



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

April 16, 2009



Re: Consolidated Appeal, Case No. 195882, Republic Technologies International
LLC – USWA Defined Benefit Plan (the “Plan” or “RTI Plan”)

Dear 

The Appeals Board of the Pension Benefit Guaranty Corporation has reviewed your appeal on behalf of 251 participants in the RTI Plan. Your appeal asserts that PBGC has not complied with the terms of the RTI Plan because PBGC is not paying a supplemental benefit (referred to in RTI Plan documents as the “LTV Supplement”) to participants who retired from RTI employment under its Early Retirement Buyout Program (the “ERB”). As is discussed in more detail below, the Appeals Board found that PBGC is including the LTV Supplement, when it is applicable, in calculating the plan benefit amount for those appellants who retired under the ERB. Accordingly, the Appeals Board decided that your appeal does not provide a basis for changing PBGC’s benefit determinations for any of the 251 appellants.¹

Introduction

PBGC is the United States government agency that insures pensions in accordance with Title IV of the Employee Retirement Income Security Act of 1974, *as amended* (“ERISA”), 29 United States Code (“U.S.C.”) 1302-1461. If a plan sponsor is unable to support its defined benefit pension plan, PBGC becomes the trustee of the plan and pays guaranteed pension benefits according to the provisions of the plan. Because of legal limits under ERISA and PBGC’s regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay. 29 U.S.C. § 1322; 29 Code of Federal Regulations (“C.F.R.”) § 4022.3.

¹ You represent the 251 timely-filed appellants listed at Enclosure 1. Of the 251 appellants, 43 (who are listed on Enclosure 2) also submitted individual appeals directly to the Appeals Board. The Appeals Board later will issue supplemental decisions that will respond to the individual submissions from these appellants. Thus, for each of the 43 appellants, the Appeals Board will keep the appeal open until the individual’s supplemental decision is issued.

PBGC determined, pursuant to ERISA § 4042(a)(2)(4), 29 U.S.C. § 1342(a)(2)(4), that the RTI Plan would be unable to pay benefits when due and thus the RTI Plan must be terminated. PBGC became trustee of the RTI Plan on September 30, 2003. Additionally, based on a court decision, June 14, 2002 was established as the RTI Plan's Date of Plan Termination ("DOPT").² PBGC began sending initial (formal) Benefit Determination Letters to Plan participants in January 2008, with the majority of letters sent to appellants in May and June 2008.³

As is explained in more detail below, most RTI Plan participants who worked for LTV Steel Company ("LTV") before 1989 are entitled to benefits under a LTV-sponsored pension plan. Effective March 31, 2002, PBGC terminated and became statutory trustee of three LTV defined benefit pension plans.

On October 29, 2008, you filed a 13-page appeal brief with 12 exhibits (the "Appeal Brief" or "AB") on behalf of 245 participants in the RTI Plan. After you submitted your Appeal Brief, the Appeals Board received an additional 6 timely-filed appeals from individuals represented by you. The Appeals Board exercised its discretion under section 4003.56 of PBGC's regulations and consolidated the appeals you filed on behalf of these 251 appellants. The Appeals Board concluded that the respective appeals arise out of the same or similar facts and that they seek the same or similar relief.⁴

Your Appeal

Your appeal raises a single issue. You state that "PBGC incorrectly applied the LTV-DBP offset and corresponding supplement provisions for participants who elected to retire under the ERB Program and who are not immediately eligible for an unreduced LTV-DBP benefit." AB at 11. The "LTV-DBP offset" and the "LTV Supplement" provisions apply to certain RTI Plan participants who worked for LTV before LTV spun off its Bar Division into a separate company in 1989.

² *Pension Benefit Guaranty Corp. v. Republic Techs. Int'l, LLC*, 386 F.3d 659 (6th Cir. 2004), *cert. denied*, *United Steelworkers of America v. Pension Benefit Guaranty Corp.*, 544 U.S. 905 (2005).

³ Part 4003 of PBGC's regulations establishes the rules governing PBGC's issuance of initial Benefit Determinations and the procedures for requesting and obtaining administrative review. 29 C.F.R. § 4003 (titled "Rules for Administrative Review of Agency Decisions"). An initial (formal) Benefit Determination is the letter PBGC issues to communicate the Agency's determination of an individual's benefit. *See* 29 C.F.R. § 4003.21. If the individual desires Appeals Board review of his or her benefits, the individual or his or her representative must file an appeal of the Agency's determination, or a request for an extension of time, within 45 days from the date of issuance of the Benefit Determination. *See* 29 C.F.R. § 4003.4, 4003.52.

⁴ In footnote 2 of the Appeal Brief, you state that the United Steelworkers ("USW") represents: (1) "all participants of the RTI plan who timely filed appeals with the PBGC Appeals Board on their own behalf and/or through the USW, and (2) all similarly situated participants of the RTI plan who failed to timely file appeals with the PBGC Appeals Board, regardless of whether such participants were specifically identified by the USW in its correspondence with the PBGC Appeals Board." We have limited this decision to the 251 participants listed at Enclosure 1 who have timely-filed appeals. We did not identify any RTI Plan participant, however, where PBGC neglected to include the LTV Supplement, when it was applicable, in calculating the plan benefit amount.

Your appeal further clarifies that:

Specifically, participants who retired under the ERB provisions are subject to the LTV-DBP offset and the corresponding LTV Supplement until age 62; PBGC properly applied the LTV-DBP offset to these participants, but failed to provide the participants with the corresponding LTV Supplement until age 62. AB at 11-12.

To illustrate you point, you provide details on four appellants: [redacted]

[redacted]⁵ You state that PBGC “correctly applied” the LTV Supplement provision for the first three participants, but failed to do so in the case of [redacted] who you assert retired under the ERB.⁶

Background

In this section, we discuss: (1) the history of Republic Technologies International, LLC, (“RTI”), LTV, and their pension plans; (2) relevant provisions in RTI Plan documents, and (3) the legal limits on benefits paid by PBGC.

1. History of the Companies and their Pension Plans

Although RTI was established in September 1998, the events relevant to your appeal issue begin with the LTV’s bankruptcy filing in September 1986. At that time, LTV’s steel bar manufacturing operation was a division (the “Bar Division”) of that Company. Shortly after the 1986 bankruptcy filing, LTV terminated its defined benefit pension plans and established a replacement defined contribution plan (the “LTV-DCP”).

Later, PBGC successfully sued LTV to have three of the terminated pension plans restored to LTV based on ERISA section 4047. As a result of this litigation, the three pension plans were restored as ongoing LTV pension plans effective January 1, 1993. The restored LTV plans provided benefit accruals for all periods of service with LTV, but benefits accruals were offset by benefits attributable to LTV’s employer contributions to the LTV-DCP.

Before the LTV plans were restored, LTV had spun off its Bar Division into a separate company named Republic Engineered Steel, Inc. (“RESI”). This spin off occurred through certain Employee Stock Ownership Plan (“ESOP”) transactions. As a result of this transfer of

⁵ [redacted] has filed an individual appeal directly to the Appeals Board, to which we will respond in a supplemental decision. [redacted] did not file individual appeals.

⁶ In the first full paragraph on page 12 of the Appeal Brief, you request that PBGC recalculate “the RTI benefits payable to all participants who are subject to the LTV offset provisions of the RTI Plan.” Because this language possibly could encompass more than the appeal issue described above, William Condron and Matt Feeks of PBGC’s Appeals Division contacted you to discuss the scope of your appeal. In a telephone conversation with you on December 1, 2008, you clarified to them that PBGC’s treatment of the LTV Supplement for ERB participants was the focus of your appeal.

the Bar Division to the RESI ESOP, the former Bar Division employees stopped earning benefit accrual service under the LTV defined benefit plans as of November 28, 1989. Employment with RESI after November 28, 1989, however, counted for purposes of establishing eligibility for certain types of benefits under the LTV defined benefit plans (“LTV-DBP”).⁷

In 1991, RESI established a defined contribution plan (the “RESI-DCP”) that was effective November 28, 1989.⁸ Also, effective January 1, 1993, RESI established a defined benefit plan (the “RESI-DBP”). The RESI-DBP provided benefit accruals for all periods of service with both LTV and RESI, but benefits were offset by benefits payable from: (1) the LTV-DBP, (2) the LTV-DCP, and (3) the RESI-DCP.

On September 8, 1998, the Bar Technologies Company (“Bar Tech”) acquired all shares of the RESI ESOP. The combined Bar Tech company was renamed Republic Technologies International, LLC (“RTI”). Also, as is noted in the restatement of pension plan provisions effective September 8, 1998, the RESI-DBP was renamed the Republic Technologies International LLC-USWA Defined Benefit Plan (the “RTI Plan”).

The USW was the bargaining agent of the workers employed by RTI and its predecessors. Through the years, RTI (and its predecessors) and the USW negotiated successive collective bargaining agreements, which provided for the terms and conditions of employment of the Company’s employees. Among the many agreements was the 1998 Pension Agreement Term Sheet (“1998 Term Sheet”), which provided for certain significant modifications to the RESI Plan’s provisions. The provisions of the 1998 Term Sheet were incorporated into the Settlement Agreement and into the restated RTI Plan document.⁹

On December 29, 2000, LTV again filed for Chapter 11 bankruptcy. PBGC terminated the three LTV defined benefit pension plans with a plan termination date of March 31, 2002. PBGC on that date also became statutory trustee of the LTV plans.

RTI was unable to achieve profitability and filed for bankruptcy in 2001. As discussed above, PBGC terminated the RTI Plan with a DOPT of June 14, 2002.

⁷ Generally, RTI hourly employees who worked for LTV prior to 1989 were covered under the Pension Plan of Republic Steel Corporation. Section 1.27 of the 2002 RTI Plan document, however, also refers to other LTV-sponsored defined benefit pension plans, such as the Jones & Laughlin Hourly Pension Plan. In this decision, our reference to the “LTV-DBP” is to all of the LTV defined benefit plans to which Section 1.27 of the 2002 RTI Plan document applies.

