



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

November 30, 2006



Re: [redacted] Case #193942, Neuman Distributors, Inc. Pension
Plan and Trust (the "Neuman Plan")

Dear [redacted]:

The Appeals Board reviewed your appeal of PBGC's [redacted] 2005 determination that you are not entitled to a benefit from the Neuman Plan. For the reasons stated below, the Board changed PBGC's determination by finding that you are entitled to a benefit. On the basis of this decision, PBGC's Benefits Administration and Payment Department will send you a new benefit determination with a new 45-day right of appeal.

PBGC's Benefit Determination and Your Appeal

PBGC's determination said that you are not entitled to a benefit because you earned less than the five years of service the Plan required for vesting. Your June 20, 2005 appeal stated that Neuman filed for Chapter 11 sometime in March of 2000, that the Company employed you until June of 2000, and that you would have completed five years of service in June of 2001. You noted that an employee from Neuman's Human Resources department informed you on your last day that Neuman would extend your service to five years because it was going bankrupt and that, as a result, you would be eligible to receive a benefit upon retirement. You submitted a number of documents in support of your appeal, including the Notice of Intent to Terminate the Neuman Plan, dated April 20, 2001, you received from the bankruptcy trustee.

Background

The Neuman Plan terminated, effective June 30, 2001, and PBGC became trustee on June 25, 2002. The terms of the Plan, the provisions of the Employee Retirement Income Security Act ("ERISA"), and PBGC regulations and policies determine your entitlement to a benefit.

When the Plan terminated, PBGC records show that Plan assets were sufficient to satisfy all Plan benefits PBGC *guarantees* under Title IV of ERISA. To determine the benefits PBGC can *pay*, ERISA section 4044 provides for the allocation of Plan assets to the following six priority categories (PC's), in PC order: (1) voluntary employee contributions (none in the Neuman Plan); (2) mandatory employee contributions (none); (3) benefits that were, or could have been, in pay status three years before the Plan's termination date; (4) all other PBGC-guaranteed benefits; (5) all other nonguaranteed vested benefits; and (6) all other (nonvested) benefits. PBGC records show that Plan assets were more than sufficient to provide all benefits through PC-6.

Section 13.3 of the Neuman Plan describes rules that apply in the event the Plan should terminate:

The Employer, without the consent of any Participant may terminate this Trust as to its Employees at any time . . . *After all liabilities of the Plan have been satisfied* (emphasis added), the Employer shall be entitled to any balance of the funds which shall remain.

Discussion

The Plan, as restated effective May 1, 1989, provides that a participant has a right to a pension benefit upon completing five years of Vesting Service. The Plan defines "Years of Vesting Service" as "Employee's years of Credited Service." Under Plan section 1.12(a), an employee earns one year of Credited Service for each Plan Year (May 1st to April 30th) in which he or she works at least 1,000 hours.

The records PBGC's auditors obtained from the former Plan Administrator show that you were actively employed at Neuman from [] 1996 through [] 2000. Thus, you earned four years of Vesting Service during that period (i.e., one year of vesting service for each of the Plan Years beginning []st of 1996, 1997, 1998 and 1999).

PBGC records also contain a copy of the *Actuarial Valuation Report* for the 2000 Plan Year. This *Valuation* includes (1) a summary of Plan Specifications with the specification for vesting shown as one year, and (2) a list of "vested terminated" participants with fewer than five years of vesting service. Your name is on this list. Based on this information, we found that your accrued Plan benefit is a liability of the Plan that must be satisfied under Plan section 13.3 to the extent Plan assets are available. Because PBGC records show that Plan assets are available in accordance with ERISA section 4044, we found that you are entitled to a benefit under the Neuman Plan.

Decision

Having applied the provisions of the Plan, the law, and PBGC regulations and policies to the facts in this case, the Appeals Board changed PBGC's [] 2005 determination by

finding that you are entitled to a benefit under the Neuman Plan. We will forward a copy of this decision to PBGC's Benefits Administration and Payment Department, who will issue you a new determination of your benefit amount with a new 45-day appeal right.

Meanwhile, if you need other information, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda M. Mizzi".

Linda M. Mizzi
Member, Appeals Board