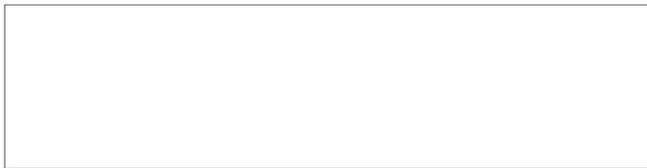




Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026  
www.pbgc.gov

March 30, 2007



Re: [redacted], [redacted], Case 198881  
Reliant Industries, Inc Rock Falls Pension Plan (the "Plan")

Dear [redacted]:

The Appeals Board has reviewed your appeal of PBGC's August 29, 2005 limited-scope determination of [redacted] benefit eligibility. As explained below, we must deny your appeal for a 70/80 Retirement benefit under the Plan's Special Early Retirement Option ("**SERO**"). However, we are increasing [redacted] service slightly, from 19 years 4 months to 19 years 5 months.

Background

- Effective September 27, 2002, [redacted] was laid off because "Reliant Fastener will be shutting down operations."
- A month later, [redacted] applied to retire effective October [redacted], 2002.
- The Plan termination date was October 31, 2002. See the discussion on page 3 of this letter.
- PBGC started [redacted] estimated PBGC benefit payments effective December 1, 2002 (age 55), using amounts calculated by the Plan's former actuary:
  - (i) \$201.29 per month for 5 years, and
  - (ii) \$103.27 per month beginning at age 60 and for his lifetime thereafter.

The \$201.29 amount was *not* calculated under the SERO. See page 6 of this letter.

- On March 28, 2005, PBGC wrote to [ ] that he had been put into pay prematurely. Until [ ] final PBGC benefit is determined, PBGC offered two Choices for receiving his estimated benefit, either:

(1) Stop payments entirely until age 60. Beginning December 1, 2007, [ ] could receive a \$287.61 per month benefit until age 65. Beginning December 1, 2012, [ ] would receive \$115.62 per month for his lifetime thereafter.

- or -

(2) Receive an estimated benefit of **\$173.35** per month until age 65, and **\$1.66** per month for his lifetime thereafter.

We found the \$173.35 amount was a recalculated estimated Deferred Vested Termination Benefit. See the calculations on page 6 of this letter. The \$173.35 amount does not include the reduction "to offset the prior payments" which you suggested in your appeal.

- In response to your and [ ] inquiries, PBGC sent a letter on July 13, 2005, explaining:
  - (A) [ ] was not eligible for the SERO because he was not age 55 when the Plan terminated October 31, 2002, and
  - (B) PBGC cannot guarantee a benefit by allowing a participant to "grow-into" eligibility after a Plan's termination date.
- Absent a response to PBGC's March 28, 2005 offer, PBGC decided to apply Choice (2) for paying [ ] estimated PBGC benefit. Thus, effective September 1, 2005, PBGC changed [ ] estimated benefit to \$173.35 per month.

#### Benefit Determination

- On August 29, 2005, PBGC formally determined PBGC cannot pay [ ] the SERO. PBGC found that on the Plan's termination date, [ ] met neither the Plan's two alternative "70/80" SERO eligibility requirements:
  - 1) *Age 55 and 15 years service ("Rule-of-70")*. [ ] failed to meet this condition because on the October 31, 2002 plan termination date, he had not yet reached age 55. His 55<sup>th</sup> birthday was on November 5, 2002.
  - 2) *Age and service Total 80 or more ("Rule-of-80")*. He failed to meet this condition because on October 31, 2002, his age plus service totaled less than 80 years. [ ] age was less than 55, and his service from his May 23, 1983 hire date totaled less than 20 years.

PBGC also found [ ] was not entitled to the SERO's Special Retirement Payment, equal to 13 weeks vacation pay in lieu of 3 months pension.

PBGC's August 2005 determination was limited to the issue of [ ] entitlement to a SERO. In the near future PBGC will separately determine [ ] PBGC benefit amount, form, and retirement date.

