Sess. 26 (1973). At the same time, Congress recognized that the imposition of unlimited liability could have a severe, detrimental effect. The Senate Committee on Labor and Public Welfare, for example, foresaw that,

". . . if the degree of liability was absolute to the extent of the employer's assets, it might drive some employers to the brink of bankruptcy, impose substantial economic hardship, or discourage the establishment of plans or the reasonable liberalization of benefits." Id.

The solution proposed to avoid this hardship was to establish [\*4] a limitation on liability, tied to employer net worth. This solution was ultimately adopted in § 4062(b)(2). We believe our interpretation is consistent with the

concerns expressed in the legislative history that the limitation is intended to operate as a limitation on the aggregate liability arising from the simultaneous termination of two plans.

I hope this will be of assistance to you.

Henry Rose  
General Counsel