

Pension Benefit Guaranty Corporation

79-4

February 28, 1979

REFERENCE:

[*1] 4007 Payment of Premiums
4023(d) Contingent Liability Coverage. Eligibility for Coverage
4062 Liability of Employer in Single Employer Plans
4063 Liability of Substantial Employer for Withdrawal
4064 Liability of Employers in Multiple Employer & Multiemployer Plans
4082(c). Effective Date; Special Rules. Applicability of Title IV to Multiemployer Plan Terminations

OPINION:

This is in response to your request for an opinion regarding the applicability of the employer liability provisions of Title IV of the Employee Retirement Income Security Act ("ERISA") with respect to multiemployer plans, in light of the fact that, under current law, the Pension Benefit Guaranty Corporation ("PBGC") does not have a mandatory obligation to pay guaranteed benefits under terminated multiemployer plans until July 1, 1979. You have also asked about the relevance, for the potential Title IV liability of employers contributing to multiemployer plans, of the fact that contingent employer liability insurance ("CELI") is not available from PBGC.

Under § 4082 of ERISA, the provisions of Title IV generally became effective on September 2, 1974, the date ERISA was enacted. However, under ERISA § 4082(c), as amended, [*2] PBGC has discretion -- but no absolute obligation -- to pay guaranteed benefits under multiemployer plans that terminate before July 1, 1979. The mandatory guaranteed-benefit payment responsibility was the only element of Title IV that was made applicable to multiemployer plans on a deferred basis. For example, since the inception of the program, multiemployer plans to which § 4021 of ERISA applies have been required to pay PBGC premiums, and their plan administrators have been required to file annual reports and to notify PBGC of reportable events and pending plan terminations.

In particular, § 4063 of ERISA currently applies -- and is being implemented -- when employers withdraw from multiemployer plans. As you know, that section requires a withdrawn substantial employer to post security, in the form of a bond or escrow deposit, against its potential termination liability in the event the plan terminates within five years after the withdrawal. Section 4063 also authorizes PBGC to partition a multiemployer plan that faces a significant decline in aggregate employer contributions as a result of employer withdrawals, or to waive the security requirements based on an appropriate [*3] indemnity agreement.

If a multiemployer plan terminates, the employers that have contributed to that plan during the five years before termination may be liable to PBGC under ERISA § 4064. The liability of each employer is an allocated share of the amount by which the value of the plan's assets on the date of termination falls short of the present value of the benefits under the plan that are guaranteed under Title IV of ERISA, but no employer can be liable for more than 30 percent of its net worth, determined in accordance with ERISA § 4062. In every case where PBGC exercises its discretion under ERISA § 4082(c) to pay guaranteed benefits, the PBGC vigorously pursues the collection of that employer liability.

Section 4022 of ERISA, as implemented by PBGC regulations 29 C.F.R. Parts 2605 and 2609, defines the benefits that are guaranteed under Title IV of ERISA. Because ERISA § 4082(c) places certain limitations on the funds that PBGC can use to pay guaranteed benefits under multiemployer plans that terminate before July 1, 1979, termination liability payments from the employers that had supported those multiemployer plans are a significant source of funds to enable PBGC "to provide [*4] for the timely and uninterrupted payment of pension benefits to participants and beneficiaries" of terminating multiemployer plans, ERISA § 4002(a)(2). It is the policy of the PBGC to make the protections offered by Title IV available to multiemployer plan participants to the fullest extent consistent with § 4082(c) of ERISA.

Employers are liable under § 4062, 4063 or 4064 of ERISA, whether or not a CELI program is established. In this connection, we note that § 4023(d) of ERISA gives PBGC broad discretion "to prescribe conditions under which no CELI payment will be made . . .", and provides that in no event would CELI coverage be available unless CELI

premiums had been paid for at least 60 months. Accordingly, CELI could not be available for any employer that withdraws from a multiemployer plan before July 1, 1979, or that contributed to a plan that terminates before that date. The extent to which CELI would provide relief from employer liability in later years is speculative; as you know, on July 1, 1978 PBGC published a report suggesting that the CELI concept under current law is unworkable, and discussing various possible program alternatives.

I hope this is of assistance, [*5] and will be pleased to answer any further questions you may have.

Henry Rose
General Counsel