

Pension Benefit Guaranty Corporation

82-39

December 20, 1982

REFERENCE:

[*1] 4201 Withdrawal Liability Established
4202 Determination & Collection of Liability
4219 Notice & Collection of Withdrawal Liability
4221 Resolution of Disputes

OPINION:

This responds to your letter to Congressman concerning withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980 ("Multiemployer Act") which amends the Employee Retirement Income Security Act of 1974 ("ERISA"). The Congressman has requested that the Pension Benefit Guaranty Corporation ("PBGC") assist you. The purpose of this letter is to explain your rights when withdrawal liability is assessed by a pension plan.

In your letter you state that on ***, Your Board of directors decided to terminate your corporation, Inc. Liquidation commenced in *** and formal dissolution occurred in *** A notice to creditors was published and six months later on ***, no claims having been received, the corporation ceased to exist pursuant to law.

You further state that prior to dissolution, the corporation contributed on behalf of its employees to the *** Pension Plan. In *** as a consequence of the corporate dissolution, the pension plan assessed the former shareholders approximately \$60,000 (later increased [*2] to \$80,000) in withdrawal liability pursuant to the Multiemployer Act.

The Multiemployer Act provides that an employer that withdraws (ceases making contributions) from a multiemployer pension plan may be liable for a share of the plan's unfunded vested benefits. Section 4201 of ERISA, 29 U.S.C. § 1381. The plan sponsor (ordinarily the trustees) of the pension fund are required by law to assess liability against a withdrawn employer. Section 4202 of ERISA, 29 U.S.C. § 1382.

If an employer disputes the liability determination of the plan, it may petition the plan for review. Section 4219(a)(2) of ERISA, 29 U.S.C. § 1399(a)(2). If the dispute continues, arbitration is required. Section 4221 of ERISA, 29 U.S.C. § 1401. Finally, the arbitrator's decision is reviewable by the federal courts. Section 4221(b)(2) of ERISA, 29 U.S.C. § 1401(b)(2). During this process the employer may raise defenses such as the amount or even the existence of liability.

Your final question concerns whether there are any legislative efforts toward eliminating withdrawal liability as applied to withdrawals which occurred prior to the enactment date of the Multiemployer Act. One such effort is H.R. [*3] 7233, the "Multiemployer Retirement Income Protection Act of 1982."

For further assistance on this matter please contact *** of my office at the above address or (202) 254-4873.

I hope we have been of assistance.

Henry Rose
General Counsel