

Pension Benefit Guaranty Corporation

83-3

January 14, 1983

REFERENCE:

[\*1] 4041(c) Termination by Plan Administrator. Inability to Determine Sufficiency  
4044(c) Allocation of Assets. Apportionment of Asset Gains & Losses Between Plan & PBGC  
4047 Restoration of Plans

OPINION:

On \* \* \*, the Pension Benefit Guaranty Corporation (the "PBGC") brought suit in the United States District Court for the District of \* \* \* seeking a decree terminating the referenced pension plan (the "Plan") and appointing the PBGC its trustee. On \* \* \*, \* \* \*, counsel to the Plan's administrator, wrote to the PBGC requesting that the PBGC permit the Plan to be restored to its earlier status, pursuant to Section 4047 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1347. In his \* \* \* letter to you, the Executive Director of the PBGC stated conditions under which the PBGC would permit restoration of the Plan to its earlier status.

On \* \* \*, you stated in your letter to me that Corporation, the employer that had maintained the Plan, "continues to be interested" in the restoration of the Plan "along the lines suggested in the \* \* \*." \* \* \* has since requested, in a telephone conversation with \* \* \* of this Office, that the PBGC prepare an agreement implementing [\*2] the restoration of the Plan, subject to the conditions enumerated in the \* \* \* letter. Such an agreement will be forthcoming. In the meantime, however, any actions by the Plan's administrator must be consistent with the requirements of Subtitle C of Title IV of ERISA.

The PBGC received a Notice of Intent to terminate the Plan on \* \* \*. On \* \* \*, the PBGC, pursuant to Section 4041(c) of ERISA, notified the Plan's administrator that the PBGC was unable to determine that the Plan held sufficient assets to discharge all of its obligations with respect to basic benefits. Under such circumstances, pursuant to Section 4044(c) of ERISA, 29 U.S.C. § 1344(c), a plan's post-termination experience gains or losses are credited to, or are suffered by, the PBGC.

Thus, the PBGC has a beneficial interest in the Plan's assets, and the Plan's administrator must take that interest into account in making its decisions regarding the investment of those assets. We are therefore concerned by the article on Page 3 of the \* \* \* issue of \* \* \*, reporting certain actions by Plan trustees in anticipation of the Plan's restoration. The PBGC was not notified in advance of any of the reported actions, and [\*3] nothing in the article suggests that they were based on consideration of the interests of the PBGC.

I would remind you that no agreement restoring the Plan to its earlier status has been reached. The PBGC recognizes that the above article may not reflect all pertinent facts. In light of our beneficial interest in the Plan's assets, we request a written explanation (within two weeks from the date of this letter) of major Plan investment decisions made since the termination of the Plan on \* \* \*.

If you have any questions, please contact \* \* \* at the address above or at (202) 254-3010.

Henry Rose  
General Counsel