

Pension Benefit Guaranty Corporation

83-18

August 5, 1983

REFERENCE:

[*1] 4203 Complete Withdrawal
4218(1)(A) Withdrawal - Change of Business Structure

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation concerning the application of Sections 4203 and 4218 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1383 and 1398. Specifically you wish to know whether the incorporation of a sole proprietorship constitutes a withdrawal from a multiemployer pension plan where the successor corporate employer continues to contribute to the plan on behalf of its employees for the same operations for which contributions were previously contributed by the sole proprietor. We conclude that a withdrawal does not occur under such circumstances where there is a substantial identity between the predecessor and the successor employer.

Under Section 4203 a contributing employer withdraws from a multiemployer plan if it (1) permanently ceases to have an obligation to contribute under the plan, or (2) permanently ceases all covered operations under the plan.

Section 4218, however, provides that --

Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely [*2] because -

(1) an employer ceases to exist by reason of -

(A) a change in corporate structure described in section 4062(d), or

(B) a change to an unincorporated form of business enterprise,

if the change causes no interruption in employer contributions or obligations to contribute under the plan

Section 4062(d) which is referred to in Section 4218, provides in paragraph (1) --

If an employer ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

It is our view that when there is no interruption in employer contributions or the obligation to contribute, incorporation of a previously unincorporated employer (e.g., a sole proprietorship or a partnership) may constitute a covered reorganization if there is substantial identity between the predecessor and the successor employers. But see Section 4212(c) of ERISA. A dispute over such a determination regarding the occurrence of a withdrawal would be subject to the arbitration provision of Title IV.

I hope this has been [*3] of assistance. If you have further questions on this matter, please contact * * * of my staff at this address or (202) 254-4873.

Henry Rose
General Counsel