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RESPONSE TO THE MULTIEMPLOYER PENSION PLAN AMENDMENTS ACT OF 1980

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MR. DONALD S. GRUBBS, JR.: ERISA has had a number of effects that have gradually been seen with respect to multiemployer plans. First it established minimum funding requirements. Prior to ERISA there was an old IRS Revenue Ruling that said you had to show, in order to satisfy the permanence requirements, that you were at least meeting interest on the unfunded prior service cost plus the normal cost, during the collective bargaining period. ERISA stepped that up a bit and required amortization of unfunded liabilities. In addition, ERISA seems to have given the actuary more backbone. The actuary now has to sign Schedule B with the certification that the assumptions and methods are reasonable. Actuaries have gotten a little more disciplined in some cases in relation to these plans.

Another important effect was the effect of fiduciary responsibility on the trustees and the administrators. Data before ERISA was absolutely terrible in many of these plans. Now it may not be ideal, but in many cases it is substantially better than it used to be, as the plan administrator and the trustees have sensed a responsibility to get good data, and the actuaries have insisted upon it.

In the face of all this, some of those plans that were not previously being very well funded were amended to be put on a more sound basis. In some major plans, reducing the level of future service accruals was certainly a reversal of trends which we had seen before ERISA. In other cases there was no reduction, but with negotiated increases in contributions, part of those contributions have been used to strengthen the previous poor funding situations and smaller benefit increases have been made than could otherwise be made with those increases in contributions. And so we have seen some gradual improvement in the funding of plans due to ERISA itself.

As you all know, the plan termination provisions had a delayed effective date under ERISA, first until January 1, 1978 and then that date was pushed back a couple of times until finally it was to go into effect on August 1, 1980. As the effective date of the plan termination insurance grew closer, it was widely recognized that there were some very large problems out there. There were enormous potential losses and the question was, "Who is going to bear the loss?" Will it be the participants by having lower benefit guarantees? Will it be the employers who leave early somehow picking up their share? Will it be employers who wait towards the end before pulling out or at the actual end of a terminating plan? Will we spread those losses among all employers who contribute to multiemployer plans through increasing the tax rate, or maybe among all employers who contribute to all plans by merging the termination insurance between the single and multiemployer plans and having everybody have a piece of the loss? Or will it be borne through general revenues in some way, letting taxpayers pay the loss?

If the question was, "Who is going to bear the loss?", I found unanimous agreement on the answer. The answer was "not me". However, in trying to solve that question, compromises were made and The Multiemployer Pension Plan Amendments Act was the compromised result. It was a compromise that employees bear part of the additional loss through reduced guarantees; all multiemployer plans themselves bear part of the loss through higher premiums. In the case of an employer selling a business,

arrangements were made to decide whether it was the buying or selling employer who was going to bear the loss. Liability was imposed upon the withdrawing employer, but a number of exceptions were carved out through the de minimus rule, through the building and construction exception and through the 20-year cap. When someone manages to escape his part of withdrawal liabilities, then it is left for the remaining employers. It is a compromise. This is an extremely complex bill. When it was passed, we all went through a learning process that is not altogether complete. None of us claim to know all of that law yet.

Now we are in the implementation stage. The plans have begun implementing changes, employers have actually begun withdrawing and have begun developing policies, actuaries for the plans are trying to decide what to do, and the PBGC is developing regulations. This morning, we are going to be talking primarily about that implementation. First, we are going to have John MacDougall. John is going to look at things from the viewpoints of the plan sponsor, the joint board of trustees, and the actuary for the plan sponsor.

MR. JOHN A. MacDOUGALL: Before getting into the question of dealing with the plan sponsor, I would like to review some background. One must appreciate the position the plan sponsor finds himself in today in order to appreciate the problems that he faces. There have been some significant changes in this position over the years.

First of all, ERISA's definition of multiemployer plan, originally contained four elements plus the right of the Department of Labor to issue additional regulations. The 1980 Act reduced those elements. The Plan must be collectively bargained and must have two or more contributing employers. It was wrong to remove the requirement that no employer contribute 50% or more of the total contributions. I would like to have seen it go the other way to better preserve the principal of the multiemployer plan. It would have been appropriate to retain the requirement that benefits continue to be paid on an on-going basis despite termination of the contributing employer, but that is subject to question in view of the concepts of withdrawal liability.

Basically, the multiemployer plan is a collective bargaining concept. It was designed to provide pension benefits first and foremost to people who would not otherwise have been entitled to pension benefits. As often happens, the focus has changed somewhat. If we look at the construction industry as an example, it is fair to say that few employees in that industry today would have had a pension plan were it not for the multiemployer concept. A social need that is met by the multiemployer plan. Through it, we are pooling the retirement risk , and through the collective bargaining process, these plans are helping to maintain competition in certain industries. Employers are able to provide pension benefits to an employee without being concerned about his competition moving in and underpricing him simply because the competition does not provide for his employees. That is a most important aspect of the multiemployer plan concept.

ERISA did not recognize the need to treat multiemployer plans differently. The Multiemployer Pension Plan Act of 1980 is a step in the right direction.

Let us look at the multiemployer pension plan before the advent of ERISA. The plan was established through collective bargaining. A fixed contribution was negotiated. The risk to the contributing employer was 50¢ an hour, $5.00 a week, whatever the collective bargaining agreement required. The expectation of the covered employees was for a pension supported by that contribution. Because it placed a limitation on the underlying obligation, namely that the employer had no commitment over and beyond what he agreed to contribute under the collective bargaining agreement, the benefit patterns were perhaps somewhat more generous under a multiemployer plan than they might have been were a single employer plan involved. Overall, there was a high degree of responsibility evident by the parties involved in establishing most multiemployer plans.

I should also note that where we had overly-generous benefits or just generous benefits, this was condoned by the actuarial profession. All these plans had actuaries who were providing advice to the plans. Consequently, we cannot, as I have heard said in the past, just say, "Well, we have had irresponsible people involved here." The actuarial profession was involved and shares in the compliments and complaints, you might say, regarding the operation of these plans.

The continuation of the funding depended upon the ability of the union to negotiate additional contributions and, importantly, the willingness of the covered employees to defer a portion of his or her wage increases in order to provide these benefits. The employers received direct recognition from their employees as to the cost of benefits provided. Typically in a collective bargaining package pattern involving a multiemployer plan, the parties bargained a total sum of money. Let us say the package is an increase in total benefits and direct wages of $1.00. Of that 10¢, 15¢, what have you, is allocated to pensions. The leadership of the union must then go to the employees and justify the additional pension benefits as being worth the direct contribution that the employers are making. This procedure, unfortunately, has created many misunderstandings in multiemployer plans, especially among employees who tend to look at that contribution as being part of their wage, an account in their name. All of you who work in the multiemployer field know that this, from time to time, does create individual problems with covered employees.

