

Pension Benefit Guaranty Corporation

78-22

September 22, 1978

REFERENCE:

[\*1] 4047 Restoration of Plans

OPINION:

This responds to your correspondence to this Office concerning the termination of the above Plan, in which you request that, pursuant to § 4047 of the Employee Retirement Income Security Act of 1974 ("Act"), the Plan be restored to its status prior to the proposed date of termination for the reasons and under the circumstances described below.

According to the information submitted by you, \* \* \* established, effective January 1, 1976, a single Plan covering employees at three separate facilities. Because of unprofitable business operations, \* \* \* decided to sever from plan participation, the employees at one of the three facilities.

\* \* \* filed with the PBGC on December 15, 1977, a "notice of intent to partially terminate" the Plan. Because, in informal discussions with PBGC representatives, \* \* \* was informed that the "partial termination" of a part of the Plan was not covered by Title IV of the Act, \* \* \* filed with the PBGC a notice of intent to terminate the entire Plan as of December 26, 1977.

\* \* \* has now requested that, pursuant to Act § 4047, the Plan be restored to its status as of December 26, 1977, so that \* \* \* may spinoff into a separate [\*2] plan assets and liabilities attributable to the participant reduction and then terminate the newly created plan as of December 26, 1977. We understand that \* \* \* proposes that the effect of granting its request would be to cease the guarantee phase-in of liabilities transferred to the spun-off plan at the one-year level. Further, you have indicated that most of \* \* \* Zoo employees are located at the unprofitable facility, and your client, therefore, proposes to sever the majority of participants from coverage under the Plan.

In Act § 4047, Congress granted the PBGC discretion, under "such circumstances as the corporation [i.e. PBGC] determines to be relevant," to cease activities to terminate a plan and to restore the plan to its status prior to the determination that the plan was to be terminated. In determining whether to exercise its discretion under Act § 4047, the PBGC will base its determination upon the relevant circumstances, which may include the actual intent of the parties the the results which will flow proximately from permitting the restoration of a plan. In the case at hand, \* \* \* has explicitly expressed the intent that, immediately upon restoration, it will [\*3] sever from plan participation the majority of participants under the Plan. In viewing proposal as a whole, it is our opinion that that proposal provides for a single transaction in two distinct steps, the proximate result of which is, as expressed above, to reduce substantially the number of participants in the Plan. It is our opinion that, under the circumstances which you describe, the PBGC should not exercise its discretion under Act § 4047 to restore the Plan.

In your correspondence, you note that in the \* \* \* case, the PBGC partitioned the plan maintained by \* \* \* and terminated a portion of the partitioned plan.

The situation in \* \* \* is not analogous to that of your client's plan. In \* \* \*, an event described in Act § 4062(e) occurred; thus, under the provisions of that section, the provisions of Act § 4063, including Act § 4063(d), explicitly applied. The decision to partition a plan under § 4063 is still at our discretion to be decided on the facts of each case. In the present case, because an event described in Act § 4062(e) did not occur (and because your client's plan is a single employer plan), the provisions of Act § 4063, including Act § 4063(d), do not apply. [\*4]

Henry Rose  
General Counsel