

Thus, the initial net rental income to the Plan of \$37,800 exceeded Mr. Freeman's net income estimate.

Mr. Freeman also placed the fair market value of the New Facilities Property at \$270,000 as of November 17, 1980. This represented a \$15,000 increase over an earlier appraisal which he had completed in February 1980. In an addendum to the November 1980 appraisal, Mr. Freeman represented that the New Facilities Property was a multipurpose property that could be easily converted to other uses.

Commercial National Bank in Shreveport, Louisiana (Commercial) was appointed as independent fiduciary to monitor both the contribution and subsequent leasing of the New Facilities Property on behalf of the Plan. Commercial was vested with full authority and responsibility to take all actions necessary to protect the interests of the Plan. Commercial, through its President and Chief Executive Officer, James E. Burt III, represented that it had over \$700 million in assets and that it maintained no financial or other relationship with either the Employer or its principal shareholder, Mr. Truman Arnold. Commercial also represented that it had reviewed the transaction and determined that it was in the best interests of the Plan and its participants and beneficiaries.

Although the Employer was authorized to lease the New Facilities Property from the Plan until September 30, 1984, it was permitted to extend the lease for three, additional five year terms, provided Commercial approved each successive renewal option. The monthly rental payments for the New Facilities Property were again established on the basis of an independent appraisal conducted once every three years and Commercial was responsible for selecting the independent appraiser. Further, at each lease adjustment period, a lease payment could not be less than that of the preceding three year term, or less than 14 percent of the fair market value of the New Facilities Property. Finally, the Employer and Mr. Arnold agreed to indemnify the Plan against any decrease in the fair market value of the New Facilities Property below the Plan's original cost basis.

PTE 81-56 expired on September 30, 1999.

PTE 85-19 allowed the Plan, which had net assets of \$2.4 million and 182 participants as of September 30, 1983, to continue leasing the land and buildings comprising the Employer's Texarkana, Texas headquarters (the Home Site Property) after June 30, 1984, under the provisions of a new lease. Previously,

the Plan had been leasing the Home Site Property to the Employer and Transport under a transitional rule lease that was subject to the provisions of section 414(c)(2) of the Act.² However, in order to continue the leasing arrangement, the Employer requested an administrative exemption from the Department on essentially the same terms and conditions as those contained in PTE 81-56.

Mr. Freeman, the independent appraiser utilized in PTE 81-56, placed the fair market value of the Home Site Property at \$256,000 as of September 15, 1983. He also determined that the gross fair market rental value of the Home Site Property was \$33,480 per year and, adjusting such property for taxes, insurance, maintenance and management expenses, determined that the net fair market rental value of the Home Site Property was \$28,705 per year. Further, Mr. Freeman opined that the Home Site Property was a multipurpose property that could easily be adapted to other uses.

In addition to determining the fair market rental value of the Home Site Property, Mr. Freeman placed the fair market value of such property at \$256,000 as of September 15, 1983. Thus, the value of the New Facilities Property, whose lease was covered by PTE 81-56 and the Home Site Property, whose lease was covered by PTE 85-19, totaled \$566,000 and constituted 23.5 percent of the Plan's assets at that time.

As in PTE 81-56, Commercial, acting as the independent fiduciary, negotiated the lease prior to July 1, 1984. The lease was a triple-net lease having a primary term of five years with three, additional five year renewal terms that could be exercised solely at Commercial's discretion. The initial annual rental under the lease was set at \$35,840 based upon an independent appraisal and it provided a 14 percent rate of return to the Plan. Every third year of the lease term, the fair market rental value of the Home Site Property was to be adjusted by an independent appraiser selected by Commercial. Again the rental rate would be the greater of the fair market rental rate, as determined by the independent appraiser, or 14 percent of the fair market value of the Home Site Property. The Employer agreed to maintain adequate fire and casualty insurance on the Home Site Property, as determined by Commercial, with the

² In relevant part, section 414(c)(2) of the Act states that the provisions of sections 406 and 407(a) of the Act would not apply until June 30, 1984, to a lease or joint use of property involving a plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract).

Plan named as the loss payee of such insurance. Further, the Employer and Mr. Arnold agreed to indemnify the Plan against any decrease in the fair market value of the Home Site Property if it fell below its \$256,000 fair market value.

Commercial, which had exclusive oversight authority over the leasing and potential sale of the Home Site Property, concluded that the Plan should retain the property after reviewing the Plan's financial records and asset portfolio. Commercial also concluded that the terms of the lease were arm's length and found the guaranteed 14 percent rate of return to be an attractive feature of the lease. Moreover, Commercial examined the Employer's past lease payment records and financial statements. Based upon such information, Commercial discovered that the Employer had never defaulted on any rental payments and it concluded that the Employer was a responsible lessee and financially healthy.

Finally, PTE 89-5 permitted the Employer to construct, contribute to the Plan (which had 214 participants and net assets of \$5,029,632 as of September 30, 1987), and then lease from the Plan two buildings (the Buildings) located on the Home Site Property. PTE 89-5 also permitted the Employer and Mr. Arnold to indemnify the Plan against any decrease in the fair market value of the Buildings. PTE 89-5 became effective as of June 1, 1988.

Under the terms of its lease of the Home Site Property and with Commercial's approval, the Employer constructed the Buildings which connected the original office building portion of the Home Site Property at a total cost of \$556,000. The Buildings were subsequently appraised by Mr. Freeman as having a combined fair market value of \$587,000 as of October 1, 1987.

On June 1, 1988, the Employer, with Commercial's approval as independent fiduciary, contributed the Buildings to the Plan as part of its annual contribution and then leased back the Buildings from the Plan under a written lease. The subject lease is a triple net lease. It had an initial term of five years, also commencing June 1, 1988, and it has three renewal options, each of five years' duration. The initial annual rental under the lease, as determined by an independent appraisal, was \$82,188. The rental amount was also equal to 14 percent of the appraised fair market value of the Buildings.

The lease provided for fair market rental adjustments every three years, again pursuant to an independent appraisal. Although the rental payments