

Pension Benefit Guaranty Corporation

76-14

February 4, 1976

REFERENCE:

[*1] 4021(a) Plans Covered. Requirements of Coverage
4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
4063 Liability of Substantial Employer for Withdrawal

OPINION:

This is in response to your letter of June 13, 1975 and subsequent telephone conversations with *** of my staff, concerning *** and the *** Pension Plan *** As I understand the pertinent facts, *** through a series of corporate reorganizations, is the successor-in-interest to *** On July 1, 1972, *** and the *** entered into an agreement (the "Participation Agreement") providing for the participation in the *** of those employees at *** Dallas, Texas plant who were represented by the *** The *** is a multiemployer plan as defined in § 4001(a) (3) of *** the Act. ** * made contributions to the *** on behalf of those employees until June 30, 1975, when *** closed its Dallas plant.

Initially, it was believed that the *** would provide *** employees with their entire pension benefit package. In 1973, however, it was discovered that the Participation Agreement provided certain supplemental and special pension benefits not provided by the *** In an agreement with the *** dated April 25, 1975, [*2] *** agreed to provide employees covered by the Participation Agreement with those benefits which the *** did not provide. *** also agreed to fund those benefits.

In light of the above facts, you requested a determination as to *** whether the Pension Benefit Guaranty Corporation (the "PBGC") guaranteed the pension benefits of *** employees at its Dallas plant, and as to whether any liability arose under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") as a result of the closing of that plant.

Because benefits provided by the ** *, and benefits provided in July 1, 1972 Participation Agreement differ, employees at *** plant, for purposes of Title IV of the Act, participated concurrently in two pension plans. To the extent that benefits provided by the Participation Agreement were provided by the *** employees participated in the multiemployer ***. To the extent that benefits provided by the Participation Agreement were not provided by the ** * employees participated in a single-employer plan maintained by ***. Under Title IV of the Act, therefore, the closing of *** Dallas plant involved a partial withdrawal of an employer from a [*3] multiemployer plan, and the termination of a single-employer plan.

Based on the information you provided, the PBGC does not guarantee the payment of pension benefits to *** employees as the result of its withdrawal from the ***. Under § 4022(a) of the Act, the PBGC guarantees the *** payment of benefits only upon the termination of a plan. Since *** withdrawal did not result in the termination of the ** *, the PBGC does not guarantee benefits as a result of that withdrawal. Additionally, since *** is not a substantial employer in relation to the ** *, § 4063 of the Act does not apply as a result of the withdrawal.

We also believe that the supplemental and special benefits provided for in the April, 1975 Agreement and promised in 1973 are not guaranteed. Section 4022(a) of the Act provides that the PBGC:

". . . shall guarantee the payment of all nonforfeitable benefits . . . under the terms of a plan which terminates when § 4021 applied to it."

Section 4021 applies generally to plans which have been determined by the Secretary of the Treasury to be tax qualified, or which had, for the preceding five years, in practice met the requirements necessary to be tax qualified. [*4] At the time of the closing of *** Dallas plant, the single-employer plan was not tax qualified. Further, since no contributions were made by *** in regard to that plan prior to April 25, 1975, a tax qualified trust could not have been established prior to that date. Without such a trust, the plan could not have been tax qualified at the time of its termination. As a result, even though the plan terminated, benefits provided by the plan are not guaranteed by the PBGC under Title IV of the Act.

The imposition of Title IV employer liability is tied directly to the guarantee of benefits by the PBGC. In this case, since the PBGC does not guarantee pension benefits either as the result of the withdrawal of * * * from the * * * in regard to employees at its Dallas plant or as a result of the termination of the single-employer plan, no liability arose under * * * Title IV of the Act as the result of * * * closing its * * * plant.

I hope that this answers your questions. If we can be of further assistance, please let us know.

George B. Driesen
Deputy General Counsel