Your Appeal

In your October 11, 2005 appeal:

1. You argued the Plan does not require working to age 55 to receive a SERO. Instead, you proposed a participant may wait until age 55 to start the SERO, if his employment is terminated earlier by a shutdown and he has at least 15 years of service. You cited Plan section 4.02(d).<sup>1</sup> You:
  - (i) noted the Plan termination date was October 31, 2002,
  - (ii) claimed [ ] was laid off "on or about October 31, 2002," and
  - (iii) noted [ ] 55<sup>th</sup> birthday was [ ] days later, on [ ], 2002.
2. You concluded [ ] Rule-of-70 benefit is guaranteed. You stated, "An individual who simply needs to meet an age requirement remains eligible upon attaining that age." You cited PBGC Opinion Letter 76-69.
3. You questioned whether the October 31, 2002 Plan termination date was properly set. You stated: "To define the benefits [ ] is entitled to receive by the use of a unilaterally decided termination date is simply unjust."
4. Based on your conclusion that the SERO is guaranteed, you asked PBGC to pay [ ] a \$7,046.00 Special Early Payment, under section 4.06. You submitted a worksheet showing Plan administrators had calculated a \$7,046 Special Retirement Payment for [ ], under the Rule-of-70 SERO.

Discussion

*Plan Termination Date*

The Appeals Board does not have the authority to review a plan's termination date. See 29 CFR 4003.61(b)(1). For your information, PBGC and Reliant Industries agreed on the October 31,

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<sup>1</sup> A copy of the final Plan document is Exhibit B to your appeal.

2002 Plan termination date. See Enclosure 1. Thus, the termination date was set following ERISA section 4048(a)(3):<sup>2</sup>

When PBGC terminates a pension plan, the plan's termination date is "the date established by the [PBGC] and agreed to by the plan administrator."

Also, Reliant Industries permanently shut down on October 31, 2002. Thus, even if a few employees stayed on, participants' reasonable expectations of the Plan's continuance were extinguished on October 31, 2002.

*Service Ending October 31, 2002*

The termination date you proposed, "on or about October 31, 2002," is after the employment termination date PBGC used, September , 2002. We found  was only laid off on September , 2002, as you stated in your appeal. Further, the Plan allowed him to earn some service while on layoff, both for eligibility and his benefit amount.<sup>3</sup> Service used for determining guaranteed benefits must end on the Plan's October 31, 2002 termination date. See the Appendix to this letter. Thus, we are redetermining  service, using the elapsed time from his May 23, 1983 hire date through October 31, 2002. Therefore, we are increasing  service from 19 years 4 months to 19 years 5 months (rounded).

*Rule-of-70 Requires Service to Age 55*

To qualify for the Rule-of-70 SERO, the Plan document requires:

"Each Participant who (i) has completed 15 Years of Credited Service and who has attained the age of 55 ... may elect to retire, by application to the Plan Administrator, on an Early Retirement Date...." See section 4.02(c). (underlining added)

Also, "Retirement means termination of employment after a Participant has fulfilled all requirements for a Normal or Early Retirement Benefit."<sup>4</sup> Thus, the Plan provides the Rule-of-70 SERO only to a Participant who is age 55 when his employment is terminated.

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<sup>2</sup> If an agreement on the date cannot be reached, the termination date is established by the court. See section 4048(a)(4).

<sup>3</sup> See sections 2.49(b) and 2.50 of your Exhibit B.

<sup>4</sup> section 2.43 of your Exhibit B.

*Service-to-55 Requirement Unchanged by Section 4.02(d)*

You questioned whether Plan 4.02(d), added in 1997, eliminated<sup>5</sup> section 4.02(c)'s requirement to earn service to age 55 for a Rule-of-70 SERO. Section 4.02(d) states:

If a Participant separates from Service before satisfying the age requirement for his or her Early Retirement Age, but satisfies the Service requirement, the Participant will be entitled to elect an Early Retirement Benefit upon satisfaction of such age requirement.

Section 4.02(d) allows a Participant whose service ends before his Early Retirement Age (ERA) to wait to an ERA and "elect" an Early Retirement Benefit.

The Board found Plan section 4.02(d) does not change the requirement to earn service to age 55 for a Rule-of-70 SERO, because:

- Section 4.02(d) mentions neither the SERO nor any specific Early Retirement Benefit,
- Section 4.02(d) reflects a legal requirement that a plan provide separated and active participants alike the same opportunity to start an actuarially reduced benefit. Thus, under Plan sections 4.02(d) and 4.02(a) together, a participant with 15 years service may elect an actuarially-reduced benefit at age 60, at no cost to the plan.<sup>6</sup>
- Section 4.02(d) does not state, nor is it a legal requirement, that a separated participant may become eligible for every subsidized Plan benefit by waiting instead of earning service to a required age.
- Any such change in eligibility for the subsidized SERO would more reasonably be effected by modifying section 4.02(c). In particular, if 4.02(d) eliminated the requirement to earn service to age 55 for the Rule-of-70 SERO, then 4.02(d) would conflict with 4.02(c), as explained above, and
- Any such change in Rule-of-70 eligibility would permit any terminated participant, after a wait of years or decades, to start an subsidized benefits at age 55, if he loses his job because of a shutdown and has 15 years of Credited Service.

