

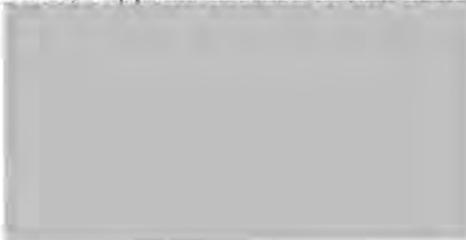


Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

September 16, 2009



Re: Consolidated Appeal; Case No: 200796, Rowe International Retirement Plan for Lodge 475; Appeals decided in this decision:



Dear 

The Appeals Board of the Pension Benefit Guaranty Corporation (“PBGC”) has reviewed your appeal on behalf of the 6 participants of the Rowe International Retirement Plan for Lodge 475 (the “Rowe Plan” or “Plan”) listed above. For the reasons summarized immediately below and discussed in more detail later, we determined that we must deny your appeal.

The Board determined that the plain language of the Plan, specifically the language in Article 6, is consistent with how PBGC calculated the appellants’ benefits. The Plan’s defined benefit insured by PBGC is the “Supplemental Plan” benefit, and Article 6 of the Plan defines how this Supplemental Benefit is calculated. The Board considered your contention that a prior early retirement calculation supported a different interpretation, but we were able to locate two other prior retirement calculations, including one done for an appellant, that supported PBGC’s interpretation of the Plan language. Both the Board’s own actuary and an actuarial consultant provided further input into why your proposed interpretation is incorrect. Ultimately, the Board determined that PBGC’s interpretation of the Plan’s Article 6 language is correct and consistent with two of the three most relevant retirement calculations we were able to review.

While we found that PBGC’s methodology for calculating benefits was correct, we found an error that will result in a benefit increase for four of the six appellants. To

calculate the normal retirement benefit, PBGC should have used the Basic Account value at the Normal Retirement Date (“NRD”); instead, PBGC erred by using the Basic Account value at the end of the NRD calendar year. This error is more fully explained in our decision.

A summary of each appellant’s correct benefit is at Appendix 1. New benefit statements for all six appellants are also included at Appendix 1.

## **INTRODUCTION.**

PBGC is the United States government agency that provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan, subject to legal limitations set by Congress under ERISA.

On November 12, 2003, the Plan terminated without sufficient assets to provide benefits guaranteed by PBGC under Title IV of ERISA, and PBGC became trustee of the Plan.

The Plan had only six participants – all in the “separated vested” category, and you represent all 6 of these individuals. PBGC determined the total value of Title IV benefits payable by PBGC was \$73,354, and Plan assets only covered \$64,721 of this amount.<sup>1</sup> PBGC sent initial (formal) benefit determination letters to the six appellants in early April 2008.<sup>2</sup> We note that none of the six appellants have yet retired.

After requesting and obtaining an extension of time to appeal, you filed a timely 11-page Appeal Brief (“AB”) with three tabbed enclosures on June █, 2008. We docketed individual appeals on behalf of each appellant, pursuant to our standard policies.

The Appeals Board exercised its discretion under section 4003.56 of PBGC’s regulations and consolidated the appeal that you filed on behalf of these six individuals.

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<sup>1</sup> See page 1 of the full 6-page PBGC Actuarial Case Memo at Enclosure 1.

<sup>2</sup> Part 4003 of PBGC’s regulations establishes the rules governing PBGC’s issuance of initial (formal) benefit determinations and the procedures for requesting and obtaining administrative review. 29 Code of Federal Regulations (“C.F.R.”) § 4003 (titled “Rules for Administrative Review of Agency Decisions”). An initial (formal) benefit determination is the letter PBGC issues to communicate the Agency’s determination of an individual’s benefit. *See* 29 C.F.R. § 4003.21. If the individual desires Appeals Board review of his or her benefits, the individual or his or her representative must file an appeal of the Agency’s determination, or a request for an extension of time, within 45 days from the date of issuance of the benefit determination. *See* 29 C.F.R. § 4003.4, 4003.52.

The Board concluded that the respective appeals arise out of the same or similar facts and that they seek the same or similar relief.

