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

FEB 19 2004



Re:  Wiretex Manufacturing Pension Trust Plan; Case #: 192034

Dear

The Appeals Board has reviewed your appeal of PBGC's July 1, 2003 determination that, although you are entitled to a monthly benefit under the Wiretex Plan, you will not receive the benefit because:

1. On October 17, 2000, the United States District Court for the District of Connecticut issued a Default Judgment that found you and another individual "jointly and severally liable to the [Plan] as of June 30, 2000 in the amount of \$1,127,263.90;"
2. The Court also required that, should the defendants fail to make full payment to the Plan within 10 days of the date of the Court's order, "any benefits payable under the Plan to [the defendants] shall be offset by the amounts remaining to be paid to the Plan by [the defendants];" and
3. The value of your benefit is less than the \$1,127,262.90 owed the Plan.

As explained below, we are denying your appeal. We found, however, that your spouse is entitled to a survivor benefit should you die before she does. PBGC's Insurance Operations Department, the organization responsible for determining and paying benefits, will send you a new determination reflecting this survivor benefit.

**Benefit Offset**

According to your July 17, 2003 appeal and August 5, 2003 supplement, you were not aware of any misapplication of any monies from the Wiretex Plan nor did you receive any monies directly or indirectly from any withdrawals from the pension fund. You also said you resigned from Wiretex Manufacturing Company on June 12, 1996, and relinquished all duties as trustee of the Wiretex pension fund. To support your appeal, you attached a number of exhibits that highlight what you believe are false statements submitted to the Court. You asked that PBGC either not implement the October 17, 2000 Default Judgment or seek to have it overturned.

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The Wiretex Plan terminated, effective June 21, 2000, and PBGC subsequently became trustee. On March 2, 2000, before the Plan terminated, the United States Department of Labor (DOL), not PBGC, filed a complaint against you for violations under sections 404 ("Fiduciary Duties") and 406 ("Prohibited Transactions") of the Employee Retirement Income Security Act (ERISA). In the case of a participant who is ordered by a court or otherwise required to pay an amount to a pension plan, section 206(d)(4) of ERISA permits the judgment, order, decree, or settlement to "expressly provide for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan." The October 17, 2000 Default Judgment against you expressly provided for an offset against your benefit.

Your appeal challenges the correctness and validity of the Default Judgment. Previously, you raised the same assertions with DOL, who responded to you in a letter dated March 4, 2002 ("Exhibit E" of your appeal filing). The Department of Labor, after reviewing your file, stated that "we see no reason to disturb the Judgment." The DOL letter further concluded that (1) the fact that you resigned as officer and director of Wiretex in June 1996 does not absolve you of responsibilities of trustee to the Plan; (2) there is no evidence that you resigned as trustee to the Plan; (3) even assuming you were no longer a trustee beginning in June 1996, you were a fiduciary to the Plan in the earlier period when the improper transfer of Plan assets occurred; and (4) DOL had made every effort to advise you of the litigation pending against you and DOL records show that you were served with the pertinent court documents.

According to the files available to the Appeals Board, there have been no payments made to the Plan as required by the October 17, 2000 Judgment. PBGC implements the terms of final judgments, orders, decrees or settlements as they apply to terminated pension plans for which PBGC is trustee. Furthermore, ERISA section 206(d)(4) permits an offset to your benefits in your situation, and the offset also is consistent with PBGC policy. Because the matters that you raise in your appeal were resolved in the court order and because PBGC's decision to apply the offset is consistent with ERISA and PBGC policy, we are affirming PBGC's determination with respect to your benefits.

We further conclude that the responsibility for obtaining for any relief from a court order is with you, rather than with DOL or PBGC. For example, you could have sought relief from the Default Judgment by filing a motion with the court. See Rule 60 of the Federal Rules of Civil Procedure ("Relief from Judgment or Order"). However, there is no record that you have filed such a motion. Thus, you will not receive a benefit from PBGC until the full amount owed to the Plan is paid.

Survivor Benefit

The October 17, 2000 order also provides that "any spouse of either [defendant] entitled to receive a survivor's benefit under the terms of the Plan shall retain the right to receive such benefit." The records PBGC's auditors obtained when the Plan terminated show that you had not retired before the Plan terminated. There is no evidence in the files to indicate that you had

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applied to begin receiving your benefit or that your spouse had elected to waive her survivor benefit. Accordingly, the Board found that PBGC must comply with the terms of the court order and that, if you die before your eligible spouse, she is entitled to a survivor benefit. We note that, in determining the survivor benefit amount, PBGC must comply with the "minimum-required qualified joint and survivor annuity" provisions under ERISA section 206(d)(5)(B).

Decision

Because we found no basis for changing PBGC's determination that you will not receive a benefit under the Wiretex Plan until the full amount owed the Plan is paid, we must deny your appeal. This is the Agency's final decision on this matter and you may, if you wish, seek court review.

The Board also found that your eligible spouse is entitled to a survivor benefit if you should die before she does. PBGC's Insurance Operations Department will send you a new determination concerning the survivor portion of your benefit (before the offset) with a new 45-day appeal right for matters not decided in this letter.

If you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,



Linda M. Mizzi  
Member, Appeals Board