

Pension Benefit Guaranty Corporation

81-36

November 9, 1981

REFERENCE:

[\*1] 4043(b)(8) Reportable Events. Mergers, Consolidations & other Transfers of Plan Assets  
4062 Liability of Employer in Single Employer Plans  
4064 Liability of Employers in Multiple Employer & Multiemployer Plans

OPINION:

This is in response to your request for an opinion concerning the applicability of Sections 4062 and 4064 of the Employee Retirement Income Security Act of 1974 ("ERISA") to an employer which has sold the stock of a subsidiary which in turn will establish a new pension plan.

As you have represented the facts, A Inc. (A) \* \* \* was a wholly-owned subsidiary of B Inc. (B). Certain employees of B and of A participated in the Salaried Retirement Plan for Employees of B Inc. (the B Plan").

Effective January 30, 1981, A sold all of the stock of A to C Corp., an unrelated entity. A was then renamed D Inc. (D) and D's employees ceased to participate in the B Plan. Under the sales agreement, D will establish a new plan (the D Plan"). Service recognized under the B Plan for vesting and benefit accrual purposes will also be credited for those purposes under the D Plan. All former A employees will receive under the D Plan treatment for accrual and vesting purposes at least equal [\*2] to that which they would have received under the B Plan.

As of January 1, 1981, the assets of the B Plan exceeded its liabilities by approximately \$9,000,000. Pursuant to the sales agreement, certain of those assets and liabilities will be transferred to the D Plan. The liabilities to be transferred are those attributable to A employees. The assets transferred will equal the amount required to fund, as of the date of the sale, 107.81 percent of benefits accrued by A employees, plus interest at the annual rate of eight percent from the date of the sale. A notice of a reportable event was filed with the Pension Benefit Guaranty Corporation (the "PBGC") by B Pursuant to Section 4043(b)(8) of ERISA on July 20, 1981.

You requested our opinion as to the possible liability of B to the PBGC in the event of termination by D of the D Plan or a cessation by D of operations at any facility which results in the separation from employment of more than 20 percent of the D Plan's active participants.

Based on your representation as to the sufficiency of the B Plan on January 31, 1981, the date of the sale, B will have no continuing liability for the D Plan to the PBGC pursuant to Sections [\*3] 4062 or 4064 of ERISA after the sale in the event of the termination of the D Plan or the cessation of operations by D at any facility.

I hope I have been of assistance. If you have any questions, please contact the attorney assigned to this matter, at (202) 254-3010.

Henry Rose  
General Counsel