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Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

MAR 29 2003

Re: Appeal No.  Trans World Airlines, Inc.  
(TWA) Retirement Plan for Pilots (the Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's August 30, 2002 determination of your PBGC benefit. For the reasons stated below, we must deny your appeal.

### ***Determination and Appeal***

PBGC determined that you are entitled to a PBGC benefit of \$782.98 per month starting on your Earliest Unreduced Retirement Date (December 1, 2012) payable as a Modified Cash Refund Life Annuity (MCRLA).<sup>1</sup> PBGC noted that it offers other benefit forms from which you may choose. PBGC included a Benefit Statement, which shows information the former Plan administrator (TWA) used to calculate your Plan-defined benefit. It shows that if you choose to start receiving your benefit before December 1, 2012, the amount will be reduced to account for the longer period of payment. The Statement also shows that PBGC used TWA's benefit amount to calculate your PBGC benefit.

Your appeal said that

- (1) at the time the Plan was frozen in 1993, you and other TWA pilots hired after 1977 as well as all former Ozark Airlines pilots had "less than ten years active service" as a TWA pilot,
- (2) you and the others "were improperly denied the opportunity to 'grow into' the A plan ten-year minimum benefit,"
- (3) you and others had a request pending with the Internal Revenue Service (IRS) for "a determination on this matter," which if favorable to you would result in a higher benefit for all of you, and
- (4) because the IRS ruling was still pending, your PBGC

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<sup>1</sup> The MCRLA would provide a benefit for the rest of your life. Also, because the Plan's former sponsor made special contributions on your behalf, your beneficiary would receive a benefit if you die before you receive pension payments equal to the special contributions balance

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Benefit Determination could not really be the "final" benefit determination.

On February 11, 2003, you called us and said that you would send us a supplemental appeal letter to which you would attach information regarding the Tax Reform Act of 1986 (TRA '86). You implied that because TRA '86 required the Plan to amend its 10-year-cliff requirement to a vesting schedule at least as favorable as a 5-year-cliff effective January 1, 1989, you should have become immediately vested in the Plan's 25% of earnings minimum benefit on that date.

**Discussion**

1. Background of the Plan

The Plan was originally established in 1950. It was maintained pursuant to collective bargaining agreements between TWA and the representatives of its pilots, the Air Line Pilots Association (ALPA). The Plan was restated effective January 1, 1986 (the 1986 Plan) and again on January 8, 1993. It received favorable determination letters from the IRS dated March 20, 1989 and March 17, 1995. TWA sponsored the Plan until January 8, 1993, when Pichin Corporation (Pichin), a Carl Icahn-controlled company, became the Plan's sponsor under a Comprehensive Settlement Agreement (CSA). TWA administered the Plan's benefit payments until the Plan terminated on January 1, 2001.

2. Retirement Benefits under the Plan

Under the 1986 Plan, a participant's benefit was calculated under one of two formulas. The Plan's generally applicable formula provided a normal retirement benefit at normal retirement age (age 60) equal to 1.5 percent of career earnings after 1970,<sup>2</sup> plus the monthly benefit to which the pilot was entitled under the Plan's prior benefit formula. Participants became 100 percent vested in their benefit at age 45. Before age 45, participants became 50 percent vested after five years of service, earning 10 percent per year thereafter until reaching 100 percent after ten years.

The 1986 Plan also provided an alternate formula that afforded a minimum retirement benefit. If the minimum retirement benefit were greater than the benefit computed under career average

<sup>2</sup> The plan formula provided a monthly benefit equal to 1/32 of aggregate contributions after October 1, 1970. Because TWA made contributions at the rate of 4 percent of compensation, the result was a formula equal to 1.5 (1/32 x 4% x 12) percent of career earnings.

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formula, a participant would receive the minimum retirement benefit. The minimum retirement benefit was equal to 25 percent of the participant's average monthly earnings (AME)<sup>3</sup>, plus the benefit accrued before December 31, 1982.

