PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

SEP 3 0 2005

[redacted]

Re: [redacted] Case 194605, Shasta Paper Company, Inc. Hourly Pension Plan (the Shasta Plan)

Dear [redacted]:

The Appeals Board reviewed your appeal of PBGC's June 25, 2004 determination of your PBGC benefit from the Shasta Plan, which was based on PBGC's determination that the Shasta Plan was not formally adopted until May 2, 2000. As explained below, the Board decided that the Shasta Plan was first adopted on January 8, 1999. As a result, PBGC's guarantee of benefits based on the $35 and $37 benefit rates will be phased-in at the $40/40% level instead of the $20/20% level that PBGC previously had determined.

As a result of the Board's decision, PBGC's Benefits Administration & Payment Department will recalculate your PBGC benefit based on the Shasta Plan having been first adopted on January 8, 1999, and send you a corrected determination of your PBGC benefit amount. The corrected determination will include a new 45-day appeal right. Please note that <u>your corrected PBGC benefit amount could be higher or lower</u> than the amount stated in PBGC's June 25, 2004 determination letter. Also, as explained in the Discussion section below, the change in your benefits (if any) is likely to be relatively small. The change is likely to be small because, even though PBGC had "phased in" your guaranteed benefits at 20%, PBGC also had concluded that you were entitled to more than 40% of your plan benefit based on a plan asset allocation.

<u>*PBGC's Determination and Your Appeal*</u>

PBGC's determination letter told you that you are entitled to a PBGC benefit of $156.27 per month, if paid as a Five-Year Certain and Life Annuity starting on November 1, 2011, your Earliest Unreduced Retirement Date. The letter also stated that the amount would be increased if you choose to retire after November 1, 2014, your Normal Retirement Date. PBGC included a Benefit Statement which showed that you could retire as early as November 1, 2004 but that your benefit would be reduced to account for the longer period of payment.

Your July 9, 2004 appeal said PBGC used inaccurate information to calculate your benefit. In particular, your letter said that the adoption date of the Shasta Plan should be January 8, 1999, based on a three page document, which you enclosed, entitled "*Resolutions For The Board of Directors of Shasta Paper Company.*" Your appeal said that that three-page document shows that the effective date and the adoption date of the Shasta Plan are both January 8, 1999. With your appeal, you also included various documents that you said showed the Shasta Plan was fully funded before the Shasta Plan terminated.

*Discussion*

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, *as amended* (ERISA). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays benefits as defined in the plan subject to the limitations and requirements set by Congress under ERISA.

1. The Plan's Funding Level

Although you said that the documents you submitted with your appeal suggested that the Plan was fully funded before it terminated, ERISA § 4044 requires PBGC to allocate a plan's assets in a prescribed order to the value of benefits described in six priority categories. PBGC regulations make it clear, in the case of a plan that is trusteed by PBGC, that the allocation of assets must be performed as of the date of the plan's termination. See 29 Code of Federal Regulations § 4044.3(b). Thus, in order for the allocation to be performed as of the plan's termination date, PBGC must calculate the total value of all benefits as of the plan's termination date and also determine the total value of the plan's assets as of the plan's termination date.

PBGC determined the value of the Shasta Plan's assets as of the Shasta Plan's termination date as the result of a Plan Asset Audit, which PBGC performed in accordance with standard accounting procedures. PBGC's auditors determined that the total value of the Shasta Plan's assets was equal to $3,724,370 as of the Shasta Plan's termination date. PBGC's actuaries determined, in accordance with the valuation procedures set out in PBGC's regulations, that the total value of the Shasta Plan's benefits was equal to $9,576,275 as of the Shasta Plan's termination date. Based on these valuation amounts, the Shasta Plan's assets were insufficient as of the Shasta Plan's termination date to provide all Shasta Plan benefits. You did not present any evidence that would change PBGC's valuation amounts.

2. Your PBGC-Guaranteed Benefit

Your PBGC-guaranteed benefit is less than your full Shasta Plan benefit because of the legal limits on guaranteed benefits set by Congress when it enacted ERISA. One of those limits, the Five-Year Phase-In, affects the amount of your PBGC benefit.

Under this limit, PBGC may guarantee benefits in new plans or increases in benefits resulting from plan amendments only to the extent of $20 per month or 20% of the increase, whichever is larger, for each full year that the plan or benefit increase was in effect before the plan's termination date. For this purpose, a new plan or a benefit increase starts to be "in effect" as of its effective date or its adoption date, whichever date is later.

Because ERISA requires that the benefits payable under a qualified defined benefit plan be defined in written form and because PBGC's copy of the first written Shasta Plan document was signed and dated May 2, 2000, PBGC determined that all three of the pre-May 1, 2001 benefit rates listed in that document ($35 effective January 8, 1999; $37 effective May 1, 1999; $39 effective May 1, 2000) were adopted less than two full years before the Shasta Plan terminated on October 31, 2001. As a result, PBGC calculated the Shasta Plan benefits using the $35, $37, and $39 benefit rates, but limited its guarantee of those benefits to $20 per month or 20% of the benefit, whichever is larger. Similarly, PBGC concluded that the benefit rates greater than $39 are not guaranteed at all because their effective dates were all less than one full year before the Shasta Plan's termination date.

