

Pension Benefit Guaranty Corporation

83-5

February 2, 1983

REFERENCE:

[*1] 4047 Restoration of Plans
4062 Liability of Employer in Single Employer Plans

OPINION:

This responds to your letter in which you, on behalf of * * * Corp. (the "Company"), indicate an interest in restoring the * * * Inc. Retirement Income Plan (the "Plan"). The Plan administrator filed a Notice of Intent to Terminate the Plan on * * *.

In view of the facts and circumstances of this case, including the short period of time between the filing of the Notice and the request for restoration, the PBGC would permit restoration of the Plan if:

1. The Company agrees to reimburse the PBGC for all expenses the PBGC has incurred as a result of the filing of the Notice, including all expenses incurred in determining, filing and litigating bankruptcy claims pertaining to the Plan.

2. The Company agrees that it will not, without PBGC consent, terminate the Plan for at least five years after the date of the restoration of the Plan.

3. The Company agrees that, if the Plan terminates for any reason whatsoever within five years of the date of the restoration of the Plan, the Company will be liable to the PBGC for * * * less the amount of any employer contributions made to the Plan subsequent to the [*2] date of the restoration. This liability shall not be limited by the Company's net worth and shall be in addition to the Company's liability: (a) to the PBGC for the amount of liability, as of the date the Plan terminates, under 29 U.S.C. § 1362; and (b) to the Plan for employer contributions required by statute or by contract. The amount paid to the PBGC under this paragraph shall be credited as an asset of the Plan in determining the amount due under 29 U.S.C. § 1362.

4. The Company agrees that it will continue to fund the Plan in accordance with any contractual obligations to contribute to the Plan and in accordance with the minimum funding standards contained in Section 412 of the Internal Revenue Code (the "Code"), 26 U.S.C. § 412 and in Section 302 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1082.

We understand that the Company may amend the Plan to cease benefit accruals but that accruals for purposes of vesting will continue. Of course, any such amendment must comply with the requirements of [*3] ERISA and the Code.

Henry Rose
General Counsel