ERISA completely ignored, or at least generally ignored, the concepts and underlying principles of the multiemployer pension plan. It did not recognize the risk sharing concept. It did not recognize that there was portability at least within geographical areas in a given industry. It did not recognize that there is a basic reinsurance principle involved in a typical multiemployer plan. As a plan is valued and funded, past losses, because of withdrawals, bankruptcies, etc., were, in effect, reinsured by the continuing employers. There is reciprocity involved. Unfortunately, to this day, no recognition has been made of the reciprocity characteristics of the multiemployer plan.

In one stroke, ERISA completely changed the ground rules and contractual commitments giving rise to the multiemployer plan. Instead of being committed to a fixed cents per hour or dollar per week contribution, the underlying liabilities were substantially increased by virtue of moving over to a

guarantee of benefits approach, thereby enlarging the contractual obligations of the parties.

There was also a lack of definition insofar as ERISA related to the multiemployer plan. The Connolly decision examined some of these problems. That is Connolly v. PBGC, in which the contention was made that the contributing employers to a multiemployer plan were obligated to a fixed level of contributions rather than a guaranty of benefits. Many persons in the field felt that ERISA made a grave error in changing this obligation. However, the Court held on appeal that PBGC was right, that ERISA required an effective guaranty of benefits, thereby broadening the liability of the contributing employers. In addition, we have problems with Title IV. Try explaining the 30% net worth provision to a board of trustees or explaining to contributing employers or to the sponsor that the five-year rule is really meaningless, that the knowledgeable employer can time his removal from the plan so as to avoid any obligations. Generally, the situation was unsatisfactory in terms of multiemployer plans, and consequently, we came up with The Multiemployer Pension Plan Act of 1980, a very necessary law.

This Act responded to many of the concerns generated by ERISA. It did not please those who felt that they had entered into a fixed and limited obligation. In providing more precise definitions of liability, the Act enforced the terms of ERISA and defined this obligation. The Title IV amendments focused on insolvency rather than termination. Importantly, the need of recognizing industry variations was incorporated. There is no question that recognition of the different industries was the result of lobbying, but one of the merits of lobbying is that you can get your point across if you work at it.

The construction industry, as I said earlier, is a special industry. Without the multiemployer pension plan, there is no pension in the construction industry. Those of you familiar with construction companies know that they carry just a few hard core employees and hire their crews when they work, using the union's hiring hall. The rules adopted through the 1980 Act reinforced this point of view by establishing a different set of rules for construction industry plans. It also recognizes that the trucking industry is different. It recognizes that the entertainment industry is different. Each has special rules.

The partial withdrawal provisions recognize that the retail food industry or the total retail industry is different. The partial withdrawal provisions, as you know, are much more onerous on a retail employer than on any other. If they go 35% off their contribution base, they are subject to the partial withdrawal provisions. This leads me to feel that the pragmatism of industry will require a review of the role of the multiemployer pension plan versus the single employer in the retail food industry. Is it appropriate for a large national corporation to be involved in multiemployer pension plans from area to area? The employee may not have the strong identification with the union in the corporation industry as he does in the construction industry or the longshore industry or similar industries. There is a serious question to be answered as to whether or not, in view of the liabilities that relate to the retail employers and similar types of employers, they should look ahead and review their position. They can take advantage of

the merger and transfer rules to aid and abet any necessary restructuring. This will raise vital concerns with the plan sponsor.

The plan sponsor in the multiemployer field is somewhat unique. It is a board of trustees. This board of trustees is composed equally of union representatives and management representatives, and usually there is a provision for resolving a deadlock. Some trust agreements even provide for a public member who will resolve these deadlocks. Alternatively, most plans provide for arbitration of deadlocks. The source of the trustees is, of course, the union and management. In each group you are going to have the leaders of the group. The union trustees and the management trustees represent the interests of their constituency. They will not forget this interest and under the new Act cannot avoid this, cannot ignore this. They will reflect their interests regardless of what ERISA or any other law says. Consequently, their responsibilities are going to be mixed, and the union leader who, in effect, is the spokesman for his side is going to be dumped if he is not doing a good job; the salaried association executive director is going to be fired if he does not do a good job. They have a selfish interest in this role.

In the operation of the board, before ERISA, it is fair to say without denigrating or cutting down anybody that the union was the dominant force on this board of trustees. Why? Because, as I have mentioned, the contribution to the plan was, in effect, a reduction of the employees' wages, and the union just naturally saw that they had a greater interest because it was "our money".

The employer or the management representative on the board played a more passive role. They were concerned that the plan operate in an acceptable manner. They relied very much on the professional advisors to the plan. They were content to go along and give the employees the right to control the plan. I know a lot of negative things have been said about this, but for most plans this ran very well. When you look at the bottom line, the employer or the employer representatives could always look at the fact that the Plan obligation was limited.

With the advent of ERISA, the whole concept changed. Sitting with boards of trustees, the fiduciary question was constantly raised. It was overdone. If a member of the board of trustees is constantly reminded that anything he does might put him in jail, he will be afraid to act. This was what was happening. At the various meetings they were constantly hammered with the fact that this could not be done, that they should go to the actuary or the attorney or the auditor; but that they still might end up in jail if things were not done right. This is a sad commentary on some of the professional approaches we have taken to these plans. Nevertheless, that was the way it was. Suddenly from being a kind of passive approver of things, the employer trustees, particularly, had to adopt a different approach.

Many problems arose, and the plan sponsor on the board of trustees was in something of a dilemma. They could not answer questions of concerned parties. On the other hand, some of the employees on an individual basis in many plans were becoming more militant, recognizing their rights and adding to the problems of the sponsor by requesting more and more information, more and more assistance. The Multiemployer Pension Plan Act of 1980 did not really change

that situation for the sponsor. The management trustees have become more aggressive, the union trustees more defensive. Perhaps in balance this is a good thing because it means both sides on the board are becoming more involved. It also means that we have, in my experience at any rate, more deadlocked situations. Few have gone to arbitration, but they have prolonged decisions by the board of trustees in trying to resolve problems. It has cost the fund more money to get answers designed to make the sponsor or the trustees feel more comfortable. This, in turn, has an impact on collective bargaining. While the trustees are not supposed to be concerned about their parochial interests, but are expected to be concentrating on the plans, they cannot ignore collective bargaining. Everytime they approve amendments, what is their role in handling these amendments? In this regard, the Act requires that the Secretary of Labor study the feasibility of requiring collective bargaining on both the issues of contributions to and benefits from a multiemployer plan. Perhaps some of you are even contemplating making a proposal on the RFP that is out from the Department of Labor on this. I am not sure, frankly, what will come out of this study because the issue is very basic. Those of us here are probably aware of what the real issue is. Namely, what is my liability for benefits?

