Pension Benefit Guaranty Corporation

93-2

July 7, 1993

REFERENCE:
 [*1] 4205(a)(1) Partial Withdrawals. Contribution Decline.
>4205(b)(1)>
>4206(a)(2)(A)>

OPINION:

I write in response to your letter requesting guidance on the calculation of partial withdrawal liability following a 70-percent decline in contributions under Section 4206 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1386 (1992). Specifically, you request our opinion on what plan year's contribution base units make up the numerator of the fraction described at Section 4206(a)(2) of ERISA, 29 U.S.C. § 1386(a)(2).

Generally, a partial withdrawal occurs on the last day of a plan year in which an employer experiences a 70-percent contribution decline. ERISA § 4205(a)(1), 29 U.S.C. § 1385(a)(1). A 70-percent contribution decline occurs whenever an employer's contribution base units in each year of a "3-year testing period" do not exceed 30 percent of the employer's contribution base units in the "high base year." ERISA § 4205(b)(1)(A), 29 U.S.C. § 1385(b)(1)(A). For these purposes, the 3-year testing period includes the current plan year and the two immediately preceding plan years. ERISA § 4205(b)(1)(B)(i), [*2] 29 U.S.C. § 1385(b)(1)(B)(i). The contribution base units in the high base year is an average of the two highest yearly contribution base unit amounts in the 5 plan years immediately preceding the 3-year testing period. ERISA § 4205(b)(1)(B)(ii), 29 U.S.C. § 1385(b)(1)(B)(ii).

An employer's liability for a partial withdrawal is determined pursuant to Section 4206 of ERISA, 29 U.S.C. § 1386. In the case of a partial withdrawal occurring because of a 70-percent contribution decline, the first step is to calculate the amount of unfunded vested benefits allocable to the employer for a hypothetical complete withdrawal under Section 4211 of ERISA, 29 U.S.C. § 1391, determined "as if the employer had withdrawn in a complete withdrawal . . . on the last day of the first plan year in the 3-year testing period." ERISA § 4206(a)(1)(B); 29 U.S.C. § 1386(a)(1)(B). This figure is then adjusted by multiplying it by 1 minus a fraction the numerator of which is the employer's contribution base units for the plan year following the plan year in which the partial withdrawal occurs, and the denominator of which is the average of the employer's contribution base units for the 5 plan years immediately [*3] preceding the 3-year testing period. ERISA § 4206(a)(2)(A) and (B); 29 U.S.C. § 1386(a)(2)(A) and (B).

You ask whether the numerator of the fraction is the contribution base units for the plan year following the hypothetical complete withdrawal (i.e., the second plan year in the 3-year testing period), or the contribution base units for the plan year following the third plan year in the 3-year testing period. Under Sections 4205(b)(1) and 4206(a)(2)(A) of ERISA, 29 U.S.C. § § 1385(b)(1) and 1386(a)(2)(A), the answer is the latter.

As stated above, a partial withdrawal is deemed to occur on the last day of a plan year in which the employer's contribution base units in each year of a 3-year testing period do not exceed 30 percent of the employer's contribution base units in the high base year. ERISA § 4205(b)(1)(A), 29 U.S.C. § 1385(b)(1)(A). The three year test period includes the current plan year and the two immediately preceding plan years. ERISA § 4205(b)(1)(B)(i), 29 U.S.C. § 1385(b)(1)(B)(i). The "contribution base units for the plan year following the plan year in which the partial withdrawal occurs" referenced in Section 4206(a)(2)(A) of ERISA, 29 U.S.C. § 1386(a)(2)(A) [*4] (emphasis added), thus refers to the plan year following the last plan year in the 3-year testing period.

Using your example of a partial withdrawal occurring in 1992, an employer's liability is calculated using the amount of unfunded vested benefits allocable to the employer under Section 4211 of ERISA, 29 U.S.C. § 1391, for a hypothetical complete withdrawal occurring in 1990, the first plan year in the 3-year test period. This amount is then multiplied by 1 minus a fraction the numerator of which is the employer's contribution base units for 1993, and the denominator of which is the employer's average contribution base units for the years 1985 through 1989.

I hope this has been of assistance to you. If you have any further questions, please contact D. Bruce Campbell of my staff at (202) 778-1918.

Carol Connor Flowe, General Counsel