

Pension Benefit Guaranty Corporation

76-102

August 23, 1976

REFERENCE:

[*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate
4048 Date of Termination

4082(b). Effective Date; Special Rules. Applicability of Title IV to Plan Terminations Occurring Between July 1, 1974
and September 2, 1974

OPINION:

Thank you for your letters of August 4 and 10, 1976. The Pension Benefit Guaranty Corporation (the "PBGC") been asked to determine whether this corporation has any jurisdiction over the above plan, which is at present the subject of the application of your client, * * * for appointment of an appropriate person to effect final windup of the plan and distribution of assets held by * * * as trustee.

We have discussed the possibility that if the plan were a covered defined benefit pension plan which terminated on or after September 2, 1974, the PBGC would seek to intervene and remove the pending application from state to federal district court. The PBGC's intervention would seek appointment of a trustee to administer the plan under § 4042 of the Employee Retirement Income Security Act, 29 U.S.C. § 1342 (Supp. IV, 1974) ("the Act"), or both appointment of a trustee and termination under that provision of the Act.

The PBGC has determined [*2] that, based upon the information you gave me by telephone on August 4 and you submitted in your letters, coupled with information from * * * attorney for some plan participants, conveyed in an August 10 phone call, the subject pension plan terminated well before the September 3, 1974 date on which. * * * ("the Company") was adjudicated bankrupt.

We have learned from * * * that the plant ceased operations in the summer of 1972. You informed me that the Company's last contribution to the trust was made on April 9, 1970, as evidenced by the accounting submitted with your application. Since benefits accrued based on actual service, benefit accruals ceased as of the next half year. Thereafter, according to an exhibit to your application, the Company's certificate of incorporation became inoperative and void under the laws of * * * on April 15, 1973. Another exhibit shows that the company was adjudicated bankrupt on September 3, 1974, having filed for bankruptcy on April 8, 1971.

In these circumstances, the only event related to plan activity occurring after the September 2, 1974 effective date of this Act was the adjudication of bankruptcy on September 3. All the indicia of plan [*3] activity - work by participants, operation of the plant, benefit accruals, and employer contributions-ceased between 1970 and 1972. Accordingly, the discharge in bankruptcy alone does not demonstrate that the plan terminated on September 3, 1974.

Based on the foregoing determination, the Act does not give the PBGC any interest in the final termination, or wind-up, procedure you have initiated. We will not, therefore, undertake to intervene in the pending state court proceedings or other proceedings related thereto.

Thank you for your cooperation.

Christine O. Cook
Attorney
Office of the General Counsel