The eligibility requirements for the minimum retirement benefit differed depending on whether the participant had been a pilot for Ozark Airlines. To earn the minimum retirement benefit as a former Ozark pilot, the pilot needed ten years of continuous service as a TWA pilot before normal retirement age. Conversely, a TWA pilot needed ten or more years of continuous service or, alternatively, simply to reach normal retirement age after October 1, 1981.

As part of the 1993 CSA, Pichin adopted a formal amendment on January 8, 1993 with an effective date of January 1, 1990, regarding the 10-year minimum benefit. Under that amendment, the minimum benefit formula changed from 25% times AME for participants with 10 years of TWA active service to 2.5% times AME for each year of TWA active service for participants terminating employment on or after January 1, 1990. The amendment also changed the vesting schedule to the five-year-cliff-vesting schedule. Participants who terminated employment before January 1, 1990 had their benefits calculated under earlier Plan provisions. The amendment also provided a special early retirement adjustment factor table for persons with less than 10 years of accrual service.

Also on January 8, 1993, Pichin amended the Plan to freeze the accrual of benefits. Thus, a participant's accrued benefit under the minimum benefit formula is based on the participant's years of active service as of January 8, 1993, and his AME as of that date. Service after January 8, 1993 (along with age) counted toward lessening the severity of the early retirement reduction factor on the minimum benefit.

### 3. The Issue Pending with the IRS

ALPA specifically raised the issue of whether the freeze amendment violated the anti-cutback rule in the context of negotiation of the 1993 Comprehensive Settlement Agreement (CSA). In accordance with the CSA, Pichin requested a determination letter from the Brooklyn District Director (BDD) on March 30, 1993. The BDD forwarded the request to the National Office, which issued a Tax Advice Memorandum (TAM) on September 9, 1994, finding that the

<sup>3</sup> A participant's AME was defined as the average monthly earnings level determined for the calendar year of the participant's highest earnings level out of the last ten (10) calendar years of Earnings, but not to exceed maximum monthly earnings of \$8,400.

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Plan did not, by its terms, violate the anti-cutback rule in section 411(d)(6) of the Internal Revenue Code (IRC). Thus, under the terms of the CSA, TWA was authorized, if not required under ERISA, to administer the plan in accordance with the January 8, 1993 amendments.

On April 22, 1999, ALPA requested reconsideration of the 1994 TAM. We understand that the request was forwarded to the National Office, but after learning that the Plan had been terminated, the National Office halted its actions concerning the request.

4. The Tax Reform Act of 1986 (TRA '86)

Although the Tax Reform Act of 1986 (TRA '86) amended ERISA, effective January 1, 1989, to require sponsors of certain tax-qualified retirement plans to adopt more generous vesting schedules, the effective date for certain collectively-bargained plans was dependent upon the date of termination of the relevant collective-bargaining agreement between the plan sponsor and the bargaining representative of employees. For the Plan, the effective date of the amendments to the vesting requirements under ERISA was January 1, 1990, not January 1, 1989. Consequently, based on the TRA '86 amendments to ERISA, you became fully vested in your accrued benefit under the Plan in five, not ten years, effective January 1, 1990.

Based on the amendment to the Plan fixing an accrual rate of 2.5 percent per year for the minimum benefit, you accrued seven years of Continuous Service by the date when the accrual of benefits was frozen, January 8, 1993. As of January 8, 1993, you had accrued 70 percent of the total maximum minimum benefit (2.5 percent x 7 years of Continuous Service = 17.5 percent of AME) because the total number of accrual years was limited to ten. You accrued no additional years of Continuous Service after January 8, 1993, but under the Plan's five-year-cliff vesting schedule, you were fully vested in your accrued minimum benefit as of January 8, 1993.

**Decision**

Having applied the law and PBGC's rules to the facts in this case, the Appeals Board decided that we must deny your appeal. This decision is the agency's final action regarding your October 11, 2002 appeal. You may, if you wish, seek court review of this decision.

If you need additional information from PBGC, please call the Customer Service Center at 1-800-400-7242.

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Sincerely,

A handwritten signature in cursive script that reads "Michel Louis". The signature is fluid and written in dark ink.

Michel Louis  
Appeals Board Member

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