**SUMMARY OF THE ISSUE RAISED IN YOUR APPEAL.**

The entire issue raised in your appeal is whether PBGC has used the proper method for calculating the Basic Retirement Benefit for a Participant who is eligible to retire early – before the age of 65.<sup>3</sup> The Basic Retirement Benefit is the defined contribution portion of the Plan benefit – which is not insured by PBGC. The Basic Retirement Benefit must be calculated and is then offset (deducted) from the Supplementary Retirement Benefit. As with any offset type pension calculation, the lower the Basic Retirement Benefit deduction, the higher the Supplementary Retirement Benefit. You argue for a methodology that results in a lower Basic Retirement Benefit deduction and a higher Supplementary Retirement (PBGC) Benefit for your clients.

The key claim of your appeal is at page 6 of the Appeal Brief. You state that when a participant “. . . decides to take [the] ‘Supplementary Benefit’ as an early retirement benefit, the amount is calculated using a two-step process, first applying Article 6.2 (a) and (b), and then applying Article 8, specifically Article 8.2 (a) or (b).” AB at 6. Your contention is that in cases of early retirement (whether under Article 8’s definition of early retirement or for deferred vested participants with 10 years of service and eligible for early retirement under Article 11), the Article 6.2 (c) provision requiring use of the ‘Life Rate’ at normal retirement age does not apply. AB at 1 and 6. We note that PBGC applied Article 6 in its entirety, including Article 6.2(c) to calculate the Supplementary Retirement Benefit.

The term ‘Life Rate’ is not defined by the Plan, yet you used this term frequently in your appeal. For example, you contend in your Appeal Brief, ‘the difference between the PBGC’s and the participants’ positions concerning the benefit determinations issued [for the Rowe Plan] is whether the offset of the Supplementary Benefit should be calculated using the Life Rate at the Normal Retirement Date (the first month after age 65) or the Life Rate at the Early Retirement Date (the first month after qualifying for Early Retirement), which is different for each individual.’ AB at 1.

We interpreted your use of the phrase ‘Life Rate at the Normal Retirement Date’ to mean the actuarial factor used to calculate an annuity value with payment starting at age 65. We interpreted your use of the phrase ‘Life Rate at the Early Retirement Date’ to mean the actuarial factor used to calculate an annuity value with payment starting at the early retirement date; this would result in an immediate annuity payable at the early retirement date.

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<sup>3</sup> Under Plan Article 8.1, a Participant is eligible for an Early Retirement Benefit after attaining age 55 and having at least 10 years of vesting service. Likewise, a deferred vested participant with 10 years of vesting service is also eligible for early retirement, as early as age 55, under Plan Articles 11.2 and 11.3.

You state that “all of the known past applications of this Plan supports the participants’ contention that the Life Rate at the Age of Retirement, and not at age 65 (Normal Retirement Age) has been used by the Plan.” AB at 2. To support you appeal, you provided information on past Plan calculations for two former Plan participants: [REDACTED] and [REDACTED]. Their calculations are at Tabs B and C of your Appeal Brief. You stated that using the Life Rate at the Age of Retirement, in the case of one appellant, [REDACTED], for example, would result in him receiving “over \$6,000 per year.” AB at 2.

Specifically, you contend that appellants should have their benefits calculated as follows:

- “. . . [REDACTED] and [REDACTED] benefit should be calculated using Article 6.2(a), then 6.2(b) and then 8.2(b). Article 6.2(c) should not be used.” AB at 9. You contend that to do otherwise would be inconsistent with the way the Plan calculated benefits for two former (and now retired) participants.
- You contend that due to confusion in [REDACTED] work history, “his Early Retirement Date should be November [REDACTED], 2003, the Life Rate for the reduction should be calculated using that date, and he should be paid retroactive benefits to that time.” AB at 10. You believe the early retirement reduction of ¼% per month would extend back to that date.
- For the remaining four appellants: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], you have identified them as eligible for a deferred vested benefit as early as age 55 and you ask that “. . . their offsets should be similarly calculated. No other result is consistent with the past application of the confusing terms of this Plan.” AB at 11.

Based on our review and for the reasons stated below, we find that PBGC’s interpretation of Article 6 is supported by the Plan’s plain language and the relevant calculations we have reviewed.

