

Pension Benefit Guaranty Corporation

76-78

June 11, 1976

REFERENCE:

[\*1] 4067 Arrangements for Payment of Employer Liability

OPINION:

The purpose of this letter is to set forth the position of the Pension Benefit Guaranty Corporation (the "PBGC") with respect to \* \* \* position on the application of Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), to \* \* \* (the "Plan"), as stated in its Annual Report to stockholders for the year 1975 and its Annual Report to the Securities and Exchange Commission on Form 10-K, (the "Reports"), which you submitted to PBGC on April 5, 1976.

The Reports state that "PBGC is on record that, should a claim (for employer liability under Section 4062 of ERISA) be asserted and upheld it is willing to work out extended payment arrangements over a period of years for liquidation of such a claim if the employer corporation is financially sound." Section 4067 of ERISA does authorize the PBGC to make arrangements for payments of employer liability and it is the stated position of PBGC that we will use that power in appropriate cases. However, no decision about payment terms has been made by the PBGC with respect to your plan. Employer liability payment terms are arranged on a case by case basis after liability is asserted [\*2] under Section 4062 of ERISA.

The Reports also state that it is \* \* \* position that should the Plan be terminated it "has no additional liability in excess of the plan assets, since the terms of the plan make no unrestricted promise to pay monthly benefits in excess of such assets and limit the Company's liability for benefits to contributions of a specified cents-per-hour for straight time hours worked, as agreed upon by the Company and the Union." Congress, in enacting Title IV of ERISA, was aware of employer liability limitation provisions contained in plans such as yours and determined that such provisions should be inoperative in plans covered by Title IV. Thus, Congress set forth in Subtitle D of Title IV new standards for determining the liability of an employer upon the termination of a plan with insufficient assets to pay guaranteed benefits. These provisions apply to all plans covered by Title IV.

Henry Rose  
General Counsel