

Pension Benefit Guaranty Corporation

81-35

October 26, 1981

REFERENCE:

[\*1] 4022(a) Benefits Guaranteed. Type of Benefits Guaranteed

OPINION:

This is in response to your request for a determination whether the early retirement factors in the \* \* \* Pension Plans (the "Plans") should be used in calculating guaranteed benefits rather than the factors used in annuity policies issued by Metropolitan Life Insurance Company. According to the facts presented, the Plans which terminated on September 1, 1980 provided normal retirement benefits for all participants by purchasing paid-up annuity policies from the Metropolitan Life Insurance Company. You contend that early retirement benefits are properly determined in accordance with the terms of those policies. However, the early retirement factors provided by Metropolitan Life produce a significantly smaller benefit than factors used under the Plans.

Under the law in effect at the time the Plans terminated, PBGC guaranteed benefits that were nonforfeitable "under the terms of a plan" (ERISA § 4022(a), emphasis added). Nothing in the statute allowed PBGC to base its guarantees on anything but the terms of the Plans. Absent a reduction in benefit levels pursuant to a plan amendment prior to termination, the PBGC would [\*2] measure insured benefits using the Plans' factors at the date of termination.

Further, it is important to note that the Plan is a contract between \* \* \* (the "Corporation") and its employees. See, *Allied Structural Steel Company v. Spannaus*, 439 U.S. 886 (1978). As such, the rights of both parties became fixed and actions altering these rights were precluded as of the date of plan termination. See, *Audio Fidelity Corporation v. Pension Benefit Guaranty Corporation*, 624 F.2d 513, 517 (4th Cir. 1980). The purchase of annuities from an insurance company, thus, cannot change the benefit amount to which a participant is entitled on the date of plan termination.

This letter constitutes an initial determination of the PBGC of the amount of guaranteed benefits under the Plans. This determination is subject to administrative appeal under PBGC's regulation on Rules for Administrative Review of Agency Decisions, a copy of which is enclosed. However, in accordance with Subpart B of that regulation, PBGC is making this determination effective on the date of this letter and there is no obligation to exhaust administrative remedies by filing an appeal.

We hope this [\*3] answer proves of assistance to you. If you have any questions concerning the foregoing, please contact \* \* \* of this office at (202) 254-4895.

Henry Rose  
General Counsel