

Pension Benefit Guaranty Corporation

82-8

March 25, 1982

REFERENCE:

[*1] 4201 Withdrawal Liability Established
4201(b) Withdrawal Liability Established. Withdrawal Liability - Definition
4202 Determination & Collection of Liability
4211 Withdrawal Liability
4225(a) Limitation on Withdrawal Liability. Sale of Assets

OPINION:

This responds to your letter in which you requested our opinion as to the meaning of "the unfunded vested benefits attributable to employees of the employer" as used in Section 4225(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("Multiemployer Act"). Specifically, you are concerned about interpretations to the effect that this amount is the same amount as determined under Section 4211 of ERISA to be "the amount of the unfunded vested benefit allocable to an employer . . ." We conclude that the two amounts are not the same.

Section 4202 of ERISA requires, upon the withdrawal of an employer that the plan sponsor "determine the amount of the employer's withdrawal liability." Section 4021(b) of ERISA defines withdrawal liability as "the amount determined under Section 4211 to be the allocable amount of unfunded vested benefits, adjusted . . . [*2] in accordance with Section 4225." [Emphasis added.]

Section 4225(a) of ERISA provides a limitation on the withdrawal liability of an employer whose withdrawal from a multiemployer plan resulted from a "bona fide sale of all or substantially all of the employer's assets in an arm's-length transaction to an unrelated party." In this circumstance the employer's liability is limited to the greater of: (1) "a portion . . . of the liquidation or dissolution value of the employer" determined in accordance with a schedule of marginal rates ranging from 30% to 80% (Section 4225(a)(1)(A), (a)(2)); or (2) "the unfunded vested benefits attributable to employees of the employer." (Section 4225(a)(1)(B)). The plain language of the statute makes it clear that "the unfunded vested benefits attributable to employees of the employer" under Section 4225(a)(1)(B) is not identical to the amount of the unfunded vested benefits allocable to an employer" under Section 4211. For example, even the "direct attribution" allocation method under Section 4211(c)(4) allocates to the employer a share of unfunded vested benefits which are not attributable to employees of the employer. Moreover, if the two amounts [*3] were identical, Section 4225(a) would be meaningless -- it would never reduce liability below the amount allocated to the employer under Section 4211.

If the plan sponsor does not or cannot make the determination required under Section 4225(a)(1)(B), the employer's liability is limited to the amount determined in accordance with the schedule provided in Section 4225(a)(2). In any event, the plan sponsor is obligated to apply Section 4225(a), where appropriate. The failure to do so would be inconsistent with Title IV of ERISA, and would be reversible in the dispute resolution process under the Multiemployer Act.

I hope this adequately responds to your question. If you have further questions on this matter, please contact * * * of my staff at the above address or at (202) 254-4873.

Henry Rose
General Counsel