PBGC
Protecting America's Pensions

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

[redacted]

August 31, 2009

Re: [redacted] Case No. 195882, Republic Technologies International LLC – USWA Defined Benefit Plan (the "RTI Plan")

Dear [redacted]

As we stated in our April 16, 2009 decision that applied to 251 participants in the RTI Plan, the Appeals Board will issue supplemental decisions for 43 appellants who submitted correspondence directly to the Appeals Board.[1] [redacted] is one of these 43 appellants.

We have carefully reviewed all the issues relevant to the appeal [redacted] submitted to the Board. For the reasons explained below, we have made the following decisions on his appeal:

- The RTI Plan's reduction for the benefit payable to [redacted] under the LTV Plan ("LTV-DB offset") is decreased from $295.80 (the amount determined by PBGC) to $287.65. This $8.15 change is favorable to [redacted]
- PBGC cannot pay any portion of [redacted] $700.00 ERB supplement because none of the supplement is either guaranteed by PBGC or funded by Plan assets;

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[1] In the appeal that you filed on October 29, 2008 on behalf of the 251 participants ("Consolidated Appeal"), you claimed PBGC had not paid a supplemental benefit (referred to in RTI-Plan documents as the "LTV Supplement") to some participants who retired from RTI employment under its Early Retirement Buyout ("ERB") program. The Appeals Board's April 16, 2009 decision ("Consolidated Decision") denied the Consolidated Appeal on this issue. A redacted copy of Consolidated Decision is included as Enclosure 1.

For [redacted] the Appeals Board found in the Consolidated Decision that PBGC had included the LTV Supplement in determining his RTI-Plan benefit amount. The RTI Plan requires omitting his LTV Supplement starting in January 2006, the earliest date when he could have received an unreduced benefit under the LTV Steel Hourly Pension Plan (the "LTV Plan").

• PBGC guarantees only 60% of certain benefit increases that were adopted on August 2, 1998 under the RTI Plan;

• PBGC officials (in "BAPD," the Benefits Administration and Payment Department) will review how PBGC determined another benefit offset, the "RESI-DCP offset," for [redacted] and

• PBGC officials will recalculate his PBGC benefit, which will reflect: (1) the $8.15 change to his LTV-DB offset decided by the Board; (2) any changes PBGC determines are appropriate concerning the RESI-DCP offset; and (3) the required benefit reductions based on PBGC's guarantee limits.

BAPD will issue [redacted] a new benefit determination, with a new 45-day right to appeal all issues not already decided in this letter.

PBGC's Benefit Determination and [redacted] Appeal

On May 21, 2008, PBGC's benefit-determination letter informed [redacted] that his guaranteed RTI-Plan benefit provides:

• $450.29 per month through December 2005, and

• $240.54 per month during his lifetime thereafter; and

• 70.9090% of the Plan's Surviving Spouse's Benefit (the "SSB").

PBGC also determined [redacted] was overpaid $61,068.95 [2] through [redacted] 2008. To "recoup" his overpayments, PBGC will reduce his current guaranteed benefit amount and his SSB by 10%. [3]

On June 27, 2008, [redacted] filed his appeal. His appeal letter (Enclosure 2) states in its entirety:

"I am appealing your calculation on my pension benefits and request that it be put back to the original amount. My appeal is being handled by lawyers for the United States Steel Workers of America."

We reviewed PBGC's determination based on available data and plan provisions, as explained below. We found some data discrepancies and an error on his LTV-DB offset. Because several of your clients specifically raised the LTV-DB offset issue, we found it is efficient to decide the LTV-DB offset issue in [redacted] appeal.

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[2] ($1,303.72 - $450.29) x 42 months [redacted]/02 - [redacted]/05
+ $1,303.72 - $240.54 x 1 month [redacted]/06
+($1,019.95 - $240.54) x 31 months [redacted]06 - [redacted]/08
His overpayment total has been increasing while his appeal has been pending.

[3] PBGC will not seek any further repayment from either [redacted] and [redacted] or from their estates. See 29 CFR sections 4022.81 and 4022.82(a)(2)(i).

Background

[redacted] was born [redacted] 1943. He worked at LTV Steel Company, Inc. ("LTV"), before transferring to Republic Engineered Steel, Inc. ("RESI"), which was subsequently acquired by Republic Technologies International, LLC, ("RTI"). The history of the companies and related pension plans is provided on pages 3-4 of the Consolidated Decision (Enclosure 1).