⁸ RTI and USW, through a document titled “1998 Settlement Agreement Between United Steelworkers of America, AFL-CIO and BarTech and RES Acquisition Corporation” (“Settlement Agreement”), which was executed on August 2, 1998, agreed that RTI would discontinue contributions under the RESI-DCP effective September 8, 1998, and would provide enhanced benefits under the RESI defined benefit plan.

⁹ In this decision, all our references to RTI Plan provisions will be to the “Republic Technologies International, LLC – USWA Defined Benefit Plan, Amended and Restated Effective as of September 8, 1998” (the “2002 Restatement”), unless otherwise stated. The 2002 Restatement, which was executed by RTI on February 26, 2002, incorporated by reference the 1998 Term Sheet and the Settlement Agreement.

2. RTI Plan Provisions

In this section we first discuss the various retirement types under the RTI Plan and the terms of the Early Retirement Buyout program. We then discuss the RTI Plan's regular pension formula, the LTV Supplement, and its other temporary supplemental benefits.

The RTI Plan's Retirement Types

Article 4 of the 2002 Restatement provides for 9 different types of pensions: Normal Retirement; 62/15 Retirement; 60/15 Retirement; 30-Year Retirement; Permanent Incapacity Retirement; 70/80 Retirement; Rule-of-65 Retirement; Deferred Vested Pension; and 60/10 Retirement (only available to prior participants in the Bliss & Loughlin Pension Plan).

The Normal Retirement benefit is payable to a participant who retires after having attained age 65 (the Normal Retirement age) with at least 5 years of Continuous Service. Eligibility for the other eight retirement types also is based on the participant's age and/or years of Continuous Service. Additionally, in order to qualify for 70/80 Retirement or Rule-of-65 Retirement, the participant must (among other requirements) incur a Break in Continuous Service as a result of a layoff or a permanent shutdown, or must have elected to be placed on layoff status and subsequently have his employment terminated. Finally, Permanent Incapacity Retirement is available only to participants who meet the disability conditions stated in the RTI Plan documents.

If a participant meets the requirements for one of the following six retirement types, he or she may retire with an immediate, unreduced RTI Plan pension: Normal Retirement; 62/15 Retirement; 30-Year Retirement; Permanent Incapacity; 70/80 Retirement; and Rule-of-65 Retirement. For 60/15 Retirement, however, the participant will receive an actuarially-reduced monthly pension if payments begin before age 62.¹⁰ Also, for Deferred Vested Pension, the participant will receive an actuarially-reduced pension if payments begin before age 65.¹¹

The Early Retirement Buyout Provisions

Select RTI employees were offered participation in the ERB based on criterion set forth in the Settlement Agreement. To qualify for participation in the ERB, a participant had to "satisfy the age and service requirements of at least a Rule-of-65, 70/80, 65/5, 62/15, or 30-Year

¹⁰ Appendix B of the 2002 Restatement is a "Table of Percentages" that shows the reductions for commencement of the 60/15 Pension before age 62.

¹¹ The Deferred Vested Pension is payable to a participant who incurs a Break in Continuous Service after five or more years of Continuous Service and who (at the time of the break) does not meet the eligibility requirements for another type of pension. 2002 Restatement, Section 4.08. Appendix C of the 2002 Restatement is a "Table of Percentages" that shows the reductions for commencement of the Deferred Vested Pension before age 65.

Section 4.09 of the 2002 Restatement provides that, for 60/10 Retirement, the reduction factors used in the Bliss & Loughlin Pension Plan (as in effect on November 30, 1998) are applied.

Retirement pension.”¹² Furthermore, the participant must also “[h]ave the greatest continuous service among a group of employees eligible to apply for ERB’s under the priority rules set forth . . . in Subsection D.”¹³

Under the ERB, a participant was offered a choice between (1) a \$15,000 lump-sum payment upon retirement, or (2) if the participant was less than 61 years of age, a \$700 monthly supplement payable until the participant became eligible for a Public Pension.¹⁴ It was generally financially advantageous for younger ERB participants to elect the \$700 monthly supplement. We note that ERB participants taking either the \$700 supplement or the \$15,000 lump sum option were ineligible for the “Increased Pension” supplements under 2002 Restatement Sections 5.04 (Permanent Incapacity and 70/80 Retirement), 5.05 (Rule-of-65 Retirement), or 5.06 (30-Year Retirement).¹⁵

The RTI Plan’s “Regular Pension”

As is stated in the first sentence of Section 5.03(b) of the 2002 Restatement (your Exhibit 4), the “Regular Pension” under the RTI Plan (prior to any offsets) is a straightforward calculation of \$35.00 times years of Benefit Service.¹⁶ Section 5.03 then states in its next sentence:

“From the amount determined in the previous sentence deduct as applicable:

(1) the Participant’s LTV-Defined Benefit Plan Benefit;¹⁷ and/or

(2) the Participant’s LTV-DCP Benefit,¹⁸ if not transferred to the RESI-Pension Plan and subsequently transferred to this Plan; and/or

(3) the Participant’s RESI-DCP Benefit¹⁹ in this Plan or, in the case of a Pension payable under Sections 4.01 through 4.05 and 5.08, only the portion of the

¹² Settlement Agreement, Section II.C.

