

ports. Under most circumstances the PBGC would not become involved in private sector labor negotiations. As stated in the Notice of Pendency, however, the 2002 negotiations were extraordinary in several respects. Despite the personal efforts of the Chairman of the FMCS, the parties reached a bargaining deadlock and a lockout was called that paralyzed the west coast docks. For the first time in a generation, the United States government invoked the provisions of the Taft-Hartley Act and obtained an injunction from a federal court to halt the work stoppage and reopen the ports. The FMCS vouched that no agreement

could be reached unless federal pension agencies provided informal reactions to proposed modifications to the 1984 and 1998 recensions of the rule.

On that basis, PBGC listened to various proposals and provided the FMCS and the parties with general guidance concerning benefit increases and temporary changes to the Funding Goal. The ILWU and PMA represented that compliance with the 85% Funding Goal would prevent them from bargaining for an increase in pension benefits to a level that was sufficiently attractive to convince current workers to acquiesce in work rule changes and employment reductions desired by the

PMA shipping interests. They argued also that PMA "could not afford" to honor the "equal contribution and benefit payment" rule because PMA "needed to invest elsewhere in the industry."

The parties reached an agreement in November of 2002 but did not finalize their pension proposals and submit them for formal approval PBGC until March 29, 2003.

Prior to the November 2002 amendments, the Plan was said to be in compliance with the 85% Funding Goal established under the 1998 recension of the special rule.

TABLE 2.—SELECT FINANCIAL DATA SUBMITTED BY PLAN ON MARCH 28, 2003

	Plan year ending June 30, 1997	Plan year ending June 30, 1998	Plan year ending June 30, 1999	Plan year ending June 30, 2000	Plan year ending June 30, 2001	Plan year ending June 30, 2002
Assets .....	\$1.63 billion ...	\$1.91 billion ...	\$2.16 billion ...	\$2.40 billion ...	\$2.22 billion ...	\$1.93 billion.
Vested Benefits .....	\$1.69 billion ...	\$1.66 billion ...	\$1.63 billion ...	\$1.83 billion ...	\$1.99 billion ...	\$1.84 billion.
Active Participants .....	8,315 .....	8,859 .....	9,572 .....	9,395 .....	10,070 .....	10,113.
Contributions .....	\$104 million ...	\$35.0 million ...	\$28.8 million ...	\$32.5 million ...	\$26.9 million ...	\$23.5 million.
Benefit Payments .....	\$101.5 million	\$108.0 million	\$110.6 million	\$126.4 million	\$132.9 million	\$154 million.
Plan Assets As Multiple of Benefits ...	16.1 .....	17.7 .....	19.6 .....	19.0 .....	16.6 .....	12.5.

Materials that the Plan submitted to PBGC in March 2003, however, indicated that the cost of the 2002 benefit increases caused the Plan to fail the Funding Goal from July 2002

through July 2012. Thus, the Plan would require annual "catch-up" contributions equal to benefit payments. The "catch up" contributions, however, would greatly exceed the amount the Plan

would otherwise need to satisfy the "minimum funding" provisions of the Internal Revenue Code.

TABLE 3.—SEGAL COMPANY PROJECTED PBGC FUNDING PERCENTAGES

[Submitted to plan on March 10, 2003]

Year	Funding level (percent)	Benefit payments (millions)	Code funding (millions)
2002 .....	87	\$154	23
2003 .....	84	167	44
2004 .....	80	179	72
2005 .....	76	192	98
2006 .....	71	211	122
2007 .....	67	230	148
2008 .....	68	238	213
2009 .....	71	247	303
2010 .....	76	253	304
2011 .....	82	259	304
2012 .....	88	264	304

### Decision on the Proposed Second Amendment

The statute and the implementing regulation state that PBGC must make two factual determinations before it approves a request for an amendment that adopts a special withdrawal liability rule. ERISA section 4203(f); 29 CFR 4203.4(a). First, on the basis of a showing by the plan, PBGC must determine that the amendment will apply to an industry that has

characteristics that would make use of the special rules appropriate. Second, PBGC must determine that the plan amendment will not pose a significant risk to the insurance system. PBGC's discussion on each of those issues follows. After review of the record submitted by the Plan, and having received no public comments, PBGC has entered the following determinations.

#### 1. What Is the Nature of the Industry?

In determining whether an industry has the characteristics that would make an amendment to special rules appropriate, an important line of inquiry is the extent to which the Plan's contribution base resembles that found in the construction industry. This threshold question requires consideration of the effect of employer withdrawals on the Plan's contribution base.