In this Background section, we discuss: (1) [redacted] RTI-Plan benefits at retirement; (2) the benefits the RTI Plan calculated; (3) benefits the RTI Plan paid before the RTI Plan's termination; (4) the RTI-Plan benefits PBGC has paid; (5) PBGC's determination of [redacted] LTV Plan benefit; and (6) PBGC's determination of [redacted] RTI-Plan benefit.

1. [redacted] <u>RTI-Plan Benefits at Retirement</u>

[redacted] retired [redacted] 1999 under RTI's Early Retirement Buyout Program (the "ERB"), with his benefit determined under the RTI Plan's 70/80 Retirement benefit formula. Under the ERB, [redacted] was entitled to the following two supplements: (1) a $700.00 per month temporary supplement (the "ERB Supplement"), which was payable until he reached age 63 (i.e., through December 1, 2006); and (2) the LTV Supplement, which was payable through December 1, 2005.[4] The RTI Plan also provides [redacted] a Surviving Spouse's Benefit.

When [redacted] retired, the RTI Plan's retirement benefit formula, before offsets, was $35.00 per month times years of combined service at LTV and RESI/RTI. Since [redacted] at retirement had 22.75 years of combined service, his RTI-Plan benefit, before offsets and not including supplements, is $796.25 [$35.00 rate x 22.75 years combined service].

Additionally, section 5.3 of the RTI Plan provides for the following two benefit offsets, both of which apply to [redacted] benefits: (1) the LTV-DB offset; and (2) the RESI-DCP offset. See pages 6-7 of the Consolidated Decision. Details concerning the calculation of these two offsets is provided later in this decision and in the Appendix, which is titled "Additional Information Concerning the LTV DCP and RESI DCP."

Section 5.3 of the RTI Plan also provides for a possible third offset, for certain distributions from the "LTV DCP." The LTV DCP

[4] Under the RTI Plan's provisions, the LTV Supplement ended when [redacted] became entitled to an unreduced LTV Plan benefit, which in his case occurred on [redacted] 2006.

is a defined contribution plan that was sponsored by LTV.[5] For participants such as [redacted] who initially worked in LTV's Bar Division, account balances in the LTV DCP were distributed to participants when the Bar Division facility was sold in 1989. Employees could choose whether to receive a cash payment or rollover their account balances into the new RESI DCP.

[redacted] chose to rollover his LTV DCP distribution, according to RTI records. His LTV DCP account balance thus became part of his RESI DCP account balance. In the case of such a rollover from the LTV DCP to the RESI DCP, RTI Plan Section 5.3 does not require an LTV DCP offset. [6] *See* the further discussion of the LTV DCP and RESI DCP in the Appendix.

2. <u>Benefits that RTI Administrators Calculated</u>

RTI administrators calculated [redacted] RTI-Plan benefit near the time when he retired. The payment periods and benefit amounts that the RTI administrators calculated are shown in Enclosure 3. They calculated his RTI-Plan benefit starting with a $796.25 total benefit, before offsets and not including supplements. This is the same amount that PBGC determined, and the appeal does not dispute the $796.25 total.

RTI administrators calculated [redacted] RESI-DCP offset as $256.16. Essentially, the RESI-DCP offset is the annuity equivalent of a distribution that a participant receives from his RESI-DCP account balance. [7] RTI administrators used a $33,263.02 RESI-DCP-distribution amount for [redacted] the sum of the account balance accumulated from the LTV DCP ($7,916.99) and the accumulated account balance based on RESI DCP contributions ($25,346.03). RTI administrators divided the $33,263.02 account balance by a 129.852

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[5] The official name of the LTV defined contribution plan is the "LTV Steel - USWA Pension Plan." The RTI-Plan document refers to this plan as the "LTV DCP," and we use that term in our decision and the Appendix.

[6] If he had not rolled over his LTV DCP account balance, then Section 5.3 would require an offset as if he: (i) had rolled his LTV DCP account balance into the RESI DCP, and (ii) had received a RESI DCP distribution at retirement equal to the accumulated value of the amount in (i).

