

Pension Benefit Guaranty Corporation

77-127

February 4, 1977

REFERENCE:

[\*1] 4062(a) Liability of Employer in Single Employer Plans. Applicability

OPINION:

This is in response to your letter of \* \* \* and subsequent phone conversation with \* \* \* of my staff, concerning employer liability upon any ultimate termination of \* \* \* (the "Plan").

As I understand the pertinent facts, your client, \* \* \*, has, over the past several years, entered into contracts to provide labor services for the operation of the \* \* \*. Under the terms of these contracts, the employees at the \* \* \* are employed by the contractor which provides the labor services. Each new contractor continues to use the same employees of the predecessor contractor, and thus even though the "employer" changes, the labor force which is covered by the Plan substantially remains the same.

You asked whether the Pension Benefit Guaranty Corporation (the "Corporation") would look to your client, \* \* \* for employer liability under § 4062 of the Employee Retirement Income Security Act of 1974 (the "Act"), rather than to the current contractor, should \* \* \* become a successor employer prior to the termination of the Plan.

Under § 4062(a) of the Act, liability to the Corporation for an "insufficient" plan is imposed upon [\*2] "any employer who maintained a plan . . . at the time it was terminated" (emphasis added). Consequently, if \* \* \* or any other financially sound company maintains the plan on its date of termination and makes payment to the Corporation in satisfaction of any employer liability under § 4062(b)(1) of the Act, the Corporation would have no interest in looking back toward a predecessor employer for any such liability.

I hope this response is helpful to you. Should you have further questions, please do not hesitate to contact me or \* \* \*

Henry Rose  
General Counsel