

Pension Benefit Guaranty Corporation

82-29

October 22, 1982

REFERENCE:

[\*1] 4062 Liability of Employer in Single Employer Plans

4062(e) Liability of Employer in Single Employer Plans. Closing of Facility Affecting More Than 20% of Plan Participants

4064 Liability of Employers in Multiple Employer & Multiemployer Plans

OPINION:

This responds to your request for a written opinion from this office concerning the effect of Sections 4064, 4062 and 4062(e) of the Employee Retirement Income Security Act (ERISA) as amended by the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. § § 1364, 1362, 1362(e) (1976) and Supp. IV 1980) on a transaction involving an employer's sale of substantially all of its assets, and the concurrent transfer of its defined benefit pension plans, to an unrelated buyer.

1. Sections 4064 and 4062

PBGC will not, as a general rule, seek from the seller employer liability under Section 4064 or 4062, with respect to a termination of a pension plan by a successor employer after the sale of substantially all of the seller's assets, if:

(1) as of the closing date of the sale, a plan had sufficient assets to satisfy all benefits which are guaranteed by the PBGC under Title IV, or

(2) a plan's assets are not sufficient to provide [\*2] guaranteed benefits on the closing date, 30% of the statutory net worth of the employer maintaining the plan immediately after the closing is greater than the sum of the plan asset insufficiencies of all the single-employer plans maintained by such employer.

2. Section 4062(e)

The application of Section 4062(e) is conditioned upon an employer's cessation of operations at a facility and a resulting separation from employment of more than 20% of all plan participants. Section 4062(e) would not apply to the seller as a result of the transaction you have described.

I trust that this response will be of help to you.

Henry Rose  
General Counsel