

Pension Benefit Guaranty Corporation

82-38

December 14, 1982

REFERENCE:

[\*1] 4211 Withdrawal Liability  
4219 Notice & Collection of Withdrawal Liability  
4221 Resolution of Disputes

OPINION:

This responds to your letter raising the question of whether officers or shareholders may be held liable for a corporation's liability under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended.

In your letter, and in a subsequent telephone conversation with \* \* \* of this office, you indicated that your company had made contributions into the Local \* \* \*, \* \* \* Pension and Trust Fund until about a year ago. You also indicated that your company filed a Chapter 11 Bankruptcy petition in 1978, that in November 1981 the company's plan of arrangement was confirmed and that at that time, "union officials accepted a 10% repayment on approximately a \$20,000 balance owed to the pension fund." Now you have received a letter from the "union" stating that \* \* \* has incurred withdrawal liability in the amount of \$210,000. You are concerned as to how this amount was reached and as to whether you or other principals can be held personally liable.

Under ERISA, any employer that completely or partially withdraws from a multiemployer plan must pay its share of the plan's [\*2] unfunded liability. The exact amount of this contingent liability is determined under ERISA Section 4211.

Under ERISA, the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan, and the amount of any liability resulting therefrom, lies with the plan. If the plan sponsor makes such a determination, and if the employer objects, the matter must then be resolved through the dispute resolution procedures described in Sections 4219 and 4221 of ERISA.

With regard to your question as to individual shareholder responsibility for withdrawal liability, we note that ERISA has no special rules regarding shareholder or officer liability. Accordingly, this issue is usually determined by State law,

which generally provides that shareholders are not liable for the debts of a corporation. You should, however, be aware that the laws of every state contain exceptions to this general principle.

If you have any questions on this matter, please contact \* \* \* of this office at (202) 254-4895.

Henry Rose  
General Counsel