Pension Benefit Guaranty Corporation

81-14

May 26, 1981

REFERENCE:
[*1] 4063 Liability of Substantial Employer for Withdrawal
4063(d) Liability of Substantial Employer for Withdrawal. Partitioning of Plan
4064 Liability of Employers in Multiple Employer & Multiemployer Plans

OPINION:

This is in response to your request that the Pension Benefit Guaranty Corporation (the "PBGC") partition the * * * and * * * Pension Plan (the "Plan") pursuant to section 4063(d) of the Employee Retirement Income Security Act of 1974 ("ERISA").

As we understand the pertinent facts, at all relevant times, the Plan was a multiemployer plan covered under Title IV of ERISA. A Inc. * * * and B Company * * * withdrew from the Plan on March 31, 1977. During the five years prior to the withdrawal, A and B each made about 15 percent of the total plan contributions. As of March 31, 1977, the Plan's assets were approximately $3.9 million. The Plan's unfunded guaranteed benefits were approximately $2.0 million. A's section 4063 liability, as of the date of withdrawal, is approximately $300,000. B's liability is also about $300,000.

Section 4063(d) authorizes PBGC to partition a plan upon the withdrawal of an employer or employers and treat a portion of the plan as a terminated plan and [*2] the remainder as a separate plan. PBGC is required to allocate the plan fund equitably between the two plans.

In deciding whether to partition a plan, the PBGC must first determine that an employer's withdrawal from the plan "has resulted, or will result, in a significant reduction in the amount of aggregate contributions to the plan. . ." Section 4063(d). The PBGC must then determine that partitioning "is consistent with the purposes of this section 4063 and section 4064 and is more appropriate in the particular case." Section 4063(d).

The PBGC has determined that it will not partition a plan to which more than one employer contributes unless it finds: (1) as a result of a withdrawal or withdrawals, contributions to or under the plan will be required to be increased unreasonably in order to meet the minimum funding standards of ERISA or to pay benefits when due, (2) participants would not be unduly prejudiced by a partition, and (3) partitioning would not significantly increase the risk of loss to the PBGC.

After examining the information that you provided, PBGC has determined that contributions to the Plan would not be required to increase unreasonably in order to meet ERISA's [*3] minimum funding standards or to pay benefits when due as a result of the withdrawals of A and B. Therefore, PBGC will not exercise its discretion to partition the Plan.

I hope this information is of assistance.

Robert E. Nagle
Executive Director