For the future, the primary responsibility of the plan sponsor under the law has to be the management of the trust for the benefit of the covered employees. There is no question about this. But at the same time, is this compatible with the underlying interest of the parties? We cannot ignore that management has concerns, even though they are sitting on the board, as does the union. Is it realistic to expect the board of trustees to sit as if it were in a vacuum and manage that plan without recognizing those other concerns? At the same time, fairness and equity must be maintained among present and future contributing employers. There is a greater need for the sponsor to understand the technical aspects of defined benefit pension plans. It places a great importance on our ability to communicate to these people just what the plan is and what it entails in terms of actual operation.

How does the actuary relate to the sponsor in these situations? It is fair to say at this point that we have not come up with numerous solutions to the problems. The general approach has been to wait and see, but nevertheless, the actuary must recognize a responsibility, a relationship to the plan sponsor. In the past, we have had actuaries having a passive relationship to the sponsor. By that I mean he has been asked to provide some information, and he provides the information. There may have been a consultant acting as the go-between between the actuary and the plan sponsor which was probably more the rule prior to ERISA. In many cases he just answered questions and was at least one step removed from the day-to-day concerns of the plan sponsor. Alternatively, we may have had an active relationship, both before and after ERISA. More so after. An active relationship is a must. I do not see how any actuary can have a relationship to a multiemployer plan without being directly involved. In this relationship, he has to have a knowledge of the commitments and relationship of the parties to the trust. In the real world you have to know what these concerns are. What is bothering the various members of the board? In conjunction with this, we have to know the industry that is involved. What is the situation in that industry? What is being required of that industry? Is it a declining industry? What about the geographic area in which the plan is functioning? It can be in an industry that is alive and growing nationally, but in an area, such as the northeastern

part of the United States or eastern Canada where there is a definite decline in economic activity. The actuary should recognize the area involved and take a different position in a declining area than he would take in a growing area. The economic implications of these aspects are very important.

The posture of the PBGC places a substantial responsibility on the trustees. This is a plus. I would rather have that relationship than to have a situation which DOL seems to be maintaining, which is to say, "This is what you will do." Those of you who are familiar with the Suspension of Benefit rules which were recently promolgated will recognize that not one criticism that was made of those rules as it applies to the multiemployer area was answered. Yet, there were really good legitimate reasons for making those criticisms. Nevertheless, DOL ignored most of the criticism and just cut through their narrow path. This also places a responsibility on the actuary. The actuary must come up with answers, explain to the plan sponsor what he feels should be done, what the situation requires because he, along with the other professionals, will have to provide the argument to PBGC to justify that procedure. My reading of the law and regulations to date indicates that we have a very broad range of choices for implementing the 1980 Act as it relates to PBGC. The plan sponsor or the board of trustees perceives the actuary's responsibility in many cases to be very broad. We have to resolve for ourselves what we conceive our responsibilities to be. I have been told by a number of boards that they see us as occupying a fiduciary relationship. I know there is a difference of opinion in our profession on this, but it is important to recognize how the plan sponsor does perceive us in this regard. We may go our merry way saying that we have no fiduciary responsibility, but if some situation arises that costs someone a lot of money, we may suddenly find that we have a very important and involved interest.

We have immediate decisions which are required, and we are slower in responding. This is a lesson we learned from ERISA. We learned the hard way under ERISA that if we moved ahead and made decisions on our own, suddenly we found two years later that we have to change everything. The remedial amendment period and all was, in my judgment, a farce because after two, three or four years, we found that we could have ignored the whole thing and gotten through anyhow. This is not to advocate that we should neglect or ignore the law or the regulations, but rather that we should have ignored the remedial amendment regulations because these regulations were not based on facts that bore the test of time in terms of implementing a procedure. Both the IRS and DOL had to recognize this, and consequently, we got all of these reopening decisions so that if a plan operated properly, in good faith, it did not suffer any problem in getting approval.

The selection of the withdrawal liability method still has to be done by most plans. The sponsor has to understand why he is selecting a particular method. Generally, one could adopt the position that the presumptive method is the better or the best of the four available. In the construction industry, it is required. The other methods must be explained and, leaving aside all the outside parties' interests which we covered here, the board of trustees has to make the decision and be satisfied with the decision because this decision must stand the test of arbitration and courts of law. In making these selections, the actuary must be working closely with the administrator. I do not see how we can make an intelligent selection of the liability allocation method without having full knowledge of how that plan is being adminis-

tered, knowing what data is available, what data should be available and, importantly, the cost of handling the data. I find that the boards of trustees are becoming more cost conscious from the point of view of administration because in many cases they have seen their expenses increase two, three or four times since the advent of ERISA. It is very difficult to separate the inflationary costs from the costs needed to comply with the law.

We still have, in most plans, the need to select a de minimis rule. Generally there is a feeling, why go beyond the minimum. From a plan sponsor's point of view, there is really little justification to go beyond the minimum required under the de minimis rule, namely $50,000 or 3/4 of 1% of the unfunded vested liability.

The free look provision has generated a good deal of discussion. The free look provision from an actuarial point of view is minimal. It can be handled by giving a few years of service which will easily be covered by the contributions which will be made by an employer who withdraws after the six-year free look. However, an important point that we have to keep in mind is that the free look rule may be an important organizing tool for the union. The union can go into whatever industry is involved and start trying to sign up employees. There are certain jurisdictions, the construction industry for example, who are suffering a general decline of employment, and the affected unions are consequently moving out into other related fields to organize. The free look is going to be a tool for them. It is a way to get the employer to be more comfortable in getting into the plan. Once he is in the plan, then it is a different story.