¹³ *Id.*

¹⁴ Settlement Agreement, Section II.B(2)(a)-(b); 2002 Restatement, Section 5.08(a)(1)-(2).

¹⁵ 2002 Restatement, Section 5.08(b).

¹⁶ Section 1.09 of the 2002 Restatement defines “Benefit Service” as “Continuous Service as an Employee recognized for purposes of computing the amount of any benefit.”

¹⁷ Section 1.26 of the 2002 Restatement defines the “LTV - Defined Benefit Plan Benefit” as “the monthly amount payable at the Participant’s age 65 in the form of a single life annuity from . . . any . . . defined benefit pension plan sponsored by LTV Steel Company on account of the Participant’s Continuous Service with the LTV Steel Company or any predecessor employer thereto.”

¹⁸ Section 1.27 of the 2002 Restatement defines the “LTV - DCP Benefit” as “for a Participant who elected distribution of his account balance as of his Transfer Date, the Participant’s account balance as of the end of the month in which his Transfer Date occurs based on the LTV Steel Company contributions (excluding any contributions under Section 401(k) of the Code) to the LTV Steel: USWA Pension Plan” The remainder of Section 1.27 describes how the account balance is adjusted for future earnings after the Transfer Date.

Participant's RESI-DCP Benefit in this Plan taken by the Participant as a lump sum distribution as provided in Appendix A."

Thus, the RTI Regular Pension that a participant generally is entitled to receive is the net amount after deductions for benefits under the LTV-DBP, the RESI-DCP, and possibly the LTV-DCP.

The "LTV Supplement"

In addition to other supplemental benefits, the RTI Plan provides a special temporary benefit, called the "LTV Supplement," for a participant who satisfies all three of the following conditions: (1) retires under the 70/80, Permanent Incapacity, Rule-of-65 Retirement, or ERB provisions; (2) has his/her RTI benefit reduced by the LTV-DBP offset; and (3) at retirement is not immediately eligible for an unreduced LTV-DBP benefit. The 2002 Restatement provides that a participant who satisfies these requirements is entitled to receive:

an additional monthly supplement ("LTV Supplement") equal to the amount of the LTV – Defined Benefit Plan Benefit payable to the month he first attains the age to become eligible for an unreduced LTV – Defined Benefit Plan Benefit (whether or not he elects to begin receiving it at that time) or to the month he elects commencement of his LTV – Defined Benefit Plan Benefit, if earlier.²⁰

Other Supplements Under the RTI Plan

Under the terms of the RTI Plan, four types of supplements are available for employees in addition to the LTV Supplement. First, a participant who retires under Permanent Incapacity Retirement or 70/80 Retirement is entitled to a \$400 per month supplement to his or her Regular Pension payable until age 62 or beginning the month the participant is eligible for disability benefits under the Social Security Act.²¹ Second, a participant who retires under the Rule-of-65 Retirement is eligible for a \$400 monthly supplement payable until the participant reaches age 62.²² Third, a participant who retires under the 30-Year Retirement is eligible for a \$200 monthly supplement, subject to certain restrictions.²³ Finally, as discussed above, certain participants eligible for the ERB were able to elect a supplemental payment as part of the ERB.

¹⁹ Section 1.47 of the 2002 Restatement defines the "RESI-DCP Benefit" as "the benefit the Participant is entitled to under the individual account provisions in Appendix A [of the 2002 Restatement]; such benefit is attributable to the contributions made by the Employer to the RESI – Pension Plan prior to September 9, 1998 on behalf of the Participant" The remainder of Section 1.47 describes how the individual account balances are adjusted for earnings after September 9, 1998.

²⁰ The 2002 Restatement uses the (identical) above-quoted language in Sections 5.04(c) (Permanent Incapacity and 70/80 Retirement), 5.05(g) (Rule-of-65 Retirement), and 5.08(c) (Early Retirement Buyout Program).

²¹ See 2002 Restatement, Section 5.04(b).

²² There are additional criteria for the \$400 supplement under the Rule-of-65 Retirement concerning earned income restrictions. See 2002 Restatement, Section 5.05(a) – (e).

²³ Section 5.06 of the 2002 Restatement states: "In the determination of the amount of any Regular Pension for a 30-Year Retirement, the monthly amount determined in accordance with paragraph 5.03(b) or (c) shall be increased

3. PBGC's Statutory Limits

As discussed above, the RTI Plan terminated without sufficient assets to provide all benefits that PBGC guarantees under Title IV of ERISA. Three legal limits to PBGC's guarantee, namely the "Accrued-at-Normal" limit, the "Phase-in Rule," and the "Maximum Guaranteed Benefit" limit, apply to the RTI Plan.

For the RTI Plan, PBGC's actuarial valuation identified 11 participants impacted by the Maximum Guaranteed Benefit limit (the "MGB"). Two of these participants are your clients: [redacted] and [redacted]. Furthermore, according to the findings in PBGC's actuarial valuation, 56 of your clients have their RTI Plan benefit reduced due to application of the Accrued-at-Normal Limit, and 133 appellants have their RTI benefit reduced by the Phase-in Rule.²⁴ Our decision will focus on the Accrued-at-Normal Limit, as it is the legal limit most relevant to the issue you have raised, and you did not appeal PBGC's application of the Phase-in Rule or the MGB.

Under the Accrued-at-Normal limit, PBGC cannot guarantee any portion of a participant's supplement unless the supplemental portion, when added to his or her regular monthly benefit, is less than or equal to the benefit the participant would otherwise receive under the plan at normal retirement age in the form of a Straight Life Annuity.²⁵ An explanation of the Accrued-at-Normal rule, as explained on pages 15-16 of PBGC's Pension Insurance Data Book 2006, is as follows:

[S]uppose that the plan entitles a participant to a straight life annuity of \$1,000 per month at the plan's normal retirement age of 65. Suppose further that, if he retires at age 60, he is entitled to an early retirement benefit of \$750 per month and a temporary supplemental benefit of \$400 per month between the ages of 60 and 62. His total benefit under the plan from age 60 to 62 would be \$1,150 per month. The accrued-at-normal limitation will reduce the supplemental benefit by \$150. In this case, PBGC would pay the participant a benefit of \$1,000 per month from age 60 to age 62, instead of \$1,150. At age 62, PBGC would stop paying the reduced supplemental benefit in accordance with the plan's terms. From that point forward, the participant would be paid a monthly benefit of \$750,

by \$200 per month beginning at the later of retirement or attainment of age 57; provided, however, that such increase shall not be applicable with respect to such a Regular Pension payable for the month for which the Participant first becomes eligible for a Public Pension; and provided, further, that such \$200 supplement shall be payable without regard to the excess earned income test set forth in paragraph 5.05(a)."

²⁴ PBGC's Actuarial Case Memorandum ("Case Memo") dated December 6, 2007, at pages 6-8, states the number of RTI Plan participants affected by the MGB and the Phase-in Rule. You included the Case Memo as Exhibit 5 of the Appeal Brief.

²⁵ See 29 C.F.R. § 4022.21(a)(1), which provides in part: "Subject to paragraphs (b), (c) and (d) of this section, the PBGC will not guarantee that part of an installment payment that exceeds the dollar amount payable as a straight life annuity commencing at normal retirement age, or thereafter, to which a participant would have been entitled under the provisions of the plan in effect on the termination date, on the basis of his credited service to such date . . ."

the same amount he would have received from the plan at that age if the plan had not terminated.

In some pension plans, such as the RTI Plan, the participant's accrued benefit is based on his combined service with two employers with an offset for the benefit payable under the second employer's pension plan. Also, sometimes the benefit payable under the second employer's pension plan has a different start date. PBGC has developed an actuarial procedure for applying the Accrued-at-Normal limit in such situations, which is explained by the following example:²⁶

Suppose Pension Plan A provides a participant with a straight life annuity ("SLA") of \$1,000 per month at the plan's normal retirement age (65) reduced for the monthly benefit payable by Pension Plan B. Also assume the participant retires at age 55 with an unreduced Pension Plan A benefit, but his Plan B benefit of \$400 per month (also payable as a SLA) cannot start before age 65, which is his Plan B normal retirement age. Finally, suppose that Plan A provides a \$300 temporary supplement that ends at age 65.

Thus, Pension Plan A would pay: (1) \$1,300 per month before age 65 (because he is not yet receiving a Plan B benefit and is entitled to a \$300 temporary supplement), and (2) \$600 per month starting at age 65 (because the supplement has ended and Plan A deducts \$400 for the Plan B benefit).

In this example, PBGC uses the combined benefits at normal retirement under Plan A and Plan B (i.e., \$1,000 per month for this participant) in applying the Accrued-at-Normal limit to Plan A. Thus, PBGC pays the participant a Plan A benefit of \$1,000 per month from age 55 until age 65, instead of \$1,300. By paying \$1,000 before age 65, PBGC ensures that the monthly sum of his Plan A benefit (\$1,000) and his Plan B benefit (\$0) equals his monthly normal retirement benefits as a SLA (\$1,000) from the two plans. Starting at age 65, PBGC pays \$600 per month, the same amount he would have received from Plan A at that age if the plan had not terminated.

We note that the above example assumes that the Accrued-at-Normal limit is the only ERISA limit affecting the participant's benefit. If other limits apply, then PBGC will make other required adjustments to the participant's benefits.

Discussion

As is stated above, the issue you raise in your appeal is: Did PBGC fail to include the LTV Supplement in calculating plan benefit amounts for participants who retired under the ERB provisions? The appeal further explains your claim as follows:

The PBGC correctly applied the [LTV-DBP] offset and corresponding supplement provisions with regards to participants entitled to Permanent

²⁶ The Appeals Board drafted this example based on how PBGC has applied the Accrued-at-Normal to the RTI Plan and other similar pension plans.

Incapacity, 70/80, or Rule of 65 pensions who are not immediately eligible for an unreduced LTV-DBP benefit, but PBGC failed to provide the same benefit to participants who elected to retire under the ERB Program and who are not immediately eligible for an unreduced LTV-DBP benefit. AB at 10.

