

Pension Benefit Guaranty Corporation

76-38

March 19, 1976

REFERENCE:

[\*1] 4041(c) Termination by Plan Administrator. Inability to Determine Sufficiency  
4068(a) Lien for Employer Liability. Creation of Lien

OPINION:

Enclosed are letters of demand pursuant to § 4068(a) of the Employee Retirement Income Security Act of 1974 (hereinafter referred to as the "Act") for payment of employer liability pursuant to § 4062 of the Act.

Liability is imposed under § 4062 against "any employer who maintained a plan . . . at the time it was terminated." Section 4001(b) of the Act provides that for the purposes of Title IV "all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer." Therefore, since \* \* \* are under common control within the meaning of § 4001(b), they are treated as the employer with respect to the \* \* \* Retirement Plan for the purposes of § 4062.

The demands are for the total amount of underfunding attributable to basic benefits. However, note that under § 4062 employer liability is limited to 30 percent of the net worth of an employer as determined pursuant to that section, and therefore this claim may be limited upon [\*2] a showing that it is for an amount in excess of 30 percent of net worth.