

Pension Benefit Guaranty Corporation

86-9

April 10, 1986

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage
4022(b)(2) Benefits Guaranteed. Successor Plan

OPINION:

This is in response to your request for an opinion as to whether the Pension Benefit Guaranty Corporation ("PBGC") would consider two defined benefit pension plans maintained by A Corporation * * * to be "successor plans" within the meaning of Sections 4021(a) and 4022(b) of the Employee Retirement Income Security Act of 1974 ("ERISA") to two similar plans maintained by the previous owner of the A assets. Section 4021(a) provides in pertinent part that "a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided." For purposes of the phase-in of guaranteed benefits in the event of subsequent plan termination, if the plans in question were considered to be "successor plans," then the time they would have been in effect would include the time the predecessor plans were in effect. In an earlier conversation with you, we indicated that after a review of the facts and circumstances, we would not find those plans to be successor plans.

The facts, [*2] as we understand them, are as follows. A presently maintains two defined benefit pension plans, the * * * Salaried * * * Plan and the * * * Hourly * * * Plan (the "Plans"). Both plans are covered by the Plan termination insurance provisions of Title IV of ERISA.

In 1981, A acquired the assets of the * * * division of B * * *. The closing date of the agreement was December 16, 1981. A (and the members of the controlled group of which it is a part) and B are and have been unrelated parties, holding no ownership interest in each other.

At the time of the sale, B maintained two defined benefit pension plans which covered the hourly and salaried workers of the * * * division (the "Operation"). As part of the asset purchase agreement, A agreed to establish for its active employees of the Operation two new pension plans, effective as of the closing date, which would be identical or generally comparable to the B plans. The A Board adopted these plans some time in 1982 with an effective date retroactive to the closing date, December 16, 1981. No assets or liabilities were transferred from the B plans to the A plans, and the original B plans continue to be maintained, albeit under [*3] a freeze, by B.

On December 29, 1984, A filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § § 101, et seq., and has continued to operate its business as a debtor in possession. To date, A has not filed a Notice of Intent to Terminate the Plans pursuant to Section 4041 of ERISA, 29 U.S.C. § 1341, and A is continuing the administration of the Plans.

In determining whether the A plans are "successors" to the B plans, the PBGC considered several factors. Initially, it appears that the A plans and the B plans include substantially the same employees. However, A is a new business which acquired the assets of B's Operation rather than purchase its stock. A and B are unrelated employers. B continues to maintain its plans, albeit on a frozen basis, and no assets or liabilities of the B plans were transferred or assumed by A.

Because there is a clear delineation of separate plans maintained by separate employers, we have found that the A plans are not successor plans, and the phase-in of guaranteed benefits under Section 4022 of ERISA would begin at the later of the adoption date or effective date of each A plan.

I hope this has [*4] been of assistance to you.

Edward R. Mackiewicz
General Counsel