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<sup>5</sup> The prior Plan document plainly required earning service to age 55 for a Rule-of-70 SERO. See Enclosure 2 page 17, section 5.05(c). We found no evidence that provision was ever changed. For example, see Enclosure 3.

<sup>6</sup> See ERISA section 206(d).

For these reasons, the Appeals Board denied your claim that Plan section 4.02(d) eliminated the Rule-of-70 SERO's requirement to earn service to age 55.

*Former Actuary's Interpretation of Plan Document*

You stated, "the Company and actuarial experts" found [ ] [ ] "was eligible for early retirement benefits." You showed Plan administrators had calculated a \$7,046 Special Retirement Payment ("SRP") for [ ], under the Rule-of-70 SERO, in October 2002.

The October 2002 calculation sheet uses a September 30, 2002 retirement date, before [ ] was age 55. (The monthly benefit is shown to start 3 months later, after the SRP's 13-week period.) See Exhibit E to your appeal. By making the retirement effective before age 55, the worksheet is erroneous, even under the Plan interpretation you propose.

Regardless of what calculations were performed, on January 8, 2003, the Plan actuary authorized paying [ ] only a \$201.29 non-SERO benefit, even while authorizing payment of the SRP to different participant. See your Exhibit H. ([ ] SERO benefit would have been approximately **\$503.78**,<sup>7</sup> unreduced for starting early. The \$503.78 amount is consistent with the **\$173.35**<sup>8</sup> estimated non-SERO benefit in PBGC's March 2005 letter.) Thus, the actions you cite calculating SERO benefits are contradicted by later actions not paying such a benefit to [ ].

Even if Plan officials believed the SERO would have been payable based on service ending October 31, 2002, such a practice cannot contradict the Plan's written terms. Further, we found no instances until the Fall 2002 termination where Plan officials applied SERO provisions. Thus, any practices paying the SERO were new when the Plan terminated. PBGC generally gives little weight to any such new practices occurring when a plan terminates. We concluded Plan officials' practices cannot be used to change the Rule-of-70 SERO requirements PBGC used.

*Nonforfeitability & Opinion Letter 76-69*

PBGC may guarantee a benefit, as otherwise limited by law, if all conditions other than a waiting period have been satisfied when a plan terminates. See the Appendix to this letter. Thus, PBGC is guaranteeing unreduced 30-Year Early Retirement Benefits under the Plan, even though participants must wait until age 60 to start

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<sup>7</sup> \$2,745.06 pension earnings x 19.3333 years service PBGC determined x 1.1% - \$80.00}.

<sup>8</sup> \$503.78 x .3441 early commencement adjustment

those pensions. Such 30-Year benefits do not require working to any particular age, in contrast to the Rule-of-70 SERO [ ] requests.

[ ] did not meet the Plan's requirements for the Rule-of-70 SERO when the Plan terminated - He had not earned the required service to age 55. Therefore, his Rule-of-70 SERO is not guaranteed.

*Special Retirement Payment*

[ ] did not qualify for a SERO when the Plan terminated, as explained above. He also did not qualify for an immediate Normal, or Late, any other Early Retirement Benefit ("SRB") because he was under age 60. Instead, his guaranteed benefit is a Deferred Vested Termination Benefit, under Plan section 4.05. Thus, he met none of the Plan's eligibility conditions for the SRB when the Plan terminated. See section 4.06. Therefore, PBGC cannot guarantee an SRB for [ ].

Decision

Having applied Plan provisions and the law to the facts in your case, we must deny your appeal. However, we are increasing [ ] service to 19 years 5 months. This letter concludes [ ] administrative remedies with respect to PBGC's August 29, 2005 determination that he is not entitled to a guaranteed SERO.

PBGC will issue [ ] a new determination of his benefit amount with a new 45-day right to appeal issues not decided in this letter. When that decision becomes final, [ ] may seek court review of PBGC's determinations with respect to the issues he has raised. Thank you for your patience while we carefully reviewed your appeal.

Sincerely,

*William D. Ellis*

William D. Ellis  
Member of Appeals Board

Appendix: Non-forfeitability and Opinion Letter 76-69

Enclosures:

- (1) Agreement for Appointment of Trustee and Termination of Plan (3 pages)
- (2) Excerpt from Plan document, effective December 30, 1993. (22 pages)

(3) Excerpt from Reliant Fastener-USW Collective Bargaining Agreement signed July 29, 1996 (6 pages)

cc: