

Pension Benefit Guaranty Corporation

76-120

December 14, 1976

REFERENCE:

[*1] 4067 Arrangements for Payment of Employer Liability

OPINION:

This has reference to your letter of * * * containing your proposal, on behalf of * * * (the "Company"), for the payment of employer liability in connection with * * * (the "Plan"). Your letter was in response to a letter of demand, dated * * * for payment of employer liability, pursuant to Section 4068(a) of the Employee Retirement Income Security Act of 1974 (the "Act"), from the Pension Benefit Guaranty Corporation (the "PBGC") to the Company for the sum of * * * plus any outstanding liability of the Plan for services rendered thereto.

We have reviewed the Company's proposal and have found it unacceptable for the following reasons.

First, the Company proposes to use an "alternative termination date" to compute the amount of employer liability. This is unacceptable because, inter alia, the Act requires that * * * employer liability be determined as of the date of plan * * * termination. The date of Plan termination has been agreed to be March 31, 1975, the date of termination proposed by the plan administrator in its termination notice.

Second, the Company proposes to pay the amount of its employer liability within [*2] thirty (30) days after a final decision is rendered in the Connolly case. We do not consider the Connolly case to affect collection of employer liability in this case.

Third, the Company proposes to pay the amount of the liability without interest. It is our position that interest accrues on such liability at an appropriate rate.

Fourth, the Company proposes to pay its employer liability ". . . in an equivalent face amount of bonds traded on the New York Exchange . . ." Under this proposal, the PBGC would accept bonds with a face or par value equal to the amount of the employer liability regardless of their current market value. The amount of the discount and consequent loss to the PBGC could be substantial. Subsequent conversion of such bonds also would involve expenses that would reduce further their realizable value. Consequently, such form of payment is not acceptable.

Accordingly, the PBGC, pursuant to Section 4068 of the Act, 29 U.S.C. § 1368, again hereby makes demand upon you for the payment of the Company's liability under Section 4062 of the Act, 29 U.S.C. § 1362, which has been calculated to be * * * plus any outstanding liability of the Plan for services [*3] rendered thereto. Failure to pay said liability, plus interest, within fourteen (14) days from receipt of this letter, will be deemed to be a refusal within the meaning of Section 4068(a) of the Act, 29 U.S.C. § 1368(a), to pay the amount demanded. Thereupon, the PBGC will consider taking such action as might be appropriate under the circumstances. However, we remain available to discuss an alternative Company proposal for payment of its liability.

Henry Rose
General Counsel