U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216

SEP -3 1980

Opinion 80-51A

101(a)(3)(A)

Mr. Herbert J. McLaughlin
Thiokol Corporation
Newtown, Pennsylvania 18940

Dear Mr. McLaughlin:

This is in reply to your letter of February 28, 1979 requesting an advisory opinion concerning whether the two Thiokol Corporation Retirement Income plans for-employees at the Louisiana Army Ammunition Plant (the Plans) qualify for the limited exemption from the annual reporting requirements of the Employee Retirement Income Security Act of 1974 (ERISA) provided in 29 CFR 2520.104-44. Specifically, you ask whether the Plans are exempt, pursuant to 2520.104-44, from the requirement in section 103(a)(3)(A) of ERISA to engage an independent qualified public accountant to conduct an examination of the financial statements and schedules of the Plans.

In your letter you state that all assets of both plans are held in the Guaranteed General Account of the Connecticut General Life Insurance Company (the Insurance Company), and that all retirement benefits paid to retiring participants are "guaranteed" by. the Insurance Company. You also state that the Plans contain an employee savings facility for voluntary contributions by participants. You further state that the Insurance Company maintains employee records, performs actuarial services, and calculates and pays benefits based upon information supplied by Thiokol.

You submit with your request a number of enclosures, including the plan documents of the Plans, the group annuity contracts through which the two plans are funded, and the additional group annuity contract for both plans which provides for a savings facility for voluntary employee contributions. Group Annuity Contract GR-3702 and Group Annuity Contract GR-3703 both show

· that the contributions paid by Thiokol Corporation to the Insurance Company are accumulated in an "Immediate Participation Guarantee Fund" (IPG Fund) from which withdrawals are made for payments of retirement annuities or other benefit payments, in accordance with the terms of the contracts.

Under the terms of both group annuity contracts, Thiokol Corporation, as policyholder, is required to specify, in writing, which of two possible methods the Insurance Company will utilize in paying the retirement benefits under these contracts. In view of the fact that we were not provided with a copy of that written notice·; we assume that the method selected by Thiokol Corporation was "Method of Payment A (Guaranteed by the Insurance Company)", since, as noted previously, you indicate in your letter that all retirement benefits paid to retiring participants are "guaranteed" by the Insurance Company, and since extracts from the group annuity contracts explicitly provide that benefits under "Method of Payment B" are not guaranteed by the Insurance Company.

Pursuant to Method A, as· set forth in the contracts, the Insurance Company will credit a retirement annuity to a participant, on his retirement date, provided that the amount of contributions in the IPG Fund, on that date, is not less than the "minimum fund liability". The term "minimum fund liability" is defined in the contracts to mean the minimum amount in the IPG Fund which would be required to provide benefits guaranteed to be paid by the Insurance Company should the "date of discontinuance" occur.[1] Consequently, funds to purchase the retirement annuity will not be set aside by the Insurance Company until the retirement date for each particular employee. The Insurance Company thus guarantees to make retirement annuity payments only to those employees for whom a retirement annuity has been credited, and the crediting of a retirement annuity to a participant is contingent upon the sufficiency of assets in the IPG Fund to purchase a retirement annuity on his retirement date.

Section 103(a)(3)(A) of ERISA provides, in relevant part, that the administrator of an employee benefit plan must engage an independent qualified public accountant to conduct an examination of any financial statements, books, and records of the plan necessary to enable the accountant to form an opinion as to whether the financial statements and schedules, required to be included in the annual report, are presented fairly and in conformity with generally accepted accounting principles.

29 CFR 2520.104-44 contains a limited exemption and alternative method of compliance for annual reporting by unfunded plans and certain insured plans. Specifically, this regulation exempts, in pertinent part, an employee pension benefit plan, which meets the requisite criteria of S2520.104-44(b)(2), from engaging an independent qualified public accountant to conduct such an examination of the plan's financial statements and schedules, provided that, among other conditions, benefits under such pension plan are

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[1]Although the portions of the group annuity contracts furnished with your letter do not include a definition of the term "date, of discontinuance" we assume that this term refers to the date on which the group annuity contracts terminate.

provided exclusively through allocated insurance contracts issued by, and pursuant to the specific terms of which benefit payments are fully guaranteed by, an insurance company or organization that issued the policy.

Under Method of Payment A, it appears that no benefits are guaranteed by the Insurance Company until a participant retires, since until that date, payment of benefits to the participant by the Insurance Company pursuant to the group annuity contracts is contingent upon the amount of contributions accumulated in the IPG Fund being not less than the "minimum fund liability" at retirement. Thus, although retirement benefits for retired participants may be "guaranteed", benefit payments for other participants in the Plans are not guaranteed by the Insurance Company. It is the Department's view, therefore, that the plans may not avail themselves of the limited exemption provided by §2520.104-44.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs