

Pension Benefit Guaranty Corporation

86-25

November 12, 1986

REFERENCE:

[*1] 4041(c)(2) Termination by Plan Administrator. (SEPPAA) Distress Termination
4041(c)(2)(B) Termination by Plan Administrator. (SEPPAA) Distress Criteria
PBGC Interim Procedures on Plan Terminations.

OPINION:

This is in response to your letter regarding the Bankruptcy Court's denial of * * * Corporation's * * * motion for approval of termination of the Pension Agreement Between * * * Company, a Division of * * * Corporation, and * * * on Behalf of Local * * * (the "Plan").

In order to effect a distress termination under section 4041(c) of the Employee Retirement Income Security Act of 1974, amended by the Single Employer Pension Plan Amendments Act of 1986, Pub. L. No. 99-272, 100 Stat. 237 (1986) ("ERISA"), a plan administrator must provide 60 day advance notice of intent to terminate to affected parties. Then, as soon as practicable after the date on which the notice of intent to terminate is provided, the plan administrator must submit to the Pension Benefit Guaranty Corporation ("PBGC"), certain information, including information that will enable PBGC to determine whether one of the three distress criteria under section 4041(c)(2)(B) has been met. Upon receiving that information, PBGC [*2] determines whether one of the distress criteria has been met.

Here, * * * has not yet submitted to PBGC any information under section 4041(c)(2). The Bankruptcy Court's order denying * * *'s motion for approval of Plan termination does not preclude subsequent approval by the Bankruptcy Court upon submission of further facts by * * *. Moreover, even if * * *'s motion for approval to terminate the Plan were denied by the Bankruptcy Court with prejudice, * * * could attempt to meet the distress criterion in section 4041(c)(2)(B)(iii). PBGC does not believe that the "as soon as practicable" time limitation for submission of distress termination information has expired. Consequently, PBGC is not in a position to determine whether * * * has met any of the criteria for a distress termination of the Plan. Until such time as PBGC makes such a determination or * * * fails to make a timely submission under 4041(c)(2), ERISA requires that * * * pay benefits in accordance with section 4041(c)(3)(D). This provision and PBGC Interim Procedures on Plan Terminations under SEPPAA require the plan administrator to: (1) refrain from distributing assets or taking any other actions to carry out [*3] the proposed termination; (2) pay benefits attributable to employer contributions, other than death benefits, only in the form of an annuity; (3) refrain from using plan assets to purchase irrevocable commitments from an insurer; and (4) pay, commencing on the proposed date of termination, only benefits guaranteed under section 4022 or to which assets would be allocated under section 4044 in accordance with 29 C.F.R. § 2623.

Edward R. Mackiewicz
General Counsel