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

NOV 17 2003

Re: Appeal No. ; Trans World Airlines, Inc.
(TWA) Retirement Plan for Pilots (the Plan)

Dear

The Appeals Board reviewed your appeal of PBGC's September 25, 2002 determination of your PBGC benefit. For the reasons stated below, we must deny your appeal.

Determination and Appeal

PBGC determined that you are entitled to a PBGC benefit of \$2,266.73 per month payable as a Modified Cash Refund Life Annuity (MCRLA).¹ PBGC included a Benefit Statement, which shows information the former Plan administrator (TWA) used to calculate your Plan benefit. The Benefit Statement shows that PBGC used TWA's Plan benefit amount to calculate your PBGC benefit. The Benefit Statement also shows that you were entitled to receive a temporary PBGC supplement of \$229.56 (\$2,496.29 - \$2,266.73) per month from February 1, 2001 through October 1, 2002.

Your October 3, 2002 form-letter appeal said that (1) PBGC did not provide you with sufficient information on the analysis that underlies the determination, and (2) without such information, it is difficult for you to know whether errors not apparent to you were made. You also questioned the disposition of your Flight Engineers' "A Plan" benefit and included a TWA benefit statement (1986 Benefit Statement) showing separate amounts for the Pilot and Flight Engineer "A Plan" benefits.

During a March 2003 telephone conversation, you said that you never elected to have your Flight Engineers' benefit merged into the (Pilots) Plan. You also suggested that your Flight Engineers' benefit should be paid in addition to your Maximum Guaranteed Benefit under the Plan. Our *Discussion* below addresses those issues, and the other issues you raised.

¹ Your MCRLA provides a benefit for the rest of your life. Also, because the Plan's former sponsor made special contributions on your behalf, your beneficiary will receive a benefit if you die before you receive pension payments equal to the special contributions plus interest through the date of your retirement.

Discussion

1. Request for Additional Information

Because your appeal requested more information about your benefit calculation, the Appeals Board sent your request to PBGC's Disclosure Officer and informed you in a letter dated November 29, 2002 that you had the option of supplementing your appeal within 30 days after his response. PBGC records show that the Disclosure Officer responded to your request on February 13, 2003 with copies of the documents in your personal PBGC file. One of those documents shows how your Plan-defined benefit was calculated. See **Enclosure 1**. On March 18, 2003, we received a letter from you in which you challenged the sufficiency of the Disclosure Officer's response under the Freedom of Information Act (FOIA). We forwarded your request for additional documents under FOIA to PBGC's Office of the General Counsel. Your March 18, 2003 letter did not assert any additional grounds for contesting the correctness of PBGC's determination.

2. Calculation of Your Plan-Defined Benefit and Your PBGC Benefit

After the Plan terminated on January 1, 2001, PBGC personnel conducted an audit of the procedures TWA used in administering the Plan and calculating participants' Plan-defined benefits. After calculating benefits for a sampling of participants and comparing the results with the amounts that TWA calculated and stored in TWA's pension database, PBGC auditors concluded that the benefit amounts in TWA's database were reliable. So, for most retirees and in your case in particular, PBGC accepted TWA's calculations, and then adjusted them to account for limitations on benefits set by Congress under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

Page 1 of **Enclosure 1** shows how TWA arrived at your accrued monthly benefit amount of \$2,468.54. This amount agrees with line (1) of your PBGC Benefit Statement. Please note that page 1 of **Enclosure 1** shows that this total is the sum of four parts.

Your accrued benefit based on your employee contributions plus interest under the former TWA Retirement Plan for Flight Engineers as of the December 1, 1969 merger date	\$20.85
Your additional pre-ERISA accrued benefit under the Plan	\$141.82
Your additional accrued benefit under the Plan calculated as of December 31, 1982	\$384.99
Your 25% minimum accrued benefit = 25% x \$92,202.38 + 12	\$1,920.88
Your total accrued benefit at age 60 payable as a Life Annuity with a Modified Cash Refund (MCRLA)	\$2,468.54

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Documents in PBGC files reveal that the Plan did not have sufficient assets when it terminated on January 1, 2001 to provide all benefits that PBGC guarantees under ERISA. As a result, the provisions of the Plan, ERISA, and PBGC's regulations and policies determine the amount of:

- your guaranteed benefit,
- your ERISA § 4044 benefit, and
- your ERISA § 4022(c) benefit.

Enclosure 2 shows how PBGC calculated these benefit amounts.

3. The TWA Retirement Plan for Flight Engineers and Your Contributions to that Plan

PBGC records show that TWA merged the Flight Engineers' and Pilots' plans into one Plan effective December 1, 1969. Thus, although you suggested during our March 2003 telephone conversation that you made a firm decision to leave your contributions in the Flight Engineers' Plan rather than transfer them to the Pilots' Plan, you effectively left your contributions in the combined Pilots/Flight Engineers "A Plan" also known as the TWA Retirement Plan for Pilots. As noted above, page 1 of Enclosure 1 shows that the portion of your Plan benefit attributable to your contributions plus interest under the pre-merger Flight Engineers' plan is a monthly benefit of \$20.85.