## **DISCUSSION.**

The Appeals Board has completed an extensive review of the Plan documents, PBGC records, and the claims you have made in the appeal.<sup>4</sup> We have also examined Plan practice in the case of [REDACTED] and [REDACTED] mentioned above and a third former participant, who we will not name in accordance with the Privacy Act. We were

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<sup>4</sup> None of the 6 Plan participants were affected by any of the PBGC legal limits generally affecting participants. See Sections 6 – 9 of the Actuarial Case Memo, Enclosure 1. As noted above, the sole issue in your June [REDACTED], 2008 appeal is whether PBGC’s interpretation of the Rowe Plan, as explained above, is correct under the Plan’s terms.

also able to obtain from a prior Plan actuary early retirement calculations in the case of [REDACTED], one of the appellants. Finally, we also had an actuary from the Board's consultant actuarial firm, [REDACTED], review this appeal, including the benefit calculations. Our analysis and findings are outlined next.

#### *PBGC's Interpretation of the Plan Document*

In its Actuarial Case Memorandum at Section 5, PBGC's "Interpretations of Note" contains the following explanation of the Rowe Plan and how PBGC interpreted it:

This plan has two parts: Basic Plan and Supplementary Plan. The Basic Plan is of the defined contribution type and the account balances under it were distributed to participants in April 2005.<sup>5</sup> The account balance under the Basic Plan is converted to an annuity and this annuity serves as an offset in the Supplementary Plan formula. Based on plan provisions and with the guidance of ASD and OPSS [internal actuarial and policy divisions within PBGC], we developed the account balance as of NRD, converted it to an immediate annuity payable at Normal Retirement Date (NRD), and used the converted amount as the offset to develop an accrued benefit payable at age 65 (see section 16 for more explanation). The accrued benefit was then adjusted for early retirement and form of payment. Following plan provisions, we used an immediate annuity conversion factor based on the plan's definition of actuarial equivalence (for other than lump sum determinations): 1971 GAM male mortality table projected with Scale E to 1978 and 6% interest. This follows our reading of the plan document (particularly Sections 6.2 and 8.2 and how DISC [PBGC's Department of Insurance Supervision and Compliance] initially analyzed the plan. This results in a large offset and a very small benefit payable. No actual calculations were available.

See Enclosure 1, Actuarial Case Memo, pages 2-3.

#### *Plan Provisions*

We started our independent analysis by reviewing the Plan language. The basis for the benefit calculation begins with Article 6 of the 2001 Restatement which outlines the calculation procedure for the Supplementary Retirement Benefit. The Supplementary Benefit, while somewhat of a misnomer, is the Plan's term for the defined benefit insured and administered by the PBGC. You acknowledge this distinction in your appeal.

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<sup>5</sup> We note that your appeal states: "The participants, I am advised, have already received the Basic Benefit under Article 5 (the defined contribution account), and they are now seeking the defined benefit part of the plan which has been confusingly mislabeled the 'Supplementary Benefit.'" AB at 6.

Article 6 of the Rowe Plan is titled “Supplementary Retirement Benefits” and states in its entirety:

6.1 This Article Generally. In addition to the benefits under the Basic Plan provided in Article 5, the Plan provides benefits under the Supplementary Plan contained in this Article.

6.2 Amount of Benefits. Subject to the other provisions of the Plan, the amount of Supplementary Retirement Benefits payable to an eligible Member shall be equal to:

- (a) 2 ½% of his Average Monthly Compensation multiplied by his Credited Service, up to a maximum of 20 years of Credited Service; less
- (b) 4 1/6% of his Primary Social Security Benefit multiplied by his Credited Service, up to a maximum of 20 years of Credited Service; less
- (c) The monthly retirement benefit which can be provided on an Actuarial Equivalent life annuity basis from the Account balance of the retiring Member as of his Normal Retirement Date under the Basic Plan; and less
- (d) The Actuarial Equivalent of any amounts previously distributed to the Member under the Supplementary Plan or the Basic Plan, due to the Member’s prior withdrawal, termination, disability, or retirement.<sup>6</sup>

6.3 When Benefits are Paid. Supplementary Retirement Benefits shall be paid when a Member qualifies to receive benefits under the terms of Articles 7 through 11.