[7] As a result of the 1998 amendments to the RTI Plan and the RESI DCP, RESI DCP account balances were transferred to the RTI Plan. Consequently, the RESI-DCP offset started applying only to the portion of an individual account balance that a participant actually withdrew. The 1998 amendments also limited the individual account fund amounts that a participant could withdraw from the RTI Plan. *See* further discussion in the Appendix. The effect of this limitation upon withdrawals is that some or all of an individual account balance was effectively converted to an RTI-Plan defined benefit, using the RTI Plan's definition of actuarial equivalence.

actuarial "annuity equivalence" factor to calculate the $256.16 RESI-DCP offset.

RTI administrators estimated [redacted] LTV-Plan benefit as $283.38 if paid as a Straight Life Annuity starting at age 62. However, RTI's written procedures required using the "actual" LTV Plan benefit if available. (See pages 9-10 and footnote 20 below.) Also, LTV administrators wrote that his LTV Plan benefit would be $220.14. Thus, RTI's worksheets recorded the $220.14 amount as the "Actual Net LTV-DBP benefit if available."[8] Based on the above-stated amounts, RTI administrators calculated the following monthly RTI-Plan benefits:

(1) $1,240.09 {$796.25 "$35-per-year total" - $256.16 RESI-DCP offset + $700.00 ERB supplement} through December 2005,[9]

(2) $1,019.95 {$1,240.09 - $220.14 LTV-DB offset} January 2006 through December 2006, and

(3) $319.95 {$1,019.95 - $700.00 ERB Supplement} for the remainder of [redacted] lifetime beginning [redacted]2007 (age 63).

RTI officials also determined the RTI Plan provides [redacted] a Surviving Spouse's Benefit.

3. <u>Benefits the RTI Plan Provided Before Plan Termination</u>

The RTI Plan provided [redacted] $1,303.33 per month starting with his retirement and continuing through the RTI Plan's termination. As stated above, the monthly RTI amount payable to [redacted] was not scheduled to change until January 1, 2006 (age 62), which was after the RTI Plan terminated.

The Appeals Board found that payment of the $1,303.33 amount, which was more than the $1,240.09 amount RTI officials had calculated, was the result of an error. Under the RTI Plan's provisions, the amount of the LTV Supplement should equal the amount of the LTV-DB offset until the LTV Plan benefit became

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[8] Former LTV administrators provided PBGC a revised LTV Plan benefit amount after the LTV Plan terminated in 2002. See section 5 of this Background summary, starting on page 6 below.

For ERB retirees such as [redacted] the exact amount of an LTV-DB offset for the period before entitlement to an unreduced LTV Plan benefit did not result in an incorrect RTI-Plan benefit for that time period. This is because the LTV-DB offset amount used by RTI administrators was matched by an LTV Supplement of the same amount.

[9] More specifically, the RTI administrator's calculation of the benefit payable before January 2006 included both a reduction of $220.14 for the LTV-DB offset and an increase of $220.14 for the LTV Supplement. Since these two amounts cancel each other out, they are not shown in the above calculation.

payable. [10] The $1,303.33 amount the RTI Plan paid, however, was based on an LTV Supplement of $283.38, which differed from the $220.14 LTV-DB offset that the RTI administrators used. [11]

4. <u>The RTI-Plan benefits PBGC has Paid</u>

PBGC continued to pay [redacted]1,303.33 per month through January 1, 2006. PBGC reduced his estimated-guaranteed benefit payments to $1,019.95, on February 1, 2006, a month after the date RTI administrators had determined for starting the $1,019.95 amount. [12] The $1,019.95 estimated-guaranteed benefit amount still included the $700.00 ERB supplement, which PBGC cannot guarantee, as well as early retirement subsidies under the ERB, which PBGC cannot fully guarantee. See the Appendix to this letter for an explanation of [redacted] guaranteed benefit.

While PBGC's cutbacks to estimated-guaranteed levels generally eliminated non-guaranteed supplements, [redacted]estimated-guaranteed benefit still included the $700.00 supplement. PBGC has continued to pay $1,019.95, including the non-guaranteed and the now-expired $700.00 ERB Supplement, as his estimated PBGC benefit while PBGC determined his benefit and while his appeal has been pending.

5. <u>PBGC's Determination of [redacted] LTV Plan Benefit</u>

PBGC is the trustee of the terminated LTV Plan, as discussed on pages 4-5 of the Consolidated Decision. Former LTV administrators provided PBGC with a new accrued-benefit calculation for [redacted] under the LTV Plan, $287.65 [13] instead of $220.14.