Because the two plans became one Plan effective December 1, 1969, the benefits you receive as a result of your contributions to the pre-merger flight engineers' plan are payable by PBGC under the post-merger (Pilots) Plan. PBGC has no authority to undo the December 1, 1969 merger of the plans.

4. Federal Litigation

Your appeal includes claims that are being litigated against PBGC and other parties in two federal courts. The plaintiffs in the court cases allege among other things that the Plan was improperly terminated under ERISA. Your letter requests a delay in the decision of your appeal until the court decides the issues before it.

By way of background, Carl Icahn was the former controlling shareholder of TWA. TWA filed a bankruptcy petition in 1992 in the Bankruptcy Division of United States District Court for the District of Delaware. One of the issues involved in the bankruptcy was the status of TWA's underfunded pension plans, and the extent

of Carl Icahn's liability, if any, in the event the plans terminated. Among other things, Mr. Icahn conditioned his willingness to provide TWA with a \$200 million loan (which was necessary for TWA to survive and emerge from bankruptcy) upon some provision that fixed the amount of liability that he might incur towards the pension plan. Throughout these proceedings, the interests of the retired and active pilots were represented by the Air Line Pilots Association (ALPA).

On January 5, 1993, TWA, ALPA (and other unions that represented TWA employees), and PBGC signed a "Comprehensive Settlement Agreement" (CSA) under which: (1) Carl Icahn loaned TWA \$200 million; (2) an Icahn-owned concern called Pichin Corp. took over sponsorship of the TWA Pension Plans, and agreed to become responsible for any minimum funding costs of the Plans that were not covered by a \$300 million payment guaranteed by TWA; (3) it was agreed that the Plans would terminate if certain events occurred after 1993; and (4) if the Plans were thereafter terminated by PBGC, it was agreed that Icahn would pay PBGC \$240 million dollars. The Bankruptcy Court approved the CSA, and it was later incorporated in a Plan of Reorganization approved by the Bankruptcy Court. Neither ALPA nor any other party took an appeal from that decision, which became final and binding.

The TWA Pension Plans terminated in 2001. Even though ALPA was one of the parties that negotiated and signed the CSA, it filed a suit to stop the termination and void the settlement agreement. Judge Ricardo Urbina of the United States District Court for the District of Columbia dismissed the case on March 29, 2002.¹ Following the merger of TWA and American Airlines, the Allied Pilots Association assumed representation of former TWA pilots and appealed Judge Urbina's ruling to the U.S. Court of Appeals for the D.C. Circuit.

On July 11, 2003, the Court of Appeals issued its decision affirming Judge Urbina's decision. The Court of Appeals held that the termination was lawful under ERISA and that the CSA was a valid exercise of PBGC's statutory settlement authority.²

Between the two decisions, on May 15, 2002, eight former TWA pilots filed another lawsuit challenging the termination, also in Washington, D.C. The judge postponed litigation in the second case until the appeal of the first case was decided. On September 8, 2003, the plaintiffs filed an amended complaint and a request for

¹ A copy of Judge Urbina's decision (<http://www.dcd.uscourts.gov/00-3113.pdf>) is available on the court's website (<http://www.dcd.uscourts.gov/>).

² The Court of Appeals decision is available on the court's web site at (<http://pacer.cadc.uscourts.gov/docs/common/opinions/200307/02-5144a.pdf>).

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a writ of mandamus. PBGC's response is due in November 2003.

While your appeal briefly summarizes the claims in these cases, it does not identify any errors in PBGC's determination of your PBGC benefit based on (1) your personal data, (2) the Plan's provisions, or (3) ERISA provisions, given the Plan's actual status as a terminated, PBGC-trusted plan. Please note that the Appeals Board does not have the authority to decide whether the Plan's termination was proper, or to change the termination date. In any event, the Board declines to decide the claims that are in litigation.

5. Adjustment of Your Final PBGC Monthly Payment Amount

While appeals are pending, PBGC generally continues to pay benefits at the estimated benefit level that PBGC was paying when PBGC issued the benefit determinations. When PBGC's Insurance Operations Department receives a copy of this decision, they will review your payment history, calculate the total amount by which PBGC has overpaid or underpaid you, and if necessary, adjust your monthly PBGC payment accordingly.

Decision

Having applied the law and PBGC's rules to the facts in this case, the Appeals Board decided that we must deny your appeal. This decision is the agency's final action regarding your appeal. You may, if you wish, seek court review of this decision.

PLEASE NOTE that PBGC will always, even after an appeal is closed, consider any new, specific evidence that you present showing you may be entitled to a higher benefit. If you have or obtain any such evidence, please send it to PBGC, Attn: Insurance Operations Department, Trusteeship Processing Division #1, P. O. Box 151750, Alexandria, Virginia 22315-1750. If you need more information about your benefit, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,



Michel Louis
Appeals Board Member

Enclosures (3)