

Pension Benefit Guaranty Corporation

78-10

June 22, 1978

REFERENCE:

[*1] 4062(d) Liability of Employer in Single Employer Plans. Corporate Reorganizations

OPINION:

You asked whether, under the circumstances described below, * * * would be deemed a "successor corporation" under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), because of its purchase of a former division of the * * * * *, and its rehiring of * * * former employees at that division.

From your letter, it appears that * * * purchased, by agreement of February 27, 1978, certain assets of the * * * ("Division") from * * * Subsequently, * * * reemployed most of the Division's employees and recognized the existing unions as collective bargaining representatives of Division employees.

At the transaction's closing, * * * maintained two corporation-wide plans, each of which covered participants who were * * * employees at the Division: a union negotiated plan for hourly employees and a plan for salaried employees (collectively "Plans"). * * * agreed with the Union representing hourly employees to adopt for union employees a new plan with a benefit structure identical to that of the * * * union plan. Further, * * * intends to adopt a new plan for the benefit of former * * * salaried [*2] employees (collectively * * * Plans"). For purposes of this opinion, this Office assumes the * * * and * * * Plans are subject to Title IV of ERISA.

Benefits received by participants under the * * * Plans at the Division will, pursuant to formulae contained in the purchase agreement with * * * be offset by benefit amounts, if any, which such participants will receive under the Plans. The purchase agreement further provides that service with * * * and * * * shall be cumulated for purposes of benefit eligibility under the * * * and * * * Plans.

The agreement explicitly provides that:

[i]t is the express intent of * * * and [* * * that in no event shall either party, or their respective Plans be liable or responsible for the obligations of the other party, or their * * * respective Plans. . . . Furthermore, it is the express intention of * * * and * * * . . . that * * * . . . will not be assuming, continuing, or maintaining * * * . . . Plans . . . ; and that no assets of * * * . . . Plans will be transferred to * * * . . . Plans." Agreement, paragraph 5.

Under the facts as you represent them, * * * would not be treated under Title IV of ERISA as a successor corporation to * [*3] * * with respect to any existing plans maintained by * * * and not assumed by * * *

Henry Rose
General Counsel