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[10] Both amounts are the LTV-Defined Benefit Plan Benefit, defined in Enclosure 4, section 1.26, page 7. See section 5.03(b)(1) (page 39) which requires reducing by the LTV-Defined Benefit Plan Benefit and section 5.08(c) (page 48) which requires using the same amount as the LTV Supplement.

[11] The Appeals Board found that the RTI Plan's practice (for participants other than [redacted] was to use the same amount for both the LTV Supplement and for the LTV-DB offset. These practices on other participants provide further evidence, beyond reading plan provisions, that the $1,303.33 payments were erroneous.

[12] RTI Plan administrators calculated the final LTV supplement would be paid on December 1, 2005. They also calculated the final $700.00 ERB supplement would be paid December 1, 2006. See Enclosure 3 page 1.

[13] 1.155% x 13.667 years 3/29/1976-11/28/1989
x $129,659.37 5-year total earnings ÷ **58** months
- $65.23 LTV DCP Annuity Equivalent.

$65.23 = **$4,010.12** DCP balance on 11/28/89 x $1.0775^{9.083 \text{ years to } 1/1/99}$
÷ 121.11 actuarial factor under the LTV Plan

The 58-month "denominator" was calculated starting with 5 years and making complicated adjustments for months with $0 earnings. See Enclosure 5.

The $287.65 amount is if paid as a Straight Life Annuity starting [redacted] 2006 (age 62).[14] On May 20, 2005, PBGC determined the same $287.65 LTV-Plan accrued benefit, in a separate PBGC determination dated May 20, 2005.[15] [redacted] did not appeal PBGC's determination of his $287.65 LTV-Plan accrued benefit.

6. <u>PBGC's Determination of [redacted] RTI-Plan benefit</u>

PBGC's determination of [redacted] RTI-Plan benefit included a LTV-DB offset amount of $295.80.[16] This offset amount differed from the $287.65 benefit amount that PBGC had determined under the LTV Plan (and from the $220.14 and $283.38 amounts RTI officials had obtained - see discussion above). For the purpose of actually paying a benefit under the LTV Plan, however, PBGC is continuing to use the (smaller) $287.65 accrued benefit it determined in 2005.

One reason PBGC calculated a new and different LTV-Plan benefit ($295.80 instead of $287.65) is that under its formal RTI-Plan determination, PBGC changed the plan administrators' (LTV's and RTI's) methods for offsetting defined benefits with defined-contribution plan (DCP) benefits. Both the RESI Plan and LTV Plan contained DCP offsets.

For purposes of determining the LTV-DCP offset to the LTV Plan benefit, LTV administrators used certain actuarial "annuity equivalence" assumptions. These assumptions differed from the assumptions used by the RTI Plan in valuing the RESI-DCP offset, and they also differed from the annuity equivalence assumptions PBGC considers appropriate for valuing benefits under terminated pension plans.

For determining RTI-Plan benefits, PBGC decided to recalculate the LTV-DB benefit by changing the LTV Plan's annuity equivalence assumptions for valuing the LTV-DCP offset. PBGC also used new data on LTV benefits from RTI's databases, as is discussed in the

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[14] See Enclosure 5.

[15] [redacted] chose to receive an actuarially equivalent $241.11 ($287.65 x .8382 early) pension from the LTV Plan starting [redacted]004. His decision to start his LTV Plan benefit early with an actuarial reduction does not affect the calculation of his RTI-Plan benefit.

[16] 1.155% x 13.667 years 3/29/1976-11/28/1989
x $129,659.37 5-year total earnings ÷ **60** months
- $45.32 LTV DCP Annuity Equivalent.

$45.32 = **$3,549.67** DCP balance on 11/28/89 x $1.0775^{9.083 \text{ years to } 1/1/99}$
÷ 154.2941 PBGC-revised actuarial factor under the LTV Plan

Appendix to this decision.[17] PBGC's changes had the impact of reducing [redacted] RTI-Plan benefit with an LTV-DB offset that is larger than the benefit PBGC had determined the LTV Plan could actually provide him.

PBGC similarly changed the RESI-DCP offset for [redacted] from the $256.16 calculated by the RTI administrators to $161.23. These two amounts are different because: (1) as was the case with the LTV-DCP offset discussed above, PBGC changed the annuity equivalence assumptions for valuing the RESI-DCP offset from what RTI administrators had used; and (2) PBGC also changed the account balance used for the RESI-DCP offset from the $33,263.02 amount RTI administrators used to $24,876.61. A more detailed discussion is in the Appendix.

