

Pension Benefit Guaranty Corporation

76-110

September 16, 1976

REFERENCE:

[*1] 3(16) Definitions. Administrator

OPINION:

Your letter of August 26, 1976, addressed to Mr. Arnold Hoffman of the Division of Plan Review has been referred to this office for reply. Under Section 3(16) of the Employee Retirement Income Security Act (ERISA), the term "administrattor" of a plan is defined to be the person so designated by the terms of the instrument under which the plan is operated. The former trustees who were so designated under the plans have resigned and the Board of Directors of * * * has not exercised its power to appoint new ones.

Section 3(16) further states that "if an administrator is not so designated, the plan sponsor" is considered the administrator. * * * is the plan sponsor, but it is presently in receivership under Chapter XI of the Bankruptcy Act.

It is our understanding that a Receiver's powers and responsibilities in bankruptcy are ordinarily limited to custodial functions with respect to the debtor's property unless they are enlarged or otherwise specified by court order. (Bankruptcy Rule 201[g]). Has an application been made to the bankruptcy court for an order specifically authorizing the receiver to appoint a successor administrator or, in the alternative, [*2] for an order directing * * * Board of Directors to appoint such successor administrator?

If nor, some such action should be taken in the interim interests of pensioners whose bebenefit payments have been discontinued. This corporation is presently considering whether statutory grounds exist to institute proceedings under Section 4042 of Title IV of ERISA with respect to these plans.

We trust the above has been of assistance to you.

Henry Rose
General Counsel