*Our Interpretation of the Plan’s Language in Article 6*

To determine the amount of the Supplementary Benefit payable, Plan Article 6.2 states that the gross benefit provided by the Supplementary Plan under 6.2(a) will be reduced by both a calculation related to the participant’s Primary Social Security Benefit (6.2(b)) and by “[t]he monthly retirement benefit which can be provided on an Actuarial Equivalent life annuity basis from the Account Balance of the retiring Member as of his Normal Retirement Date under the Basic Plan . . .” (Article 6.2(c)). The actuarial equivalent of the Basic Plan Account Balance is determined as of the Normal Retirement Date. Thus, the Plan language itself identifies the Normal Retirement Date as the date at which the monthly retirement benefit derived from the Basic Plan Account Balance is determined.

PBGC’s decision, as noted in the Actuarial Case Memorandum at Section 5 (discussed above), to calculate the Basic Account Balance as of the Normal Retirement Date is clearly supported by the plain language in Plan Article 6.2(c).

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<sup>6</sup> We are not aware of any prior distributions involved in this case; thus, this provision is generally not relevant to our review.

*Your Key Contention is that Article 6.2(c) does Not Apply*

Your contention, however, is that “. . . the Supplementary Benefit is calculated differently, depending on whether the retirement is early, normal, late, or deferred.” AB at 4. As discussed earlier, you contend that Article 6.2 (specifically 6.2(c)) is only applicable when calculating the Normal Retirement Benefit under Article 7. You assert that the Supplementary Benefit for early retirement is calculated using Article 8.2. AB at 4.

We note that all six appellants are eligible for an early retirement benefit either directly under Article 8 or as a deferred vested beneficiary under Article 11.<sup>7</sup> Thus, we also looked at the Plan language in Article 8 in examining your appeal.

*Article 8 Plan Language*

Article 8 of the Rowe Plan is titled “Early Retirement Benefit” and states in part:

8.1 Eligibility for Benefit.

A Participant or an Inactive Participant shall have a nonforfeitable right to an Early Retirement Benefit if his Termination of Employment occurs after attaining Early Retirement Age, but before attaining Normal Retirement Age.

“Early Retirement Age” means the age at which a Participant has attained age 55 and completed at least ten years of Vesting Service.”

8.2 Amount of Benefit.

The monthly pension benefit payable to a Participant who is entitled to an Early Retirement Benefit shall be an amount equal to:

(a) *His Supplementary Retirement Benefit determined as of his Early Retirement Date* if payment of his pension commences as of his Normal Retirement Date; or

(b) *His Supplementary Retirement Benefit determined as of his Early Retirement Date*, reduced for each month his pension starts before his Normal Retirement Date. The reduction shall be  $\frac{1}{4}$  of 1% for each month before age 65 the pension is to be paid. Payment of this amount shall continue during the life of the Participant without change at the Participant’s Normal Retirement Date. (*emphasis added*)

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<sup>7</sup> Under Article 11.3 a deferred vested participant “. . . with at least ten years of Vesting Service may elect to have his pension benefits commence at any time between age 55 and his Normal Retirement Date.” Under Article 11.2, “. . . if the Participant elects under Section 11.3 to have his pension benefits commence before his Normal Retirement Date, the Participant’s benefits shall be reduced in the same manner as an Early Retirement Benefit, as described in Section 8.2(b).”

### *Our Interpretation of the Key Article 8 Language*

The key language you rely on is highlighted in italicized text above. Both Article 8.2(a) and 8.2(b) use the phrase: “His Supplementary Retirement Benefit determined as of his Early Retirement Date . . .” regardless of whether the pension starts at age 65 (NRD) under 8.2(a) or whether the pension starts before NRD under Article 8.2(b).

This phrase is subject to varying interpretations. The Board’s interpretation is that the phrase means that the Supplementary Retirement Benefit is determined (under Article 6 provisions) using the Basic Plan Account Balance as of the Early Retirement Date. We recognize your interpretation is different.

Under your interpretation of Articles 8 and 11, anyone with 10 years of vesting service (whether as an early retiree under Article 8 or a deferred vested retiree under Article 11) would earn a higher pension benefit than someone who came up just short of 10 years vesting service, yet worked until normal retirement age at 65. In other words, under your interpretation, anyone with 10 years of service has their Supplementary Retirement Benefit calculated differently than what Article 6 provides. Such a two-tier Supplementary Retirement Benefit scheme is not supported anywhere in the Plan language.

#### *Prior Plan Benefit Calculations Submitted with Your Appeal*

You provided two prior plan calculations for former participants, [REDACTED] and [REDACTED], to support your appeal claims. We will discuss the benefit calculation for [REDACTED] first and explain why we do not think it is relevant.