Using the above-discussed offset amounts, PBGC determined the following RTI Plan-provided benefits, before applying guarantee limits required by law:

(1) $1,335.02 {$796.25 "$35-per year of service" - $161.23 RESI-DCP offset + $700.00 ERB supplement} through December 2005 (age 62),

(2) $1,039.22 {$1,335.02 - $295.80 LTV-DB offset} January 2006 through December 2006, and

(3) $339.22 {$1,039.22 - $700.00 ERB Supplement} for the remainder of [redacted] lifetime beginning [redacted] 2007 (age 63).

The RTI Plan-provided benefits PBGC determined are more favorable than the amounts RTI administrators calculated. Compare (1)-(3) immediately above with the corresponding amounts on page 5.

Discussion

In this Discussion section, we will address in the following order: (1) [redacted] request to have his RTI-Plan benefit reinstated to its original amount; (2) the amount of the LTV-DB offset to his RTI-Plan benefit; (3) the amount of his RESI-DCP offset; (4) the reason his $700.00 ERB Supplement is not guaranteed by PBGC; and (5) the reduction to his guaranteed benefits based on the "Phase-in Rule."

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[17] PBGC used slightly different benefit formulas and account balances. Under its LTV-Plan determination, PBGC used a $4,010.12 LTV-DCP account balance for [redacted] when his LTV employment ended in 1989. PBGC used a different $3,549.67 LTV-DCP 1989-account balance under its RTI-Plan determination. We explain in the Appendix that under our decision, the conflicting 1989-account-balance data has a negligible effect on his combined PBGC benefits under the LTV and RTI Plans.

1. [redacted] request to have his RTI-Plan benefit reinstated to its original amount

As we stated in the Consolidated Decision, PBGC pays guaranteed pension benefits based on the provisions of the pension 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 provide.[18]

Two guarantee limits – the "Accrued-at-Normal limit" and the "Phase-in Rule" – apply to [redacted] guaranteed benefits. As is explained later in this decision, PBGC must apply these two limits to [redacted] benefits.

PBGC also pays nonguaranteed pension benefits if the pension plan, when it terminated, had sufficient assets to pay them. When the RTI Plan terminated, however, it had: (1) assets of only $46.2 million; (2) $88.0 million in unfunded guaranteed benefits; and (3) an additional $77.2 million in unfunded benefits that PBGC does not guarantee. Thus, overall, the RTI Plan was funded only 22%, and total underfunding was more than $165 million. Because of the insufficiency of the RTI Plan's assets, PBGC may pay only [redacted] guaranteed benefit. We therefore deny his request for PBGC to reinstate the benefits RTI administrators were paying.

2. The LTV-DB offset to [redacted] RTI-Plan benefit

As discussed above, PBGC's determination of [redacted] RTI-Plan benefit included a LTV-DB offset amount of $295.80, which differed from the $287.65 benefit amount that PBGC had determined for the LTV Plan. To determine whether PBGC correctly used different values for these two amounts, the Board examined RTI-Plan documents, which provide as follows:

> (i) The RTI Plan's formal document requires an LTV-DB offset from the "the Participant's LTV-Defined Benefit Plan Benefit," which is "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...."; [19]
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> (ii) The RTI Plan's Summary Plan Description similarly requires an LTV-DB offset equal to "the participant's LTV-DBP benefit." The LTV-DBP benefit is defined simply as "the monthly amount payable at the participant's age 65 in the form of single life annuity from any defined benefit plan sponsored by the LTV Steel Company"; and
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> (iii) To calculate the LTV-DB offset, RTI's actuaries' written instructions for a benefit-calculation program state, "Confirm

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[18] See Consolidated Decision at pages 1-2 and 8-9.

[19] See Enclosure 4, section 5.03(b)(1) on page 39, and section 1.26 on page 7.

actual LTV benefit is unreduced before any reduction factor is applied. . . . If actual LTV DBP benefit is available, make sure this amount is used to determine RESI DBP benefit." [20]

(iv) A pre-printed RTI-Plan application form allows retiring participants to choose between starting an estimated pension or "wait until the LTV information is received from PBGC and my final pension is calculated before my payments start."