PBGC's Case Memo, however, does not draw the distinction you make between participants who retired under the ERB and those who retired under the Permanent Incapacity, 70/80, or Rule-of-65 provisions. Rather, the Case Memo states:

Retirees receiving a 70/80, rule-of-65, disability *or ERB* pension who are not eligible for an unreduced benefit from the LTV DB Plan receive from this plan the unreduced LTV DB Plan accrued monthly benefit, payable monthly from retirement until age 62, when this amount becomes payable unreduced from the LTV DB Plan. For purposes of applying the accrued-at-normal limit, PBGC treats the benefit before applying the LTV offset as the benefit payable at normal retirement age, so the temporary LTV DB Plan benefit paid from this plan is generally not affected by the limit. [Emphasis added].

Case Memo at page 6. Thus, the Case Memo shows that PBGC has interpreted Plan provisions, as well as PBGC's Accrued-at-Normal limit, in the same way for ERB program retirees as it has for Permanent Incapacity, 70/80, or Rule of 65 retirees.

In response to your appeal, the Appeals Board further examined PBGC records to determine whether PBGC in practice is including the LTV Supplement in calculating Plan benefit amounts for appellants who retired under the ERB or under other retirement types where the LTV Supplement could be payable. The Board's findings are presented below.

1. *PBGC records show that 42 appellants are ERB retirees and 4 appellants are Permanent Incapacity retirees*

As is stated on page 5 of the Case Memo, 802 participants elected to retire under the RTI Plan's ERB provisions. The Appeals Board examined a PBGC electronic listing of these 802 ERB retirees and found that 42 appellants are either ERB retirees or are the beneficiaries of ERB retirees.²⁷ Enclosure 3 provides a listing of the 42 individuals. The Appeals Board further examined individual pension records for this group of 42 individuals and found that the records PBGC obtained from RTI generally contained documentation of the individual's ERB status.²⁸

There are several reasons why many appellants, as well as many non-appellants, are not ERB retirees. First, only select RTI employees, based on criterion set forth in the Settlement Agreement, were offered participation in the ERB. Second, to qualify for participation in the

²⁷ Appellants [redacted] are the surviving spouses of participants who retired under the ERB. [redacted] is the Alternate Payees of another appellant [redacted] who retired under the ERB.

²⁸ ERB status typically was indicated on the participant's retirement application, the benefit calculation records prepared by the RTI Plan's administrators, and/or similar types of records.

ERB, a participant had to “satisfy the age and service requirements of at least a Rule-of-65, 70/80, 65/5, 62/15, or 30-Year Retirement pension.”²⁹ Finally, the RTI employee was required to accept the ERB offer and actually retire.³⁰

Individuals who retired under the RTI Plan’s Permanent Incapacity, 70/80, and Rule-of-65 provisions, like some ERB retirees, potentially could receive the LTV Supplement. *See* discussion above under “RTI Plan Provisions.” In addition to the 42 ERB appellants, we identified four additional appellants who retired under the Permanent Incapacity provisions. Our search of PBGC records, however, did not identify any appellant who, before DOPT, was eligible for a 70/80 or Rule-of-65 Retirement benefit.³¹

Appeals Board staff also examined the individual pension records for the remaining 205 appellants who are not listed in PBGC’s actuarial valuation as ERB retirees or Permanent Incapacity retirees.³² We did not locate any additional appellant (not already identified in PBGC’s actuarial valuation) who retired under the ERB or who is the beneficiary of an ERB retiree.³³

²⁹ Settlement Agreement, Section II.C.

³⁰ Section D.4. of the Settlement Agreement provides: “To meet operational needs, the Company may retain an employee who accepts an ERB for up to six (6) months, or a period of time not to exceed twelve (12) months as mutually agreed to by the employee and the Company.”

³¹ As stated previously, a participant must (among other requirements) incur a Break in Continuous Service as a result of a layoff or a permanent shutdown, or must have elected to be placed on layoff status and subsequently have his employment terminated, in order to qualify for a 70/80 Retirement or a Rule-of-65 Retirement. As required by ERISA sections 4022(a) and 4001(a)(8) (definition of “nonforfeitable benefit”), PBGC cannot guarantee a 70/80 or Rule-of-65 Retirement benefit unless (among other things) the participant satisfied either the layoff or permanent shutdown condition for that benefit before DOPT.

³² Based on PBGC electronic records, the 205 appellants generally fall into three categories. The first category, which consists of approximately 98 appellants, are participants who retired before DOPT under the RTI Plan’s 30-Year or 62/15 Retirement provisions, or who at DOPT were eligible to retire under those provisions. These individuals, who generally have qualified for unreduced LTV DBP benefits as of their RTI Plan retirement dates, are not eligible to receive the LTV Supplement. The second category (of approximately 104 appellants) consists of individuals that PBGC found to be deferred vested participants. Under the terms of RTI Plan, the LTV Supplement is not payable to Deferred Vested participants. The third category (of 3 appellants) consists of partially-vested or non-vested participants who, like the Deferred Vested participants, are not eligible for the LTV Supplement.

³³ The Appeals Board identified one appellant [redacted] who, although not identified in PBGC’s valuation as an ERB retiree, had been offered and had accepted ERB retirement in February 1999. Records for [redacted] further show: (1) he did not actually retire from RTI until April [redacted] 2002; and (2) in 2002, the RTI Plan’s administrators had placed him into pay status as a 30-Year retiree, rather than as an ERB retiree. Thus, PBGC’s conclusion that [redacted] was not an ERB retiree is consistent with how the RTI Plan’s administrators had processed his application based on his actual retirement date.

