



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

February 14, 2011

SENT VIA EMAIL

The Honorable Sherrod Brown
United States Senate
Washington, D.C. 20510
ATTN: Ms. Ellie Dehoney

Re: Republic Technologies Inc.

Dear Senator Brown:

Since November 2010, we have had several discussions with Ms. Ellie Dehoney of your staff concerning various issues raised by your constituents concerning the Pension Benefit Guaranty Corporation's (PBGC) termination of the Republic Technologies International LLC (RTI) pension plan. As a result of those conversations, we agreed to conduct certain limited scope inquiries. This letter provides information about our work regarding PBGC's guidance for deferring payments required by a 1998 agreement between PBGC and RTI; PBGC's support for the payment waiver amendments; and Benefit Determination Letters for four participants in RTI pension plans.

In addition, we have provided assistance to your staff in identifying particular documents related to the RTI plan and some of its participants.

Background

Under the Employee Retirement Income Security Act of 1974 (ERISA), as amended,¹ PBGC insures benefits in certain defined benefit pension plans sponsored by private sector employers. ERISA authorizes PBGC to initiate the termination of a pension plan when certain conditions occur, such as if the plan will be unable to pay benefits when they are due, or the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.² Once a plan is terminated, PBGC is charged to continue an uninterrupted stream of benefits to participants, subject to the ERISA limitations.³

In order to prevent plan termination or to mitigate losses to PBGC and plan participants in the event a plan later terminates, PBGC sometimes works with plan sponsors to obtain protections.

¹ 29 U.S.C. §§ 1301-1461.

² ERISA sections 4042(a)(2) and (a)(4); 29 U.S.C. § 1342(a)(2) and (a)(4).

³ ERISA section 4002(a)(2); 29 U.S.C. § 1302(a)(2.).

PBGC has developed an "Early Warning Program" that focuses on transactions that pose a risk of long-run loss to PBGC's pension insurance program, and typically involves transactions by troubled companies and by companies whose plans are underfunded on a current liability basis. If PBGC determines a transaction could result in a significant increase in the risk of loss under ERISA section 4042(a)(4), PBGC may negotiate protections for the pension insurance program, which might include additional cash contributions, letters of credit, security interests, and guarantees.

According to PBGC, in 1998, PBGC began discussions with Republic Engineered Steel (the predecessor to RTI), after Blackstone and Veritas Capital Partners announced their intention to merge several steel companies, taking on \$850 million of secured debt. PBGC also learned that the company had negotiated a new labor agreement with the United Steelworkers of America (USWA), which included substantially increased pension costs and obligations.

On November 2, 1998, PBGC and Republic Engineered Steel under the umbrella of the Early Warning Program, negotiated an agreement whereby the company would make \$177.7 million in payments to its pension plan in excess of legally mandated contributions. As defined in the parties' Memorandum of Understanding (MOU), these additional payments were "Required Contributions," scheduled to begin on January 1, 1999, and end on July 1, 2003. On November 4, 1998, PBGC issued a press release announcing that Republic Steel "will make an increased pension contribution of \$27 million cash on or before January 31, 1999, plus \$151 million in payments through 2003" (see Attachment A). Under the MOU, in January and July 1999, RTI made the first two payments of \$27 million and \$20 million.

Documentation provided by PBGC shows that RTI met with PBGC in December 1999 to request a deferral of payments. PBGC also requested information about a variety of relevant issues including a draft of an irrevocable standby letter of credit to be provided to PBGC, and the actual and projected amounts for the number of layoffs and number of workers to receive early retirement benefits. At that time, PBGC advised RTI that "PBGC expects that all significant constituencies share in the responsibility to help RTI in its efforts to accomplish its goals."

Between December 28, 1999, and July 24, 2000, PBGC and RTI negotiated a series of eight amendments to the MOU, which stretched the payments out from their prospective due dates and deferred portions of the Required Contributions. PBGC records show that RTI advised PBGC that it had reached certain agreements with RTI's banks, equity holders, and with its largest trade creditor and investor. Based on RTI's success in obtaining these concessions, PBGC agreed to defer the bulk of the payments due in 2000 and 2001 to 2002. PBGC, however, did not publicly announce modifications to the agreement that permitted deferral of the additional contributions required by the MOU.

Most of those contributions failed to materialize. RTI filed for bankruptcy on April 2, 2001, after making additional payments to its pension plan totaling \$64.5 million out of the total \$177.7 million "Required Contributions" (see Attachment B).

Guidance and Supporting Documentation for Amendments to Agreements under the Early Warning Program

You asked whether PBGC had written guidance for the process of negotiating with pension plans to make amendments to agreements that defer or reduce “required contributions.” PBGC does not have written guidance for conducting these types of negotiations to defer payments or other terms for the satisfaction of such liability. That is, PBGC asserts that all such negotiations are decided on a case-by-case basis, without reference to specific policy or other guidance.

We asked PBGC about documentation of supporting financial analysis and authoritative review for the 1998 RTI MOU and the subsequent amendments. To date, PBGC has not provided evidence of either, with respect to their negotiations with RTI. While some documents have been provided, including a staff member’s designation of authority and a 2009 concurrence matrix, we noted that none of the documents included qualitative factors to guide analysts or staff attorneys in their work. Further PBGC did not provide documentation evidencing the chain of authority for the decisions specific to the RTI case.

Regarding the November 1998 Press Release, we determined that at the time of the RTI announcement, PBGC lacked written policy on announcements about negotiations under the Early Warning Program. We confirmed that PBGC made a public announcement of the agreement for RTI to provide additional funding but did not make similar public announcements when the agreement was modified to defer the additional payments.

Benefit Determinations under the RTI Plan

You also made inquiries about Benefit Determination (BD) letters for four participants in the RTI Defined Benefit Plan. We noted that each of the participants appealed their BD. When we inquired about RTI, a PBGC official noted that determining the pension benefits under steel plans is complicated, and many RTI participants appealed their BDs. An unusual occurrence for the RTI plans noted by PBGC was that a court overturned the Date of Plan Termination (DOPT) established by PBGC. This further complicated the benefits process because PBGC had begun paying estimated benefits, which included shut down benefits, based on the original DOPT established by the district court. Unfortunately, this change in DOPT resulted in benefit overpayments, some of which were large.

On June 14, 2002, PBGC filed suit in district court to terminate the RTI plans before RTI’s shutdown. The USWA intervened to oppose PBGC’s recommended plan termination date. In September 2003, the court approved the plan terminations but set the termination date after the shutdown. PBGC appealed, and in October 2004 the court of appeals reversed and ruled for PBGC on the termination date. The litigation ended in March 2005, when the U.S. Supreme Court denied the USWA’s petition to review the case.

Honorable Sherrod Brown
February 14, 2011
Page 4 of 7

PBGC reports that it processed 381 RTI appeals, all of which have been completed; 100 increased participants' benefits and 103 appeals decisions overturned the original BD. PBGC provided a procedures manual containing guidance for its appeals process. Though we did not recalculate benefits determinations, we saw evidence, in all four plan participants' appeals, that the appeals process, although lengthy, was detailed, well documented, and communicated information on complicated benefit calculations to the participants.

On February 7, 2011 we issued an engagement letter describing our upcoming audit on the effectiveness of PBGC's agreements for additional funding (see Attachment C). That audit, when complete, will be available on our website. Please feel free to contact me if there is additional information we can provide.

Respectfully submitted,

A handwritten signature in blue ink that reads "Rebecca Anne Batts". The signature is written in a cursive style with a large initial 'R'.

Rebecca Anne Batts
Inspector General

cc: Josh Gotbaum, PBGC Director

Attachment A – Press Release

Agreement Protects Pensions of 3,600 at Republic Engineered Steels

Page 1 of 1

Agreement Protects Pensions of 3,600 at Republic Engineered Steels

November 04, 1998

The holding company for Republic Engineered Steels, Inc., Massillon, Ohio, has reached an agreement with the Pension Benefit Guaranty Corporation (PBGC) to provide \$178 million in additional financing for Republic's underfunded pension plan. Blackstone Capital Partners II Merchant Banking Fund L.P. and Veritas Capital Partners L.P., private equity funds based in New York City, purchased the steel firm in September.

"In this transaction, Republic's new owners worked with PBGC to structure an agreement that puts retirement benefits of almost 3,600 steelworkers on a much stronger financial footing," said PBGC Executive Director David M. Strauss.

Under the agreement with PBGC, Republic Engineered Steels, Inc. will make an increased pension contribution of \$27 million cash on or before January 31, 1999, plus \$151 million in payments through 2003. A significant portion of the payments will be in excess of estimated minimum funding requirements. The agreement will end when Republic meets certain financial benchmarks, but no sooner than September 15, 2003.