The Appeals Board concluded that these four documents all plainly provide that the LTV-DB offset is based on the actual accrued (unreduced) benefit that is payable from the LTV Plan. Thus, these documents do not provide for a recalculation of the LTV-DB offset based on any actuarial assumptions, employment data, or LTV-DCP account balances different than what PBGC already used to determine benefits under the LTV Plan.[21]

The Appeals Board thus concluded, based on those documents, the RTI Plan's overall design, and the RTI Plan's practice, is that PBGC should determine RTI-Plan benefits using the same LTV-Plan accrued benefit that PBGC has determined and is fully guaranteeing under the LTV Plan. (The LTV DB offset may, however, differ from what PBGC is actually paying under the LTV Plan if a participant's LTV Plan benefit is being reduced for early commencement, an optional benefit form, or optional pre-retirement survivor annuity coverage.) Thus, PBGC must reduce [redacted] LTV offset from $295.80 to the $287.65 amount PBGC determined in May 2005. The smaller offset is favorable for [redacted]

3. <u>The RESI-DCP offset to [redacted] RTI-Plan benefit</u>

PBGC changed the actuarial assumptions for calculating the RESI-DCP offset for many participants, including [redacted] Specifically, PBGC changed the assumptions RTI used for calculating the annuity equivalence of DCP distributions. PBGC's decision to change actuarial assumptions followed a PBGC precedent on a similar terminated pension plan, the LTV Plan.

The circumstances underlying PBGC's decision to change actuarial assumptions for the RESI-DCP offset, which are complex,

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[20] The RTI manual requires calculating the LTV Offset without any LTV-Plan reductions for early retirement, pre-retirement spouse coverage, or optional form of payment. [redacted] $287.65 LTV-Plan accrued benefit already omits any such reduction. See footnote 13.

[21] Also, the LTV Plan already used different actuarial assumptions than the RTI Plan did for offsetting a DCP distribution, before PBGC decided to change actuarial assumptions. The two plans even differed on what payments constituted a distribution requiring an offset - an LTV DCP distribution that was rolled into the RESI DCP became an offset in the LTV Plan but not in the RTI Plan. We saw no reason why a decision to change the later (RTI) plan's actuarial assumptions would imply the two (LTV and RTI) plans' assumptions should be made the same.

are discussed in the Appendix. The Appeals Board found that PBGC's reasons for its changes, as well as how they should be applied, are unclear in certain respects. For this reason, we are asking PBGC officials to revisit the appropriate actuarial assumptions for the RESI-DCP offset. Thus, we are not deciding the amount of [redacted] RESI-DCP offset in this decision.

Also, as discussed above, PBGC's calculation of the RESI-DCP offset was based on a $24,876.61 account balance, while RTI used a larger $33,263.02 account balance. An offset based on a larger account balance produces a smaller RTI-Plan benefit. The Appeals Board is therefore also asking PBGC officials to revisit the appropriate account-balance amount for purposes of calculating [redacted] RESI-DCP offset.

4. [redacted] $700 ERB Supplement is not Guaranteed

As stated above and on pages 8-9 of the Consolidated Decision, the "Accrued-at-Normal" limit applies to [redacted] guaranteed benefits. Generally, the Accrued-at-Normal limit provides that PBGC cannot guarantee any portion of a temporary supplement if it would result in the participant receiving more than the normal retirement benefit that is payable as a Straight Life Annuity.[22]

As stated on page 9 of the Consolidated Decision, 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. PBGC has established procedures for determining the Accrued-at-Normal limit in such plans. As is explained on page 9 of the Consolidated Decision, PBGC generally uses the combined benefits in both pension plans in applying the Accrued-at-Normal limit.

PBGC's procedures favorably allow the LTV Supplement to be included in [redacted] guaranteed benefit calculation. *See* discussion at pages 9-10 of the Consolidated Decision. The ERB program, however, created a second temporary supplement, the $700.00 ERB supplement, that until age 63 increased [redacted] combined benefits under both plans to $700.00 more than the amount of his combined normal retirement benefits.[23] Therefore, based on

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[22] Specifically, PBGC's regulations provide, at 29 Code of Federal Regulations ("C.F.R.") § 4022.21(a)(1), in pertinent 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 . . ."

[23] For example, using the RTI-Plan benefits on page 8 that PBGC calculated, and favorably including the LTV Supplement, [redacted] Accrued at Normal Limit is $635.02 {$339.22 age-63 + $295.80 LTV Supplement}, $700.00 less than his initial RTI Plan-payable benefit.

