

Pension Benefit Guaranty Corporation

81-9

April 30, 1981

REFERENCE:

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

OPINION:

This is in response to your request for an advisory opinion with respect to the potential liability of A under section 4062(d) of the Employee Retirement Income Security Act of 1974 ("ERISA") under the circumstances described below.

A proposes to purchase certain B Corporation * * * assets, relating to B truck manufacturing business in the United States and Canada, in exchange for A assumption of certain enumerated liabilities of B to secured creditors and unsecured lender and vendor creditors. Additionally, Consolidated proposes to acquire the assets and assume the liabilities of the B pension plan for union employees at the * * *, Virginia plant and certain truck branches and the pension plans of C Corporation, a B subsidiary. However, A proposes to assume these pension plans only if the net liability of the plans does not exceed \$686,000.

From discussion between your staff and mine, I understand you to recognize that with respect to the pension plans which A does assume, A will be liable to the Pension Benefit Guaranty Corporation (the "PBGC") under section 4062 of ERISA in the event that any of the assumed plans should terminate. [*2] The amount of such liability to the PBGC under section 4062 of ERISA would not be limited by any agreement between A and B.

Based on the facts as you have represented them, we would not regard A as a successor corporation to B with respect to any existing plans maintained by B and not assumed by A.

I hope this response is helpful to you.

Henry Rose
General Counsel