The PBGC posture does permit thoughtful solutions. The problem with the thoughtful solutions is that we have a timing problem where somebody wants an answer, particularly in the case of a withdrawing employer. This is the biggest area of controversy in the 1980 Act. The withdrawing employer certainly has different interests than the sponsor, both current and on-going. If I anticipate withdrawing from the plan, clearly I would take a completely different approach to that plan. The actuary at this point can, in terms of advising the sponsor, operate with a reasonable degree of safety on the fact that reasonableness will prevail. Most of us feel that the law will protect you if you take a reasonable course of action. But the reasonable course of action requires that you put down footprints, that you show that there is a design in the way you select assumptions and in the way you value the plan. If the path goes all over the place, basically ad hoc from year to year, if we change the interest assumption because the union representative says he wants more benefits or if we change the withdrawal assumption, in other words, if there is not a basic documentation for everything we are doing in terms of advising a sponsor, then perhaps we are subject to a question on the reasonableness of our actions. Importantly, who benefits from the actuarial gains and losses? We know that the actual gains and losses will evolve or emerge over a period of time. From the sponsor's viewpoint, there is a serious question whether we can just give a departing employer the benefit of the gain on a withdrawal under today's conditions because the sponsor is responsible for the next fifty years or more for these people.

As a final note here, the evolution of the multiemployer plan is approaching that of the operation of an insurance company. You are finding that in many union jurisdictions, you have joint administration of the welfare fund, of

the pension fund plus a number of other plans that are subject to collective bargaining. There is one administrative office. The amounts of money being handled, in some cases, is substantial; thirty, forty or fifty million dollars. Those familar with the Western Conference of Teamsters or with Central States know that the money they are handling far exceeds that of most insurance companies. We are evolving to the point where the large multiemployer plans that can justify their existence will survive and tend to function more and more as insurance companies. As noted earlier, employers in certain industries, e.g., mining, retailing, fabricating, etc., will now be concerned with alternatives to the multiemployer plan for their employees covered by such plans. We can expect a "shake out" in multiemployer plan participation as a result. The future for multiemployer plans should be well defined by the end of 1985.

MR. GRUBBS: John has looked at these plans from the viewpoint of the plan sponsors and their actuary. A different viewpoint is sometimes held by the employers and the employer's associations and the actuaries who are engaged by them. Steve Rabinowitz is going to give us that vantage point.

MR. STEVEN M. RABINOWITZ: Before I begin, I would like to explain some of my own biases and tell you where I am coming from. I happen to be the consulting actuary for several major corporations, some of whom contribute and participate in multiemployer plans. I also happen to be the actuary for one of the largest multiemployer plans in the country. This multiemployer plan is dominated by major corporations. As John had mentioned, the justification for multiemployer plans is losing some of its validity for major companies. It is in this latter role that I am very familiar with many of the responses of the large companies that are contributing to this plan. The key is the industry involved. Although the perception of the employers (both large and small) may differ by industry, within an industry there is not all that much difference. The reaction of the employers do differ by size, mostly in the amounts of sophistication, awareness, and of resources that they can devote. The capsule answer, or actually non-answer, to the question of, "How are employers reacting to the law?" is...mixed. But there is generally a slowly growing awareness and concern. The Act is still relatively new, and its impact has not been felt yet. Mixed reactions tend to range from (a) initial unawareness of the Act and withdrawal liability, to (b) a vague awareness but total unfamiliarity with how the Act is going to specifically affect that particular company, to (c) very highly sophisticated involvement as evidenced by the heavy lobbying efforts that some large companies did on their own and in conjunction with employer associations. As those of you who have read or tried to read the Act know, all the special interest provisions have made reading the Act extremely complex, extremely tedious and very difficult to understand if you do not know the purpose of all the special provisions.

As might be expected, the employer's reactions are heavily influenced by a number of items. The first item is the degree of involvement in multiemployer plans. For example, if the contribution level being paid into the plan is rather substantial, employers are much more likely to investigate what withdrawal liability implications might be and try to do something about it. I am familiar with several companies who have actually undertaken studies on alternate withdrawal liability calculations. If the employer was contemplating withdrawal and was not happy with the methods and assumptions that the plan was using, then he may have had input into the decision of the trustees either through the employer trustee or through the association. On the other

hand, if the contribution rates are not significant, even large companies often take the old attitude of, "Well, we always considered these contributions to the multiemployer plan as just another cost of the agreement just like wages, some more cents per hour. We are not planning on withdrawing, and even if we were, it really is not easy to negotiate yourself out of a multiemployer plan." Unions are going to strongly resist withdrawals. The companies in this category tend to say, "Well, we suppose that we should find out what the amount of the withdrawal liability is, but why worry? We are not going to withdraw." There is a wide range of reactions depending upon the magnitude of the involvement in terms of the amount of contributions being paid to these plans.

The second item influencing employer reactions is the degree of control they have over the plan and the situation. Employers who are represented on the board of trustees are much more likely to be aware of the problems involved and react to protect their own interests. If the amounts involved are rather high, large companies, in particular, are going to make a much more concerted effort to be represented on the board.

The third item influencing employer reactions is their own self-interest. Employers who are planning to withdraw or who consider future withdrawals likely, even for ordinary business reasons such as a plant shutdown, or a sale of an operation, are going to be very heavily involved. These companies are becoming very concerned and often react extremely negatively and seek ways to minimize or reduce the withdrawal liabilities. These employers will tend to prefer nice high interest rates and nice low withdrawal liabilities. On the other hand, employers who have no intention of withdrawing are often unaware and not too concerned about the problem. In fact, they are sort of happy that there is a withdrawal liability. They feel that companies leaving, often smaller companies, are getting off the hook. Why should they be paying for someone else's employees? They tend to favor withdrawal liability. The employer representatives on the board tend to fall in this category.

The last item is the industry that the plan is covering. As John mentioned, there are very different characteristics for each of the industries, and these industry characteristics have a strong affect on how employers are reacting. The reactions of the employers are very slow in the construction, trucking, moving and warehousing industries because the immediate shock and impact of the law is to a large extent deferred for these people. On the other hand, for the coal industry the reactions are extremely strong. This industry and the United Mineworkers Plans are characterized by large companies, predominantly large oil and steel companies. In fact, even before the Act was passed, back in 1977, they tried to negotiate a splitup of the multiemployer plans and create individual single company plans. Their basic desire was not to pay for other employer's employees and more importantly to have a much stronger control over their own destiny and a stronger hand in the bargaining. In fact, in the negotiations still going on right now, the large companies who are representing the industry in the association still want to split up the plan. They have withdrawn their proposal to negotiate a breakup of these plans, but it appears they have succeeded in at least getting the union to agree to create a joint study group of both employer and union represetives that will investigate the legal, actuarial, and administrative ramifications of a splitup.