2. 23 of the 42 ERB appellants are receiving unreduced benefits from the LTV-DBP

As discussed above, retirement under the ERB program was available to certain RTI employees who satisfied the age and service requirements for a Rule-of-65, 70/80, 65/5, 62/15, or 30-Year Retirement benefit.³⁴

In the case of an ERB retiree who met the age and service requirements for 30-Year, 65/5, or 62/15 Retirement, the individual also is eligible to receive an unreduced pension from the LTV-DBP as of the same Actual Retirement Date (ARD) that he or she retires from the RTI Plan. The ARDs are the same in both plans for these three benefit types because: (1) the LTV-DBP, like the RTI Plan, offers unreduced 30-Year, 65/5, or 62/15 retirement benefits; and (2) as is the case with the RTI Plan, under the LTV-DBP service with LTV and with RESI/RTI is combined for purposes of determining eligibility for those three benefit types.

The Appeals Board examined PBGC records for the 42 ERB program retirees. The Board found that 22 of them had met the service requirement for a 30-Year Retirement benefit and one had qualified for a 62/15 retirement benefit. (None of the 42 ERB appellants is a 65/5 retiree.) The Board also examined PBGC payment records for the LTV-DBP. The Board found that each of the 23 appellants who qualified for a 30-Year or 62/15 benefit has been receiving an unreduced LTV-DBP benefit that had started on or before the RTI Plan's DOPT.

As discussed above, the LTV Supplement is payable only if the participant has his or her RTI benefit reduced by the LTV-DBP offset and is not immediately eligible for an unreduced LTV-DBP benefit. See 2002 Restatement, Sections 5.04(c), 5.05(g), and 5.08(c). Thus, because each of the 23 appellants discussed above had been receiving an unreduced LTV-DBP benefit as of the RTI Plan's DOPT, the individual is not entitled to receive the LTV Supplement from PBGC.

3. PBGC has included the LTV Supplement in determining the Plan benefit amount for the remaining 19 ERB program appellants and for the 4 Permanent Incapacity appellants

The LTV-DBP does not provide a 70/80 benefit or a Rule-of-65 benefit for a former LTV Bar Division employee who was employed by RESI and/or RTI after November 28, 1989. Thus, an ERB retiree who (at retirement) did not meet the age and service requirements for a 30-Year, 65/5, or 62/15 Retirement benefit generally cannot receive an unreduced LTV-DBP benefit until age 62 – even though the RTI Plan pays the individual an immediate unreduced benefit upon ERB retirement. The RTI Plan's LTV Supplement accordingly was created to provide an ERB retiree (as well as a 70/80, Rule-of-65, or Permanent Incapacity retiree) with additional monthly payments from the RTI Plan until the unreduced LTV DBP benefit became payable.

³⁴ PBGC records show a "retirement type" for each participant who retired under the ERB. The listed retirement type corresponds to the age and service requirements that the participant satisfied when he terminated employment. For example, if the participant retiring under the ERB had sufficient age and service for 70/80 Retirement, the records would list the individual as a 70/80 retiree. Also, in some cases, a participant may qualify for more than one type of benefit. In PBGC's benefit statements, the "Retirement Type" for those ERB retirees who satisfied the age and service requirements for both a 70/80 benefit and a 30-Year Retirement benefit generally is listed as "70/80."

The Appeals Board found that for the group of 42 ERB appellants: (1) 14 appellants had met, as of their ERB retirement dates, the age and service requirements for 70/80 Retirement but had not met the service requirement for 30-Year Retirement; (2) an additional 5 ERB appellants had met the age and service requirements for Rule-of-65 Retirement but had not met the requirements for 70/80 or for 30-Year Retirement; and (3) as discussed above, the remaining 23 appellants are receiving unreduced benefits from the LTV DBP.

The Appeals Board further examined PBGC records and found that, for each of the 19 individuals not receiving an unreduced LTV DBP benefit, PBGC had included the LTV Supplement in determining the individual's plan benefit amount. Two of these individuals, [REDACTED] are specifically named in your appeal. See Appeal Brief at page 10, where you cited [REDACTED] as examples of where PBGC "correctly administered the LTV-DBP offset and corresponding supplement provisions." The Appeals Board also found that PBGC had included the LTV Supplement in its calculations for all 4 of the Permanent Incapacity appellants.

Accordingly, the Appeals Board concluded that, for the 42 ERB appellants and 4 Permanent Incapacity appellants, PBGC in practice is either (1) including the LTV Supplement in determining each individual's plan benefit amount, or (2) not paying the LTV Supplement because the individual had qualified for an unreduced LTV DBP benefit. We note, however, that PBGC is unable to pay the full LTV Supplement amount for the 19 ERB appellants and 4 Permanent Incapacity appellants who qualified for it because of the Phase-in Rule. See discussion above under "PBGC Statutory Limits."