Approval of a new five-year collective bargaining contract between the United Steelworkers of America and Republic was a condition of the sale of the firm to Blackstone-Veritas. The new contract significantly increased early retirement benefits that required funding which the agreement provides.

Republic Engineered Steels has operations in Ohio, Pennsylvania, Connecticut, Maryland, Indiana and Illinois.

PBGC is a federal corporation created under the Employee Retirement Income Security Act of 1974 to guarantee payment of basic pension benefits earned by some 42 million American workers and retirees participating in about 45,000 private-sector defined benefit pension plans. The agency receives no funds from general tax revenues. Operations are financed largely by insurance premiums paid by companies that sponsor pension plans and investment returns.

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PBGC No. 99-06

Attachment B-Required Contributions per MOU

Contributions Prior to Bankruptcy (in millions)

Attachment B Contribution Date	1/1/99	7/1/99	10/1/99	1/1/00	4/1/00	7/1/00	10/1/00	1/1/01	TOTAL
Contribution Amount	\$27	\$20	\$7.5	\$7.5	\$7.5	\$7.5	\$7.625	\$7.625	92.25
Amount Paid	\$27	\$20	\$7.5	\$2.0	\$2.0	\$2.0	\$2.0	\$2.0	\$64.5
Deferred Amount	\$0	\$0	\$0	\$5.5	\$5.5	\$5.5	\$5.625	\$5.625	\$27.75
Cumulative Deferred Amount				\$5.5 ⁴	\$11 ⁵	\$16.5 ⁶	\$22.125 ⁷	\$27.75 ⁸	

Contributions After Bankruptcy (in millions)

Contribution Date	4/1/01 ⁹	7/1/01	10/1/01	1/1/02	4/1/02	7/1/02	10/1/02	1/1/03	4/1/03	7/1/03	Total
Contribution Amount	\$7.625	\$7.625	\$9.075	\$9.075	\$9.075	\$9.075	\$8.475	\$8.475	\$8.475	\$8.475	\$85.45
Amount Paid	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Total Unpaid Contributions = \$113.2m (\$177.7m -\$64.5m)

⁴ First-Fourth Amendment deferred payment until 7/1/00

⁵ Fifth & Sixth Amendment deferred cumulative payments until 7/1/00

⁶ Seventh Amendment deferred cumulative payments until 7/14/00

⁷ Eighth Amendment deferred cumulative payments until 1/1/02

⁸ Under Eighth Amendment if RTI pays \$2.0m before 1/1/01 the remaining will be deferred until 1/1/02

⁹ RTI filed bankruptcy on 4/2/01

Attachment C – Announcement Memo



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

February 7, 2011

MEMORANDUM

TO: Josh Gotbaum
Director

FROM: Joseph A. Marchowsky *Joseph A. Marchowsky*
Assistant Inspector General for Audit

SUBJECT: Audit of PBGC's Negotiated Funding Agreements (Project No. PA-11-80)

Under certain circumstances, PBGC can negotiate agreements that provide additional protection to defined benefit pension plans via additional cash contributions or other means. During FY 2010, PBGC reached agreements with 20 companies for approximately \$250 million; PBGC reports it has obtained additional protections totaling more than \$644 million and affecting over 76,000 participants since 2006. The Office of Inspector General (OIG) is initiating an audit to assess the effectiveness of PBGC's negotiated agreements for additional funding.

Our audit objectives will be to evaluate how PBGC monitors, enforces, and modifies negotiated funding agreements, including an assessment of how PBGC demonstrates accountability with respect to fulfillment of agreements. We will determine how PBGC measures the effectiveness of negotiated funding agreements and evaluate PBGC's use of information technology in recording, tracking and managing negotiated funding agreements, as well as PBGC's actions to ensure protection of sensitive data.

We would like to conduct an entrance conference for this audit within the next week and will contact Marty Boehm to make the necessary arrangements. It would be helpful to have a member of your staff designated as the point of contact for this engagement in the event that we require help to facilitate interviews and requests for documentation. We look forward to working with you and your staff. If you have any questions, please contact OIG Audit Manager Jarvis Rodgers on extension 3419 or me on extension 3928.

cc:
Marty Boehm, Director, Contracts and Control Review Department
Michael Rae, Acting Chief Insurance Program Officer