The Appeals Board reviewed documents in PBGC's files and found that Shasta Paper, formerly known as Shasta Acquisition, Inc., acquired the Shasta Mill division of Simpson Paper Company, pursuant to an Asset Purchase Agreement (APA) dated January 8, 1999. Section 6.3.1.3 of the APA required Shasta Paper to

> "establish or provide a defined benefit plan for Hired Hourly Employees (the 'New Hourly Defined Benefit Plan'), which plan shall provide Hired Hourly Employees with benefits substantially comparable to those required under the Collective Bargaining Agreement. The New Hourly Defined Benefit Plan shall recognize Simpson Service for Hired Hourly Employees for purposes of eligibility to participate, eligibility for benefits (including early retirement) and vesting, but not benefit accrual, in the new Hourly Defined Benefit Plan."

The APA defined "Collective Bargaining Agreement" (Simpson CBA) as the "Labor Agreement between Simpson Paper Company, Shasta Mill, California, and the Union from May 1, 1996 to April 30, 2000. . ." The pages from the Simpson CBA that you provided with your appeal show benefit rates of $35 (effective May 1, 1998) and $37 (effective May 1, 1999).

Although the Appeals Board could not locate a signed version of the APA, the Board concluded that it probably was executed on or before January 8, 1999, because it is unlikely that an asset purchase transaction of this type would have occurred before the execution of a formal agreement. Thus, based on the terms of the APA and the terms in the Simpson CBA, the Appeals Board concluded that the $35 and $37 benefit rates were both adopted more than two but less than three full years before the Shasta Plan terminated. As a result, PBGC will recalculate the guaranteed portion of all Shasta Plan benefits calculated using the $35 and $37 benefit rates by limiting these benefits to $40 per month or 40% of the benefit, whichever is larger.

The effective date of the increase in the benefit rate from $37 to $39 is May 1, 2000, which is more than one but less than two full years before the Shasta Plan terminated. So, PBGC will recalculate the guaranteed portion of the increase resulting from the change from the $37 benefit rate to the $39 benefit rate by limiting the increase to $20 per month or 20% of the increase, whichever is larger.

3. Your Full PBGC Benefit Based on the Allocation of Assets and Section 4022(c) of ERISA

When the value of plan assets exceeds the value of benefits that PBGC guarantees (which appears to be the case with the Shasta Plan), PBGC will pay additional nonguaranteed benefits based on an allocation of plan assets to benefits. See the **Enclosure** for a description of ERISA's priority categories for this allocation. With respect to the Shasta Plan, ERISA requires PBGC to allocate the Shasta Plan's assets first to guaranteed benefits in Priority Category 4 (because there are no Shasta Plan benefits in Priority Categories 1 through 3) and then to non-guaranteed benefits in Priority Category 5.

In addition to the allocation of plan assets, ERISA requires PBGC to allocate an additional amount of money (the ERISA § 4022(c) amount) based on PBGC's average recoveries from the plan sponsors of terminated plans. PBGC calculated the Shasta Plan's ERISA § 4022(c) amount using the Small Plan Average Recovery Ratio (SPARR) for 2001, the year in which the Shasta Plan terminated. The SPARR is calculated based on a specific formula in ERISA § 4022(c) that PBGC is required to use. The 2001 SPARR is 9.6%. So, PBGC calculated the Shasta Plan's ERISA § 4022(c) amount to be $561,758, which is 9.6% of the difference between the value of all Shasta Plan benefits ($9,576,275) and the value of the Shasta Plan's assets ($3,724,370).

It is very likely that, in spite of the Appeals Board's decision that the $35 and $37 benefit rates should be phased in at the $40/40% phase-in level instead of the $20/20% phase-in level, the Shasta Plan's assets will still be greater than the value of all PBGC-guaranteed benefits. In that case, the total value of benefits that PBGC can pay to the group of all Shasta Plan participants -- that is, the combined total of guaranteed benefits, plan asset allocation benefits, and § 4022(c) benefits -- would remain the same. In other words, if the Shasta Plan's assets are still sufficient to cover PBGC-guaranteed benefits even when the $35 and $37 benefit rates are phased in at the $40/40% level, the total value of all benefits payable by PBGC to Shasta Plan participants will be equal to $4,286,128, which is the sum of the Shasta Plan's final assets ($3,724,370) and the Shasta Plan's § 4022(c) amount ($561,758). However, even though the total value of all benefits payable by PBGC to Shasta Plan participants is likely to remain the same, some participants' PBGC-payable benefits will increase while other participants' PBGC-payable benefits will decrease. Such increases or decreases, which will result directly from the rules that PBGC must follow in calculating PBGC-payable benefits, in most cases are likely to be relatively small.

We regret that the outcome of your appeal is not more favorable, but PBGC is not allowed to pay benefits larger than those payable in accordance with ERISA.

*Decision*

Having applied the law and PBGC's rules to the facts of this case, the Appeals Board decided that the Shasta Plan was first adopted on January 8, 1999. As a result of the Board's decision, PBGC's Benefits Administration & Payment Department will recalculate your PBGC benefit based on the Shasta Plan having been first adopted on January 8, 1999, and send you a corrected determination of your PBGC benefit amount. The corrected determination will include a new 45-day appeal right.

We regret the delay in responding to your appeal and appreciate your patience while we completed our review. If you need other information from PBGC, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

Michel Louis

Michel Louis
Appeals Board Member

Enclosure