

Pension Benefit Guaranty Corporation

76-105

September 1, 1976

REFERENCE:

[*1] 4062(b) Liability of Employer in Single Employer Plans. Amount of Employer Liability
4062(c)(1) Liability of Employer in Single Employer Plans. Basis of Determination of Employer Net Worth

OPINION:

In your letter of August 9, 1976, you asked about the basis for a possible *** claim by PBGC against the assets of the *** arising out of the termination of that company's pension plan. As you know, under Section 4062 of ERISA the PBGC may recover from the employer the amount by which the Plan's assets were insufficient to satisfy guaranteed benefits on the date of Plan termination, up to 30 percent of the employer's net worth. As we have discussed, under Section 4001(b) of ERISA, all trades and businesses under common control are treated as a single employer, and the net worth of the consolidated group is the measure of the limitation on PBGC's potential recovery.

The pension plan in question terminated on June 30, 1975, at which time the value of its assets was insufficient to cover the present value of its guaranteed benefits by *** approximately *** Under Section 4062(b)(2) of ERISA, the net worth limitation on employer liability is determined as of a day chosen by PBGC within the [*2] 120-day period preceding Plan termination. Under the statute the PBGC determines net worth "on whatever basis best reflects, in the determination of the [PBGC], the current status of the employer's operations and prospects at the time chosen" for the determination, ERISA § 4062(c)(1).

According to the figures listed in the attachment to your August 9 letter, *** and its *** subsidiaries had a consolidated book value of *** on *** 1975. Thirty percent of that amount exceeds the estimated plan asset insufficiency. However, it is the PBGC's view that "net worth" as used in Section 4062(b) of ERISA refers to an employer's fair market value, which in many cases may differ significantly from the employer's book value. According to the document you submitted, for example, the *** group began to incur *** substantial and continuing losses a month after the pension plan was terminated. This may indicate that the group's *** fair market value within the relevant period is not accurately illustrated by its book value.

In order to make the net worth determination called for by Section 4062(b) and (c) of ERISA, the PBGC will need a range of information relating to the controlled [*3] group members -- including stock ownership records or other materials showing all the trades or businesses that were under common control within the meaning of the applicable regulations on June 30, 1975. Mr. Marteen Jones will contact you shortly to arrange for PBGC examination of the necessary data. In the interim, if either you or *** have any questions concerning PBGC's interpretation of the statutory provisions, please feel free to be in touch with me directly.

Judith F. Mazo
Attorney
Office of the General Counsel