

Pension Benefit Guaranty Corporation

81-25

August 24, 1981

REFERENCE:

[*1] 4001(b) Definitions. Employer and Controlled Group
4062 Liability of Employer in Single Employer Plans
4062(a) Liability of Employer in Single Employer Plans. Applicability
4062(b) Liability of Employer in Single Employer Plans. Amount of Employer Liability
4062(d) Liability of Employer in Single Employer Plans. Corporate Reorganizations
29 CFR 2612 Trades or Business under Common Control

OPINION:

This is in response to your request for an opinion from the Pension Benefit Guaranty Corporation (the "PBGC") regarding the liability of various corporations upon the termination of the above-captioned plans.

You informed the PBGC that the above-captioned corporations (hereinafter collectively referred to as the "Seller") are insolvent and have ceased operations. You stated that all of the Seller's assets had been used as collateral to secure a debt of the Seller to * * * Bank, N.A. (the "Bank"), and that the Bank has foreclosed on this collateral as a result of the Seller's insolvency. You stated further that the Bank has sold the Seller's assets for cash to a new corporation called A. You stated that A is a subsidiary of B, which is an affiliate of C, and that A, B and C are not related [*2] to the Seller. You informed the PBGC that A did not and will not assume any of the Seller's obligations under the seven pension plans for hourly employees and the pension plan for salaried employees which were maintained by the Seller, and that A will not continue any of these eight (8) pension plans. In these circumstances, you have requested an opinion from the PGBC that A will not succeed to any liability to the PBGC by reason of the termination of the eight plans, and that the PBGC will not assert any claim against any of the Seller's assets purchased by A based upon the Seller's liability to the PBGC for terminating the plans.

For the purpose of this ruling, I assume that the eight pension plans maintained by the Seller are covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") (amended by Pub. L. No. 96-364 (1980)). I also assume that A is not related to the Seller in any manner, including any relationship through B or C, and that all of the other facts recited in your letter are correct.

Section 4062(a) of ERISA provides that "any employer who maintained a plan . . . at the time it was terminated . . ." shall be liable to the PBGC for an [*3] amount determined under Section 4062(b) of ERISA. Under Section 4001(b) of ERISA, and Title 29, Code of Federal Regulations, Part 2612, trades or businesses under common control are treated as a single employer for purposes of Title IV of ERISA. Section 4062(d) establishes rules to identify the employer which is liable to PBGC in the case of certain corporate reorganizations.

In this case, the purchase solely for cash of the Seller's assets by A is not a reorganization of the type described in Section 4062(d) of ERISA. Accordingly, under Section 4062 of ERISA, assuming the purchase is for fair market value, A would not be subject to liability resulting from the termination of the plans maintained by the Seller, and the PBGC will not assert a claim against the assets purchased by A in order to recover the Seller's liability to the PBGC.

I hope this is of assistance.

Henry Rose
General Counsel