We note that the calculation for [REDACTED] at Tab C of your Appeal involves a participant who retired in May 1993 at age 68 with a “Late Retirement” benefit under Article 7.2(b). Because [REDACTED] deferred retirement beyond his Normal Retirement Date, the late retirement calculation, which was done by [REDACTED], does not offer insight into relevant Plan practice for participants with an Early Retirement Benefit. The provisions surrounding late retirement benefit calculations differ in actuarial principles from early retirement calculation procedures. Thus, we are unable to conclude that this practice supports your claims for the six appellants – none of them have yet to defer retirement past their Normal Retirement Date.

Regarding the calculation for [REDACTED] at TAB B of your Appeal, we note that he retired in 1987, over 16 years before the Plan terminated.

In reviewing [REDACTED] calculation, we noticed that the Basic Plan Account was determined using an immediate annuity factor at the actual (early) retirement date, which was prior to the Normal Retirement Date; the net Supplementary Plan Benefit is further reduced for early distribution. We do not think this interpretation of Plan language is correct or reasonable. In fact, our Actuary for the Board, [REDACTED], confirmed this conclusion. His findings are at Appendix 2.

Even if we concluded that the [REDACTED] calculation supported the appeal claim raised by you, it is only one calculation – done 16 years prior to Plan termination. We wanted to consider whether other prior early retirement calculations could be found.

*Our Independent Efforts to Find Other Insights into Early Retirement Calculations*

In an effort to obtain other prior calculations that would be helpful in answering your appeal, we contacted the Benefits Manager at Rowe listed on the first page of Tabs B and C of your appeal and a number of actuaries listed in the calculation sheets. In addition, our consultant actuary, [REDACTED], also contacted [REDACTED]. [REDACTED] was the plan actuary prior to the plan's termination; [REDACTED] was the senior actuary assigned to the Rowe Plan. While he had no more examples of past calculations, he was in a position to offer our consultant actuary additional insight into the correct calculation procedures.

After discussing the matters raised in your appeal with our consultant actuary, [REDACTED] reviewed the applicable plan provisions. His interpretations were consistent with PBGC's that the Plan intended to offset the Basic Benefit at Normal Retirement and reduce any net benefit for early distribution at a rate of  $\frac{1}{4}$  of 1% for each month that the distribution precedes age 65.

We contacted the Benefit Manager who provided us a packet of information, apparently also sent to you, on a former Rowe Plan participant who is not an appellant. We cannot disclose this individual's name in accordance with the Privacy Act. We will refer to this participant as the "Unnamed Former Participant."<sup>8</sup>

The handwritten calculations in the case of the Unnamed Former Participant are for an Early Retirement Benefit five months prior to age 65. This is the exact scenario raised in the appeal, and this Plan calculation was done in the late 1990s, much closer to Plan termination than the [REDACTED] calculation you provided.

The methodology used to calculate the Unnamed Former Participant's expected Early Retirement Benefit at age 64 and 7 months includes calculating the "Deferred to Age 65 Life Annuity" value of the Basic Account. This age-65 annuity amount, also referred to on the calculation document as the "Annuity Equivalent of Basic Account payable at Age 65" is subtracted from the Accrued Supplementary Benefit to reach a final age-65 retirement benefit. This age-65 benefit is then reduced by  $\frac{1}{4}$  of 1% for each month of the (5 months) early retirement. The Unnamed Former Participant's handwritten early retirement estimate reflects the calculation of the Supplementary Benefit pursuant to the plain language in Article 6, not the methodology you advocate in the Appeal Brief. This evidence strongly supports the PBGC's interpretation of the Plan documents.

