

Pension Benefit Guaranty Corporation

82-30

October 22, 1982

REFERENCE:

[\*1] 4062 Liability of Employer in Single Employer Plans

OPINION:

This is in response to your letter requesting an opinion concerning the effect of Section 4062 of the Employee Retirement Income Security Act, as amended by Multiemployer Pension Plan Amendments Act of 1980 ("ERISA"), 29 U.S.C. § 1362 (1976 and Supp. IV 1980) on a seller and other members of a controlled group of corporations with the seller following the sale of the stock of the seller's subsidiary corporation to an unrelated buyer under circumstances in which the defined benefit pension plan of the former subsidiary continues to be maintained by the former subsidiary after the sale.

PBGC will not, as a general rule, seek from the seller and other members of a controlled group of corporations with the seller employer liability under Section 4062 of ERISA, with respect to a termination of a pension plan by a successor employer after the sale of stock of a subsidiary corporation, if:

(1) as of the closing date of the sale the plan had sufficient assets to satisfy all benefits which are guaranteed by the PBGC under Title IV, or

(2) the plan's assets are not sufficient to satisfy guaranteed benefits on such date, 30% of the statutory [\*2] net worth of the employer maintaining the plan immediately after the closing is greater than the sum of the plan asset insufficiencies of all the single-employer plans maintained by such employer.

I trust this will help you.

Henry Rose  
General Counsel