

Pension Benefit Guaranty Corporation

82-31

October 27, 1982

REFERENCE:

[\*1] 4062 Liability of Employer in Single Employer Plans  
4063 Liability of Substantial Employer for Withdrawal  
4064 Liability of Employers in Multiple Employer & Multiemployer Plans

OPINION:

This responds to your request for an opinion with respect to the liability of the A under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") with reference to the transaction described below.

You have represented to us as follows. A is a wholly-owned subsidiary of B. C Corporation owns 100% of the outstanding common stock of B. C Corporation is 100% owned by the D Company \* \* \*, the parent company. Therefore, A is presently a member of a group of trades or businesses under common control as defined in Section 4001(b) of ERISA. A is presently the sole employer contributing to the B, Inc. Employees' Pension Plan ("the Plan"), a defined benefit pension plan which is completely independent of any of the other pension plans maintained by D or by members of D's controlled group. D proposes to sell 100% of the stock of A for fair and reasonable consideration to the E Company of. E is unrelated to A or any member of D's controlled group. Subsequent to the Proposed sale, A shall continue [\*2] as the sole employer contributing to the Plan. The assets of the Plan are sufficient to fund all benefits guaranteed by Title IV of ERISA. The purchase price is approximately \* \* \* and such amount is a fair and reasonable price. The sale is to be closed on October 27, 1982.

Based on the foregoing facts and in reliance on your representations you are advised that if the proposed sale as described above is consummated, the PBGC will not pursue liability against A under Section 4062 of ERISA arising from the termination of pension plans maintained by D or any member of the controlled group. In addition, under the circumstances that you have described, Sections 4063 and 4064 of ERISA would not apply. Of course, A would have potential Title IV liability in connection with the Plan in the event of termination.

I hope this response is helpful.

Henry Rose  
General Counsel