4. *PBGC is paying appellant [REDACTED] an unreduced LTV-DBP benefit*

As stated above, the Appeal Brief specifically discusses the benefits of four RTI Plan appellants: [REDACTED] The Appeal Brief asserts that PBGC properly applied the LTV Supplement for [REDACTED] but improperly omitted it in determining [REDACTED] benefits. The Appeals Brief, at page 12, further contends that [REDACTED] is an ERB retiree who, under Plan terms, is entitled to a LTV Supplement until age 62.

The Appeal Board, however, found no evidence that [REDACTED] had been offered retirement under the ERB. Rather, the records PBGC obtained from RTI show that: (1) [REDACTED] retired effective February [REDACTED] 2000 under the RTI Plan's 30-Year Retirement provision; and (2) he elected to take his benefit in the form of a Straight Life Annuity with a five-year certain period. See his retirement election form at Enclosure 4.

Because his combined RTI and LTV service exceeded 30 years, [REDACTED] became eligible, as of his May [REDACTED] 2000 Actual Retirement Date, to receive an unreduced benefit from the LTV-DBP.³⁵ See PBGC's determination letter for the LTV-DBP (included in Enclosure 4),

³⁵ Records PBGC obtained from LTV show that [REDACTED] termination of employment date for purposes of his LTV-DBP benefit was January [REDACTED] 2000. After the end of his 3-month Special Payment period, [REDACTED] became entitled to a \$362.29 monthly benefit starting May [REDACTED] 2000.

which shows [redacted] is entitled to an unreduced LTV-DBP benefit of \$362.29 as of his February [redacted] 2000 Actual Retirement Date. PBGC payment records (see Enclosure 4) further show that [redacted] has been receiving monthly LTV-DBP payments of \$362.29 from PBGC.

Accordingly, because [redacted] was receiving an unreduced LTV-DBP benefit on the RTI Plan's DOPT and afterwards, he is not entitled to receive the LTV Supplement from PBGC.³⁶ A more detailed explanation of PBGC's determinations of [redacted] benefits under the RTI Plan and the LTV-DBP is provided in Enclosure 4.³⁷

5. *Appellants with their own unique issues and claims.*

As we stated in footnote 1, the 43 appellants listed in Enclosure 2 have submitted individual appeals directly to the Appeals Board. We will answer their individual issues in supplemental decisions to you, with a copy furnished directly to them.

In this decision, the Appeals Board has limited its factual findings and legal conclusions to the issue raised in your appeal. While we decided that PBGC is including the LTV Supplement (when it is applicable) in calculating the plan benefit amount for those appellants who retired under the ERB, we did not review the correctness of PBGC's calculations. In at least five of the individual appeals, however, the RTI Plan participant has challenged the amount of the LTV-DBP offset that PBGC had calculated. The Appeals Board therefore will address the calculation of the LTV-DBP offset when it decides those individual appeals.

Decision

Having applied the RTI Plan provisions, the provisions of ERISA, and PBGC regulations to the facts in this case, the Appeals Board found that PBGC is including the LTV Supplement, when it is applicable, in calculating the plan benefit amount for those appellants who retired under the ERB. Accordingly, the Appeals Board decided that your appeal does not provide a basis for changing PBGC's benefit determinations for any of the 251 appellants. As discussed

³⁶ Additionally, RTI Plan provisions do not provide 30-Year retirees like [redacted] with an LTV supplement. Section 5.06 of the 2002 Restatement discusses the only supplemental payment available for the 30-Year Retirement benefit, stating:

In the determination of the amount of any Regular Pension for a 30-Year Retirement, the monthly amount determined in accordance with paragraph 5.03(b) or (c) shall be increased by \$200 per month beginning at the later of retirement or attainment of age 57; provided however, that such increase shall not be applicable with respect to such a Regular Pension payable for the month for which the Participant first becomes eligible for a Public Pension; and provided, further, that such \$200 supplement shall be payable without regard to the excess earned income test set forth in paragraph 5.05(a).

Because of the Accrued-at-Normal limit, [redacted] is not entitled to receive the \$200 supplemental monthly benefit after the RTI Plan's DOPT.

³⁷ Additionally, Enclosure 4 contain excerpts from PBGC records on [redacted] which include his benefit determination letters, benefit statements, and various RTI retirement election forms.

above, however, the Appeals Board will issue supplemental decisions for 43 of the 251 appellants.

This decision is PBGC's final Agency action with respect to 208 appellants who will not receive supplemental decisions. These appellants, if they wish, may seek review of this decision in an appropriate federal district court. For the appellants listed on Enclosure 2 who will receive supplemental decisions, this decision is not yet PBGC's final agency action. If any appellant needs other information regarding his or her PBGC benefits, he or she may contact PBGC's Authorized Plan Representative at 1-800-400-7242.

Sincerely,



Charles Vernon
Appeals Board Chair

Enclosures (4):

1. List of 251 Appellants with Timely Filed Appeals (6 pages)
2. List of 43 Appellants who Filed Individual Appeals (2 pages)
3. List of 46 Appellants who Participated in the ERB or are Permanent Incapacity Retirees (2 pages)
4. Benefit Explanation (5 pages), with Excerpts from PBGC's Records (29 pages) for