The coal plans are also a good example of problems the different industry groups create. Most of the participants in the plan are coal miners. However, they do cover a number of people who are construction workers who build facilities for the mines. The association for construction employers have sent a letter to the PBGC notifying them that they would like to spinoff from the UMW Pension Plan and create their own multiemployer plan. The principal reason being that this would enable them to take advantage of the special provisions in the Act for the construction industry. They cannot do that in the midst of a larger plan which is not in the construction industry. Unfortunately for the construction employers, they are not represented on the Board of Trustees of that Plan.

One of the complications with the perception of withdrawal liability is that the accountants have not made up their minds yet on what to do about this. Financial Accounting Standards Board Statement #36 indicates that liabilities for multiemployer plans should be disclosed if the amounts are determinable, whatever that means. But multiemployer plan pension liabilities were not included. In fact, they were specifically excluded in the discussion paper that the Financial Accounting Standards Board prepared for their project to rewrite the old Accounting Principals Board Opinion No. 8. Most of the accounting firms have not required disclosure of withdrawal liabilities as yet. However, I am aware of several large companies that were either forced or pressured by their accountants to disclose withdrawal liabilities or did it on their own volition. This disclosure was in the 1980 reports for their company. Also, other companies are looking at this as a potential problem which might have to be addressed, if not in 1981, then in the future. However, since the accountants have not taken a definitive stand, many employers really do not know what the amount of their potential liability is. Many employers are also not aware that there is a provision in the Act, specifically Section 4221(e), that requires plan sponsors, if asked in writing by an employer, to provide, at no cost to the employer, all the general information needed by the employer to determine his withdrawal liability. If the employer wants a plan sponsor to actually estimate the amount for him, the plan sponsor may ask for a reasonable fee to cover costs for the calculations. Awareness by employers of the withdrawal liability is starting to grow. Whether this awareness will be assisted by the accountants or not, it is incumbent upon actuaries for employers to indicate that they should at least find out what it is. Undoubtedly, many employers are going to find out the hard way. All of a sudden, someone makes a decision, "Hey, gee, this plant is not profitable. We are going to have to close it, or we are going to have to sell it." A decision is made and is implemented, and lo and behold, after the fact, they got a friendly little letter from the plan sponsor asking them to start paying the withdrawal liability for amounts that they could not imagine that they were liable for.

In terms of employers that are not currently participating in a multiemployer plan, the passage of the Act and the imposition of withdrawal liability is a very strong inducement to take a hard second look before signing the agreement that obligates them to participate in the plan. Before passage of the Act, the usual decision process undertaken before joining a multiemployer plan was to consider the customary political labor relation problems and possibly investigate the cost benefit advantage of joining the plan (based upon the employer's own employee mix). Were they getting a decent shake or would they have been better off if they had created their own pension plan, assuming

that was a viable option in negotiations? The injection of withdrawal liability has made this consideration of the cost benefit problem much more serious and much more important. Depending upon the withdrawal liability method that the plan sponsor has adopted or has been imposed by the Act, it is quite possible for new employers to immediately or gradually start inheriting old liabilities from other employers. They should examine how fast they will be inheriting or increasing their share of the total unfunded vested liabilities. Basically, employers who are aware of withdrawal liability are trying to avoid participating in these plans. In fact, most actuaries I know tend to recommend trying to stay out if you can. Industry group is a very big consideration. For some industries, this is feasible; for other industries such as the construction industry it is very difficult, maybe impossible, to provide meaningful pension benefits on your own. I am not aware of any plans, but I am sure there are some out there, that have no unfunded vested liabilities. In this happy situation, the picture changes, and if that is likely to continue in the future, employers tend to drop most of their consideration of the withdrawal liability problems. But a key point is how likely is that going to continue in the future. There are some places, such as Atlantic City, where the contruction industry is booming. If you are involved in one of those plans, you might see a very different future ten to twenty years down the road. Employers once in, even for those plans which have adopted the six-year free look, are usually faced with an extremely difficult task of trying to persuade unions, in negotiations, to allow them to stop participating in the plan. Not easy negotiations at all, and the results tend to end up with the employers providing at least the same benefits, but probably more to make all employees whole and add an extra inducement to allow the union to agree to this. Because of the problems, what we are beginning to see is that many employers are starting to want to put limits on the responsibilities of the plan trustees and not allow them to make all the decisions. This is evidenced in the Act itself by the special interest lobbying provisions. For example, the building and construction industry plans must use the presumptive method. The coal industry plans must use the rolling-five method as the presumptive method. Employer trustees or the trustees of the employer association, as I mentioned before, are generally not interested at all in protecting withdrawing employers. They do not want to minimize the unfunded vested liabilities and withdrawal liabilities and tend to shy away from what withdrawing employers would consider as the nice current high interest rates available in the marketplace today. However, all employers, including the employer representatives on the board, do not like unfunded vested liabilities, and they would prefer having a plan reasonably well funded. This has created a strong desire on the part of employers and employer representatives on the board to limit any benefit increase that will raise the unfunded vested liabilities. Stay away from increasing benefits for past service if at all possible. If given a choice in trying to decide how to spend any increase in our employer contribution rate and how to improve benefits, employer representatives will more likely now want to use all that extra contribution income to improve future service benefits. No past service improvements, and no straight across the board increases. They are much more cautious about doing anything that will increase unfunded vested liabilities. They are also more cautious about granting any past service benefits to employees of new employers entering into the plan. One of the methods, as John briefly alluded to, of constraining the powers of the plan sponsor to set benefit levels is simply to negotiate both the contribution rates and the benefit levels. In plans where that is viable (plans where there are no complicated benefit schedules based upon

contribution levels), there will probably be a trend in that direction. It allows employers to have much more control over what is going to happen. However, it can create havoc for the plan actuary.

As many of you know, not many actuaries really deal on a full-time basis with multiemployer plans. It is a special area of expertise with special problems. You will find that many actuaries who have not been dealing with multiemployer plans are still unaware of specific details of the Act. In fact, I do not know anyone who knows all of them, or who understands three-quarters of them. However, you are going to find that more and more actuaries are going to be forced to learn about multiemployer plans or are going to want to learn about multiemployer plans simply because they have to advise their clients who happen to be contributing to these plans.