In addition to the prior calculation of an Early Retirement Benefit in the Unnamed Former Participant's case, the Board received from the [REDACTED] actuary mentioned above, a one-page pension calculation on [REDACTED], one of the appellants. See Enclosure 2. Again, the calculation in the case of [REDACTED], apparently

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<sup>8</sup> Based on fax cover sheets provided us by the Benefit Manager, we believe you may have received the calculations on the "Unnamed Former Participant."

done in early 2002, reflects the calculation of the Supplementary Benefit pursuant to the plain language in Article 6, not the methodology you advocate in the Appeal Brief.<sup>9</sup>

*Our Actuarial Consultant Review of Your Appeal Revealed an Error*

The Appeals Board currently contracts with an Actuarial Services firm, [REDACTED], to do consultant actuarial work, when requested. We asked our actuarial consultant with [REDACTED], who is familiar with PBGC policies and procedures, to review this case. The actuarial consultant reviewed your entire appeal, including attachments. He also had access to all of PBGC's records and actuarial databases in this case. Finally, we provided him all of the additional calculation sheets we received. Our actuarial consultant reached the same conclusions the Board did regarding the meaning of the plain language in Plan Article 6.

Our actuarial consultant did, however, find an error in the PBGC calculation. PBGC erred in calculating the Basic Plan Account balance as of NRD. Essentially, PBGC failed to limit interest projections to the Normal Retirement Date, instead providing interest to the first of the following year. This calculation inflates the Basic Plan Account Balance, providing participants with a lower net benefit.

Our actuarial consultant provided us the following detailed table which illustrates the extent of this actuarial error for each participant:

Appellant Name	Provided Basic Plan Account on 12-31-2005	Valuation Account Projection to NRD	Revised Account Projection to NRD	Difference Between Projected Accounts	Difference in Monthly Offset
[REDACTED]				\$15,657.93	\$139.38
[REDACTED]				\$2,058.59	\$18.32
[REDACTED]				\$472.20	\$4.20
[REDACTED]				\$1,127.95	\$10.04
[REDACTED]				\$5,565.27	\$49.54
[REDACTED]				\$7,078.06	\$63.00

As stated earlier, Appendix 1 contains a summary of the Appellants new benefit, whether elected at NRD or retiring effective October 1, 2009. You will note that the NRD benefits shown at Appendix 1 for [REDACTED], [REDACTED], and [REDACTED] have increased by the same amount as the difference in the monthly offset reflected in the table above. For [REDACTED] and [REDACTED], their total offsets (while decreased as noted above) still result in a net Supplementary Retirement Benefit of \$0.00.

Our actuarial consultant recommended correcting this data, and the Board agreed. Revised benefit statements are included at Appendix 1; they reflect the revised and accurate benefit calculations.

<sup>9</sup> We recognize that the calculation for [REDACTED] is for a retirement benefit at NRD.

*Summary of Our Findings on Your Appeal*

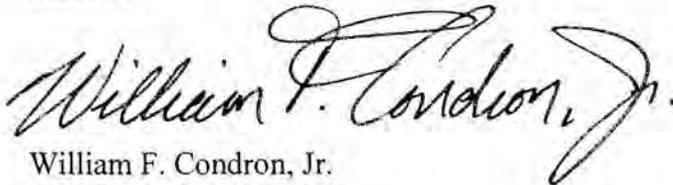
In summary, the Board examined two prior early retirement calculations: one for [REDACTED] provided by you and a Former Unnamed Participant we obtained. We also examined the former Plan Actuary's retirement calculation for [REDACTED] from 2002. In two of the three calculations, the methodology used supported PBGC's interpretation of the Plan language. We find that the plain language of Article 6 is compelling, and the evidence we were able to locate on early retirement calculations outweighed the example you provided. We are further convinced this is the correct decision based on our actuarial consultant's review of your appeal and our own Board Actuary's review of the [REDACTED] calculation at Appendix 2.

**Decision.**

Having applied the Plan provisions, the provisions of ERISA, other applicable law, and PBGC regulations and policies to the facts in this case, the Appeals Board has denied your appeal. We did, however, independently find an error in the manner in which benefits were calculated and have corrected it. The revised benefit statements at Appendix 1 will be the basis for PBGC's calculation of retirement benefits when each appellant applies for retirement benefits.

This decision is PBGC's final Agency action regarding the issues raised in your consolidated appeal. The appellants, if they wish, may seek review of this decision in an appropriate federal district court. If your clients have questions, they may call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



William F. Condrón, Jr.  
Member, Appeals Board

Appendix 1: Summary of Benefit changes and revised Benefit Statements (13 pages).

Appendix 2: Board Actuary's Comment on [REDACTED] Calculation (2 pages)

2 Enclosures

1. PGBC Actuarial Case Memo (6 pages).
2. Pension calculation for [REDACTED] (1 page).