



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

Office of the General Counsel

February 28, 2007



Re:  Case 196053, Mosler Pension Guarantee  
Plan

Dear :

The Appeals Board has reviewed your appeal of PBGC's March 28, 2005 determination regarding your monthly pension benefit from the Mosler Pension Guarantee Plan (the "PGP"). For the reasons stated below, we denied your appeal.

Your Benefit Determination and Appeal

By letter dated March 28, 2005, PBGC determined that you are entitled to a monthly benefit of \$201.54. In that letter, PBGC also noted that this is the same amount you received from the PGP Plan administrator before the PGP terminated.

In your April 6, 2005 appeal, you stated that you should be receiving \$357.89 per month. You further asserted that your PGP benefit should not be reduced based on your account under the Mosler Employee Stock Ownership Plan (the "ESOP"), since you received only a single payment of \$3,874.00 from the ESOP and would not receive future payments due to Mosler, Inc.'s ("Mosler's") bankruptcy.

On April 25, 2005, an authorized PBGC representative responded to your appeal, stating:

Your plan included a provision offsetting your defined benefit by your accumulated ESOP balance. PBGC does not have any authority over the Mosler ESOP plan.

At the time of your retirement, your Mosler pension benefit consisted of the PGP benefit offset by the annuitized value of your ESOP balance. In accordance with plan practice of the MOSLER PENSION GUARANTEE PLAN the prior plan administrator determined your ESOP monthly offset to be \$156.35. Your PGP monthly

benefit, guaranteed by the PBGC, payable from your retirement date of [ ]/2000 is \$201.54.

In a second appeal letter dated May 9, 2005, you again stated that your PGP benefit of \$357.89 per month should not be reduced by the monthly equivalent of your \$19,372.31 ESOP account balance, since most of it was never paid to you.

#### Overview of the PGP, the ESOP, and PBGC's Guarantee

The PGP, which is a defined-benefit pension plan, is part of a floor-offset arrangement with the ESOP. The ESOP is a separate, "individual account" pension plan.<sup>1</sup> Under the floor-offset arrangement, the benefit payable by the PGP is the amount that remains, if any, after the offset for the participant's ESOP benefit.

PBGC's termination insurance program covers certain defined-benefit pension plans. Since the PGP is a terminated, defined-benefit plan covered by PBGC, ERISA requires PBGC to guarantee the payment of benefits under it, subject to statutory limits. ERISA § 4022. Therefore, after the underfunded PGP terminated as of October 15, 2001, PBGC became responsible for paying guaranteed benefits to every PGP participant and beneficiary based upon the terms of the PGP and ERISA's requirements.

ERISA § 4021(b)(1), however, expressly excludes individual account plans from coverage by PBGC. Because the ESOP is an individual account plan, PBGC is statutorily prohibited from insuring any benefits that should have been, but were not, paid from that plan.

#### Pension Plan Terms that Define Your PGP Benefit

The PGP plan document in effect when you terminated employment is the "Mosler Pension Guarantee Plan as Amended and Restated as of July 1, 1994" (the "1994 Plan"). A participant's

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<sup>1</sup> Section 407(d)(6) of the Employee Retirement Income Security Act of 1974 ("ERISA") defines an "employee stock ownership plan" (i.e., an "ESOP") as an "individual account plan" whose funds must be invested primarily in qualified employer securities.

ERISA § 3(34) defines the term "individual account plan" as "a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains, and losses, and any forfeitures ... which may be allocated to such participant's account."

accrued benefit under the PGP (if any) is defined under section 6 of the 1994 Plan, which sets forth a multi-step benefit formula.

The first step of the formula is to calculate a maximum benefit using one of two formulas, whichever produces the higher benefit. See 1994 Plan § 6(a)(1). Next, the offset element is calculated. The offset element is the sum of: (i) the participant's "ESOP Benefit,"<sup>2</sup> if any, and (ii) the participant's American Standard Plan (a predecessor plan) benefit, if any. See 1994 Plan § 6(a)(2). Once the offset element has been determined, the third and final step is to subtract the offset element from the maximum benefit. See 1994 Plan § 6(a).

Your ESOP benefit rights are defined under the terms of the "Mosler Stock Ownership Plan as Amended and Restated as of July 1, 1994" ("1994 ESOP"). That document provides that a participant's "Capital Accumulation"<sup>3</sup> will be distributed following his "termination of Service," unless the participant elects to keep his funds in the ESOP. 1994 ESOP § 13(a). The ESOP's terms also provided that distribution of funds from a participant's ESOP account could be made through cash payments over a five-year period.<sup>4</sup>

The Summary Plan Description ("SPD") for the Mosler Retirement Program (which covers both the PGP and ESOP) provides as follows:

After the June 30<sup>th</sup> allocation to participants' accounts, all accounts will be "valued." The value of each share is determined by an independent appraiser.

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<sup>2</sup> Section 6(b)(4) of the 1994 Plan describes the ESOP Benefit as follows:

For purposes of this Section 6, the term ESOP Benefit shall mean the vested benefit under the ESOP. Such benefit shall be expressed as the life annuity Actuarial Equivalent payable at the Participant's Normal Retirement Date determined using 100% of the value of such Participant's nonforfeitable shares allocated to his account under the ESOP as of the valuation date preceding the earliest date as of which a distribution is available from the ESOP and including in such value any prior distributions made to the Participant.

<sup>3</sup> The term "Capital Accumulation" refers to a participant's vested, nonforfeitable interest in his or her ESOP account. ESOP § 2.

<sup>4</sup> We note that section 409(o)(1)(C) of the Internal Revenue Code permits ESOP distributions to occur, after termination of employment, through installments payments over a five-year period.

Following the appraisal, the value and the current worth of the accounts will be determined. Any gains will be added and losses will be subtracted from each person's account.

PGP's Determinations of ESOP Benefit Offset Amounts

Consistent with the ESOP's terms, the ESOP's Administrative Committee annually valued the ESOP's stock prices based on the work of an independent appraiser. This independent appraisal occurred as of each June 30th, which was the last date of the ESOP's plan year. The Administrative Committee, upon approving the independent appraiser's work, then used the appraiser's stock values (i.e., their price per share as of June 30th) for the entire 12-month period of the following plan year.

Based upon information available to PBGC, the table below shows the stock values that the ESOP used for the four plan years prior to PGP's termination:

PRICE PER SHARE OF MOSLER, INC. STOCK				
Stock Type	7/1/98 - 6/30/99	7/1/99 - 6/30/00	7/1/00 - 6/30/01	after 6/30/01 <sup>5</sup>
Preferred (Series C)	\$100.00	\$100.00	\$17.38	\$0
Preferred (Series D)	\$284.58	\$340.99	\$70.83	\$0
Common Stock	\$2.40	\$3.20	\$1.12	\$0

The ESOP's administrators also performed a quarterly accounting of the number of stock shares allocated to each participant's account. Thus, for example, the stock dividends that accrued on Mosler's preferred stock were credited to ESOP accounts on a quarterly basis.

The PGP's administrators, in calculating the amount of the

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<sup>5</sup> We found no record that an independent appraisal occurred for June 30, 2001. However, the benefit statements prepared for participants who terminated employment after June 30, 2001, indicate that the PGP's administrators valued Mosler stock as \$0 after that date. Additionally, PBGC's Actuarial Case Memo states that, after June 30, 2001, the ESOP's account balances were valued as \$0.

ESOP Benefit offset to the participant's PGP benefit, used the account balances provided by the ESOP (which, as discussed above, were based on the appraised stock values). The ESOP Benefit offset amount was determined as of a valuation date prior to the first ESOP installment payment. Under the terms of the PGP, there was only one valuation date to determine the amount of the ESOP Benefit offset. We examined records PBGC obtained from Mosler, but did not find a single instance where the PGP revalued the amount of the ESOP Benefit offset after the first installment payment from the ESOP was made.

#### Information in PBGC Records Concerning Your Benefits

The records PBGC obtained from Mosler indicate that:

- you were informed that the earliest date as of which an ESOP distribution was available to you was December, 2000;
- your ESOP account was valued as of September 30, 2000, and both the ESOP Benefit offset and the amount of the first ESOP installment payment were calculated as of that date;
- the value of your ESOP account as of September 30, 2000, which was based on the stock prices shown in the table above for the 7/1/00 - 6/30/01 plan year, was \$19,372.31;
- based on the PGP's actuarial assumptions, your \$19,372.31 ESOP account balance as of September 30, 2000 was equivalent to a monthly payment of \$156.35, payable in the form of a life annuity as of your normal retirement date; and
- based on your statements in your appeal, you received an ESOP cash distribution on December 27, 2000, in the amount of \$3,874.00, which was approximately one-fifth of your ESOP account balance as of September 30, 2000.

#### Discussion

Your appeal asserted that your PGP benefit should not be reduced by an ESOP Benefit offset amount, since you received only a single payment of \$3,874.00 from the ESOP. ERISA requires, however, that PBGC follow the terms of your defined-benefit plan, the PGP, in determining the amount of your guaranteed benefits.

The plan documents governing the PGP provide that the ESOP Benefit offset amount is to be determined "as of the valuation date preceding the earliest date as of which a distribution is available from the ESOP." This provision clearly establishes

that the ESOP valuation date occurs before the date of the first ESOP distribution. Furthermore, as discussed above, the PGP's practice (which was consistent with the PGP's terms) was not to revalue the ESOP benefit offset after the first ESOP payment was made. Accordingly, based on our review of the PGP's terms and our examination of PGP's practice, we concluded that we cannot change your ESOP Benefit offset amount even though you received only a single ESOP installment payment.

Thus, in accordance with sections 6(a) and 6(b)(4) of the 1994 Plan document and based on the pension plan records PBGC obtained, your monthly PGP benefit is \$201.54. This equals the \$357.89 monthly benefit calculated under the PGP's benefit formula after the offset for the American Standard Plan benefit, reduced by your \$156.35 monthly ESOP Benefit.

#### Decision

For the reasons stated above, the Board denied your appeal. This is PBGC's final action in your case and you may, if you wish, seek court review of this decision. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Charles Vernon  
Chair, Appeals Board