One of the key problems in terms of withdrawal liability is obviously the interest rate assumption. It is almost inevitable that there are going to be disputes regarding withdrawal liability leading to arbitration and to court proceedings. This has opened up a whole new area of potential or perceived conflicts of interest for actuaries. It is not unlikely that the actuary for an employer who objects to withdrawal liability calculations, assumptions, or amounts, works in the same firm as the multiemployer plan actuary. Situations such as this obviously require full disclosure and maybe even what the bank trust departments do in terms of creating Chinese Walls between these two actuaries. For example, in my firm I am not allowed to speak to any other Mercer actuary or consultant regarding the multiemployer plan that I am an actuary on. The only information I could give is the same information that I would give to any one of you who happened to call me up and ask me a question. If it is public information, I could disclose it. Nothing else.

Obviously, the Act has created a whole new market for additional services for actuaries and not only for actuaries of multiemployer plans. For a plan actuary this new Act would be somewhat similar to ERISA. Initial bursts of activities for services and advice needed by trustees and administrators, winding down after a period of years, and continuing services at higher levels than pre-Act days. For actuaries of employers, it is more likely the services will start growing rather slowly. As we educate our clients and as our clients become more aware of the implications of the Act, additional services to help them investigate what they got into will occur. After this initial activity, it is going to die down. Once employers are comfortable or feel they know about their plans, there really is not too much to do on an ongoing basis. However, in special situations, mostly negotiation situations, preexpiration of a bargaining agreement or sale of business, additional actuarial input and advice will be needed. Because of the potential for disputes, there is probably a need for a whole new area of actuarial services, that is, third-party actuaries, to resolve the disputes between the plan actuary and the employer actuary and assist arbitrators.

The different withdrawal liability methods produce extremely different amounts and very difficult patterns of withdrawal liabilities for the employers. If anyone happens to know of a plan which uses the direct attribution method, I would really be interested, because I just cannot believe that any plan is going to incur the extra expense to use that method even if they happen to have, which is very unlikely, data to permit them to use that method. Most plans are sticking with the presumptive method for one or two reasons

or maybe a combination of both reasons. Either from the desire to attract new employers or from inertia. Basically, the board of trustees cannot come to a conclusion on whether to switch to the modified presumptive method or to the rolling-five method, so they leave things alone, and they end up with the presumptive method.

In terms of withdrawal liability calculations themselves, the interest assumption is the critical item. I have had companies come to us who basically want calculations of withdrawal on a whole range of assumptions because they may want to lobby with their association or may want to dispute the amount that the plan is imposing upon them. The herd instinct range of interest assumptions tends to be the valuation rate assumption on the conservative and low end and the PBGC plan termination rates for single employer plans on the high end. It would be very interesting to see what the PBGC is going to come up with in the regulations on what they consider reasonable actuarial assumptions for withdrawal liability calculations. I do not envy PBGC's task in producing that regulation. The only other item that tends to create disputes and concern is the value of assets used in withdrawal liability calculations. Is it market value or actuarial asset value? The general preference among actuaries instead seems to be market value because it is consistent with the disclosure and FASB information. But a strong argument could be made to use actuarial asset value, since you are supposed to do these calculations on an ongoing plan basis.

MR. GRUBBS: Steve mentioned that the actuary may get involved in arbitration. At times we may even be an arbitrator. If you ever get into that role, I would suggest getting a book called How Arbitration Works by Elkouri and Elkouri, published by The Bureau of National Affairs Inc.

The third member of our panel is Nell Hennessy. Nell is an attorney with the PBGC.

MS. ELLEN HENNESSY: Steve will be happy to hear that I have the unenviable task of writing the regulations on actuarial assumptions which I will discuss briefly later.

The Multiemployer Act specifically mentions slightly more than 60 regulations that the Pension Benefit Guaranty Corporation has to write. We, in our own inimitable style, of course, immediately issued a regulation that was not required. Like a good insurance company, it was the new premiums. Then we moved on to more serious business. The first regulation that touches on the multiemployer plans, which is of some importance to the actuary, dealt with the first step in calculating withdrawal liabilities, the methods for allocation of unfunded vested liabilities. On January 19, we issued a regulation that provided some adjustments to the four statutory methods for allocating unfunded vested liabilities that the plans could adopt without coming to PBGC for approval. That regulation also set up a procedure for obtaining PBGC approval of alternative methods devised by the plans. So far we have received about a dozen alternative methods. Most of them are minor variations of the statutory methods, mostly adjustments to the allocation fractions. Some of those may later be incorporated in a final regulation that we may see after this first flurry. We may see more methods as the actuaries and the plans and the employers have an opportunity to study the Act and get a better handle on it, but Steve's evaluation is probably correct, that most plans are going to remain with the presumptive method or some variation of it.

The second multiemployer regulation was issued only last week. John briefly touched on the change in the definition of multiemployer plan. We issued a regulation for those plans that have previously been categorized as non-multiemployer plans, that is, plans that had a 50% or more contributor. Those plans have until September 26, 1981 to elect to remain "single employer plans" (non-multiemployer plans). If any of you are advising those plans, you should make sure that the plan sponsors are aware of the opportunity to make the election. What we are kind of afraid of is that those plans, because they were not multiemployer plans, will think that the Multiemployer Act does not apply to them and so will miss the deadline. They will not be able to make the election after September 26.

We have several regulations that are pretty well developed which are not in final form and which have not been approved by the Board of Directors. What I am going to tell you is basically the staff recommendations to the Board of Directors. The first one has to do with mergers and transfers between multiemployer plans. As you probably know, ERISA established Section 414(l) of the Internal Revenue Code under which the IRS has mandated schedules of benefits for single plan mergers to insure that on a termination basis, participants are protected to the same extent that they were before the merger or transfer. Those rules were never applicable to multiemployer plans, although PBGC had the authority to apply them. In the Multiemployer Act, Congress permanently excluded multiemployer plans from Section 414(l) and substituted instead four new requirements. The first requirement is notice to the PBGC 120 days before the merger or transfer. This is different than the timing of the required notice to the IRS under Section 414(l) which may cause confusion. The second requirement is that there be no reduction in accrued benefits. We have toyed with the idea of issuing some elaboration of that rule and decided that we really did not want to get into a situation where we were issuing rulings or opinions or anything on accrued benefits that might conflict with the IRS. What we have done is simply require that the plan that is going to survive the merger (or any plan to which benefits are to be transferred) have a plan provision that says that no accrued benefits will be reduced as a result of the merger. Accrued benefits will have the same meaning as under the Internal Revenue Code, but PBGC will not be making determinations about what is or is not an accrued benefit. That way we will not have any interagency conflict.