PBGC's regulation and PBGC's procedures for determining the Accrued-at-Normal limit in benefit offset plans, none of [redacted] $700.00 ERB Supplement is guaranteed.

5. <u>PBGC's 60% "Phase-in" of Benefit Increases</u>

The Phase-in Rule provides that PBGC's guarantee of benefit increases is phased in over five years from the later of the adoption or effective date of the plan amendment or amendments that provide for the increases. This phase-in of benefit increases is required by ERISA and PBGC's regulations.[24]

For the RTI Plan, certain benefit increases (including those under the ERB program, which became effective on January 1, 1999) were adopted or effective less than 4 years before the RTI Plan terminated. As a result of the Phase-in Rule, [redacted] benefit increases under the ERB and under the 1998 amendment to the RTI Plan are guaranteed at 60%.[25]

In particular, four different types of benefit increases are included in the Phase-in Rule calculations for [redacted] First, under the September 1998 RTI Plan amendment, his benefit accrual rate increased from $33.3334 (capped at 30 years) to $35.00 (uncapped years). Furthermore, the ERB amendment – which, among other things, made him eligible for a benefit determined under the 70/80 benefit formula – increased his benefit three more ways:[26]

- He became eligible for an unreduced benefit on [redacted] 1999, 10 years before his [redacted] 2009 normal retirement date. Without either the 1998 amendment or the ERB, he would only have been eligible for a Deferred Vested Pension, requiring an actuarial reduction for starting early;
- He became eligible for the Surviving Spouse's Benefit; [27] and
- He also became eligible to receive a 5-year certain period on his pension at no charge. [28]

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[24] 29 United States Code § 1322(b)(1), (7) (ERISA requirements); 29 C.F.R. §§ 4022.2, 4022.24, 4022.25 (PBGC's regulations).

[25] A net increase of up to $60.00 per month would be fully guaranteed. See ERISA section 4022(b)(7).

[26] The ERB also increased [redacted] benefits by making him eligible for the RTI Plan's $700.00 per month ERB supplement. Because none of [redacted] $700.00 ERB supplement is guaranteed as a result of the Accrued-at-Normal limit, the $700.00 ERB supplement does not affect his Phase-in Rule calculation.

[27] See Enclosure 4, page 61, section 6.02(a)(2).

[28] See Enclosure 4, page 70, section 7.04(a).

Under prior RTI Plan provisions (the "1993 Plan"), [redacted] qualified only for a Deferred Vested retirement, and for none of the four improvements discussed immediately above. Thus, after removing the non-guaranteed $700.00 ERB Supplement because of the Accrued-at-Normal limit, the remaining benefit is subject to the Phase-in Rule. The Benefit Statement that PBGC will provide with its new determination for [redacted] will explain PBGC's new guaranteed-benefit calculations.

<u>Decision</u>

Having applied the law, regulations, and Plan provisions to the facts in his case, the Appeals Board decided: (1) the RTI Plan's reduction for the LTV-DB offset is decreased from $295.80 to $287.65; (2) [redacted] is not entitled to a guaranteed $700.00 temporary supplement under the ERB program; and (3) PBGC may guarantee only 60% of certain benefit increases that were effective September 8, 1998 and January 1, 1999 under the RTI Plan.

PBGC will redetermine [redacted] guaranteed benefit pursuant to this decision. PBGC also will revisit how his RESI-DCP offset should be calculated. PBGC's new determination will include a 45-day right to appeal all issues not already decided in this letter.

When PBGC's new determination becomes final, he may seek court review of PBGC's determinations with respect to the issues he raised. We thank you and [redacted] for your patience while we carefully reviewed his appeal.

Sincerely,

William D. Ellis
Appeals Board Member

Appendix: Additional Information Concerning the LTV DCP and RESI DCP

Enclosures:

(1) Redacted copy of the Appeals Board's decision dated April 16, 2009 ("Consolidated Decision") (15 pages)

(2) Copy of [redacted] June 27, 2008 appeal (2 pages)

(3) Final Pension Benefit report calculated by RTI on August 10, 1999 (7 pages)

(4) Republic Technologies International, LLC - USWA Defined Benefit Plan, Amended and Restated Effective as of September 8, 1998 (58 pages)

(5) LTV Plan Administrators' Calculation of [redacted] LTV-Plan accrued benefit (2 pages)

cc: [redacted]