The third requirement for mergers and transfers is that there be no reasonable expectation that a participant's benefits will be cut as a result of plan insolvency. One of the more controversial aspects of the Act was the provision that requires a plan to reduce benefits as soon as it becomes insolvent, down to the PBGC guarantee level or a higher level if the plan has assets to support that level. We hope that the merger regulation will provide a couple of safe harbors for mergers and different safe harbors for significant transfers that will enable the actuary to certify to the fact that the plan is reasonably expected to be solvent. If the merger cannot satisfy one of the plan solvency tests, the regulation will permit the actuary to come to the PBGC and demonstrate by some other method that there is no likelihood that benefits will be reduced.

The fourth requirement in the Act for mergers between multiemployer plans requires a valuation in the year preceding the merger. The valuation date was set as the last date of the plan year ending before the merger and that

caused problems for people who valued it on a different date. We have made it any date in the plan year preceding the plan year in which the merger occurs. We have also loosened the valuation date requirement for mergers so that the year before valuation will only be required for spinoffs and other significant transfers. It will not be required for mergers. Plans involving mergers can rely on the last actuarial valuation done for funding purposes. As a practical matter for some plans, that will not make any difference because they are already doing annual valuations, but for those plans that are not doing annual valuations, it may be of some help.

The one area of some conflict involving mergers and transfers is the authority of the PBGC to determine that mergers and transfers comply with Title IV. The PBGC determination of compliance with the Title IV requirements for mergers and transfers will mean that there can be no possibility of a prohibited transaction. Essentially, we are going to be issuing prohibitive transaction exemptions. Again, to avoid getting into conflicting opinions, we are not going to determine whether you would have had a prohibited transaction absent our compliance determination. We will just determine whether or not you have complied with the Act, and if DOL ever comes after you, you can say, "Look, I complied with the Act and PBGC said so." The compliance determination was designed for situations in which the merging or transferring plans have common trustees. We do not know whether DOL would have considered those prohibited transactions, but now you are not going to have to worry about them.

The second regulation that we are fairly well along with deals with an area that is becoming increasingly controversial and that is withdrawal liabilities when there is a sale of assets. Steve briefly alluded to the fact that it is difficult for an employer in a plan to bargain out of the plan. A more common situation in which the withdrawal liability issue comes up is a sale. This is one area where lawyers who are involved in this transaction are still somewhat remiss. They suddenly become aware of the withdrawal liability implications within days or weeks before closing on a sale. We have had people call and say, "Where do these requirements come from?" That was a little bit understandable in October or November of 1980, but we are still getting those calls. You may get calls saying, "We have a closing in so many days, tell us what our liability is."

The Act, however, provides that in a sale of assets, the seller will not be liable for withdrawal liability if several conditions are met. The first one, and the most important and the one that cannot be waived by anybody, is the requirement that the purchaser become liable for substantially the same number of contribution base units: hours worked, tons mined, whatever basis that contributions are required to the plan. The second requirement is that the purchaser post a bond equal roughly to one year of the seller's contributions to the plan. PBGC has the authority to waive that requirement. We are going to issue some blanket waivers, situations where purchasers do not have to get the bond. We are going to issue some guidelines for other situations where either the purchaser or the seller can come to PBGC and ask PBGC to waive the bond. The third requirement in order to take the seller off the hook for withdrawal liability is that the seller has to remain secondarily liable. PBGC has the authority to waive the requirement that that secondary liability be stated in the contract of sale, but it does not have the authority to waive the liability itself. All of the sale of assets rules are in Section 4204 of ERISA as added by The Multiemployer Act.

There is also a provision that if the seller is liquidated within five years after the sale of assets, the seller has to post a bond or escrow equal to what the seller's liability would have been if the purchaser had not stepped in. We have discovered from talking to bonding people and from sellers who have called us that the seller's bond is virtually unattainable. No one will bond. The bonding people tell us that they are not in the business of risk at all. For liquidating sellers, you have nothing but risks unless you have a corporate seller that is liquidating to one or two shareholders who are willing to assume personal liability, but that is usually not the situation. PBGC does not have the authority to waive the seller's bond, but we are going to issue an interpretation which should come out early next week. If things went well at the office today, you will find it in your BNA next week. We are going to issue a second multiemployer bulletin, and it is going to allow the plans to waive the seller's bond if the plan determines that it has adequate security. [Note: Multiemployer Bulletin No. 2 was issued on July 2.] Either a third-party, the purchaser for example, steps into the shoes of the seller completely and assumes all the seller's liability, or the plan otherwise determines that it has adequate security. The plan can relieve the seller of its requirement to escrow the amount of the liability, or it could set other terms and conditions. It could limit the amount that has to be escrowed or work out some other arrangement with the selling employer.

The question that is of most interest to the actuaries is, "What are the appropriate actuarial assumptions to use to calculate withdrawal liabilties?" That regulation is nowhere near as final as the two that I have just described to you, so everything that I am going to tell you is up in the air at the moment. We do not think generally that the termination rates are appropriate for calculating withdrawal liability because, as Steve mentioned, the calculation of unfunded vested liabilities is supposed to be made on an ongoing plan basis. There is a presumption in the Act, if the plan uses either its own funding assumptions or PBGC assumptions, that the calculation is correct. We think what will happen if we do not issue a regulation is that the plan will use its funding assumptions or somewhat of a higher interest assumption, and the withdrawing employer will come back arguing for the termination rates. We do not know what method we are going to use, and we would like as much assistance as possible. We have had one suggestion that involved valuing assets one way and then the unfunded portion a different way. We are not leaning in that direction, but we are taking it into consideration. If the members of the Society, either individually or collectively, have views on the appropriate method for calculating unfunded vested liabilities, we will be quite happy to hear from you. You can address any comments that you have to the Policy and Planning Staff at PBGC. If you call me, I will listen to you, but I am not an actuary. If you want to talk to an actuary, call our office and ask for Vincent Amoroso who is the head actuary on the Policy and Planning Staff and a Fellow of the Society. Vince is working on the actuarial assumptions regulation. At the moment, we are leaning towards valuing assets at market value and using the PBGC mortality assumptions. If anybody has any problem with this, let us know.

The other area where we are doing a lot of work, but inconclusively, is a program which we are mandated to establish by May of 1982 to insure against uncollectible withdrawal liability. This program is basically similar to the Contingent Employer Liability Insurance (C.E.L.I.) program that was repealed by The Multiemployer Act. The uncollectible withdrawal liability pro-

gram is voluntary and must be funded entirely from premiums paid by the plans that elect the coverage. It would have no reserves, and it would have no borrowing power to draw against the Treasury. When we described those conditions to the consultants that we called on, they laughed. The actuaries for insurance companies said, "You cannot insure bankruptcy." The credit insurance people said, "You can insure bankruptcy but not under those conditions." We are in the process of trying to develop some kind of a program. The closest existing insurance model that we have is credit insurance. It may turn out that we can develop a program that is like that. To make credit insurance work, credit insurers insure accounts receivable, and a company would come to them and say, "What will it cost to insure my accounts receivable?" They will insure some of the accounts receivable but not all. They will insure some of the accounts receivable for less than the full amounts receivable based on the financial worth of the company that owes the accounts receivable. They will insure some accounts receivable fully. One of the areas that they will not insure, generally, is construction. They will not insure an accounts receivable from a construction company because construction companies have useful lives averaging something like five or six years. They are simply not willing to take that risk.

One thing that we do not know about the uncollectible program, and one thing the consultants do not know and would love to know, is if we develop a program, whether anybody out there will buy it, at any price. Don described to me a program which someone asked him to develop, an insurance for people who are going into the hospital. He figured it out. Even nervous people going into the hospital, unless they thought they were dying, would not be willing to pay the premium. We think that is going to be the result with our uncollectible program. We have to guard against the risk of attracting only unhealthy plans. What might happen is that if we establish the program, the premium would be so prohibitive that even unhealthy plans would not be willing to divert their assets to buy this insurance.

Since the other two panelists mentioned this, I will say that I am among the group of people who should know everything that is in the Act. I do not know anyone who knows everything in the Act.

MR. GRUBBS: Are there any questions for the panel?

MR. PAUL GEWIRTZ: I have an observation and possibly would like a response from both Steve and Nell. We are aware that the most controversial areas are the interest rate assumptions and the calculations of withdrawal liabilities, but we also ought to be aware that the calculations are not sitting in a vacuum. The accounting profession also reviews unfunded vested liabilities, also not on a termination basis but rather on an ongoing basis. It would seem to me that the sum of all withdrawal liabilities in a plan must necessarily equal the total unfunded vested liability of the plan. It is just a matter of how you prorate it. If the plan itself were required by the accounting profession to use current high interest rates, and if that is what the Academy of Actuaries supports, if it eventually supports an approach, I wonder how we could at the same time support yet a different interest rate, namely an artificially low 4% or 5% interest rate, simply because the plan happens to be using that rate for funding purposes? How do we reconcile the different consumers of our numbers and come up with a consistency that makes sense?

MS. HENNESSY: That is going to be a problem. We have not heard from anybody who is arguing for using current high interest rates. Employers, if they consult an actuary, will be told that the current high interest assumptions have no relevance for funding over a period of years. The real question is going to be, "What do you assume is going to happen after this period of high interest rates?" Most employers will not be successful legally. They will not be successful with anything higher than the PBGC close-out rates which are based on current insurance company rates. Between that range and the plan's funding assumption is the area where you are going to have the dispute.

MR. RABINOWITZ: I basically agree with you. I have a lot of problems with using a different assumption for withdrawal liability than is used for funding purposes. Basically, why should a withdrawing employer contribute on a different basis than employers that are still in the plan? What is going to happen, and I am starting to see it, is that plan actuaries are going to start raising the valuation interest rate assumption. If it is too conservative, it is just too open for challenge.

MR. MacDOUGALL: I would like to add something to that. There is a premise that the multiemployer plan is using a very conservative interest rate. The reverse is true. Among all plans, the multiemployer plan tends to use a higher interest rate than the single employer plan which minimizes this concern.

MR. RICHARD DASKAIS: I wanted to make sure that Ms. Hennessy heard from at least one actuary who does believe very strongly in using current interest rates that reflect current interest rates. The withdrawing employer is not getting away with anything if the liability is calculated on current interest rates, and his amortization is similarly based on that same high interest rate. There is no reason for the withdrawing employer to subsidize the continuing employer. The actuary probably has his head in the sand and is very conservative in the ongoing funding.

MS. HENNESSY: One of the problems in the Act is that the amortization period is not based on the same assumption used for calculating the withdrawal liability. The Act mandates that the amortization period be based on the funding assumption and that goes towards the side of using the plan's funding assumption.

MR. RABINOWITZ: The only real solution is having realistic valuation assumptions.

MS. HENNESSY: The strongest argument for using an interest assumption other than the funding assumption is the argument that the actuary is not using an explicit interest assumption. To avoid the argument that the actuary is hedging his interest assumption to reflect turnover or some other variable that he cannot control, the actuary has to leave his footprints in cement.

MS. MARGARET PEARSON: What do you think of the plans that are adopting half-way measures on expressing the choice between the funding interest rate and the PBGC assumptions; who would do something like take all of the retirees and purchase annuities for them and write that off? I have seen this happen on a few plans now.

MR. RABINOWITZ: There is a comfort range. Somewhere in the middle is one way of doing it. There is no one real answer. It is realistic from the plan's viewpoint to immunize or buy annuities, so it is a compatible approach in terms of plan sponsors.

MR. CHARLES V. SCHALLER-KELLY: I would like to make two points. One is that it would be highly desirable that whatever the unfunded vested liabilites are that are mandated for purposes of the withdrawal be also the same as the ones which can be derived from Form 5500. Could it be possible that an employer might not be interested in revealing to the plan sponsor, who after all must give information to the union? The employer might not be interested in asking those kinds of questions about what your unfunded vested liabilities would look like upon withdrawal. It would sound as if he is going to withdraw. What he would like to be able to do is to look up a form which has to be filed with the government somewhere. I do hope that the two figures will be mandated to be the same in some way.

The second point is that we can talk about ongoing assumptions and termination assumptions. There is a good argument saying that the two of them should be different. Usually, or in many cases at least, if the employer withdraws, it is likely that the employees that he leaves behind may quite possibly not benefit from all the increases in benefits which subsequently occur. If that is the case then you are really not in an ongoing situation. If you are not in an ongoing situation, then you do not have to worry about the yield you can obtain on the normal cost. You only have to worry about the yield that you can obtain on the past service contributions which you will make in the future. That has an affect on what kind of interest rates ought to be considered for valuing these unfunded vested liabilities.