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PENSION PLANS—PROVISIONS FOR TERMINATION OF PLAN

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"The essence of the reserve concept . . . lies in a running presumption that the plan may terminate."*

INTRODUCTION

DESPITE the title and quotation above, this paper is not presented in a spirit of pessimism; it is not intended as a companion piece to the gloomy prediction of an economist a few years ago that "the one thing that is absolutely certain about the pension contracts of the past few months is that they will not stay in force very long."[1]

Nevertheless, with over 15,000 funded pension plans in operation, mostly established in the last 10 years, there are bound to be numerous cases of termination of plan for one reason or another. Over future decades, plans may terminate by business necessity, by union-management agreement or disagreement, by dissolution or merger of companies, by encroachment of social security, etc. A plan may terminate, or splinter, in respect of a part of its coverage, by the closing of a plant, by the dissociation of a subsidiary, by the withdrawal of a union group, by separation of a once common plan into hourly or salary categories, etc.

Present day pension plans, approved for favorable tax treatment by the Internal Revenue Service, are not terminable at will, without chance of penalty, and the funds of these plans are irrevocably beyond recapture by the employers, except through the euphemism of "actuarial error" (which arises if the actuary has been conservative and the reserve can more than meet all demonstrable liabilities of the plan). The termination of a plan and the effect of that action on benefits, conditions for receipt thereof, allocation of fund or annuities and distribution thereof, are very important aspects when the time arrives. At the inception of a plan, termination problems seem remote and are often given insufficient attention; at the end of a plan, the termination provisions are "all there is" and assume great weight, particularly to the individuals involved.

Among the broad plan types, *viz.*, (i) (*a*) insured individual policy plans

* American Statistical Association *et al.*, Panel Meeting—"What Is Actuarial Soundness in a Pension Plan," p. 7; Chicago, Dec. 29, 1952.

[1] "The Mirage of Pensions," Peter F. Drucker, *Harper's Magazine*, Feb. 1950, p. 31.

and (*b*) insured group permanent plans, (ii) insured group annuity plans, (iii) insured deposit administration plans and (iv) noninsured trust fund plans, the first two types (i) and (ii) carry the nearest to "built-in," rigid termination specifications and these will be discussed only briefly herein. The latter two types, (iii) and (iv), are likely to have less definite—even wholly indefinite—provisions with respect to termination of plan and these will be treated at some length in what follows. While the first two would be easier to handle, the latter two would provide more flexibility and, perhaps, equity, according to one's views.

In the termination of a plan without the built-in automatic provision, many parties have a hand or interest, to varying degrees. First, of course, are the individuals covered by the plan being discontinued; the others—employer, any pension committee, employee unions, insurance company or trustee, legal, accounting and actuarial counsel, and the Internal Revenue Service—may, some or all, become involved.

Outside of the built-in provisions for termination of plan, it would seem that the least difficulty and chance for misunderstanding or dispute would occur in respect of plans which set forth, directively, in carefully written detail, the steps to be taken upon their termination. In general, three varieties of termination provision are found for pension plans. One is very general and indefinite, *e.g.*, where the interests and allocations are "to be determined" by the employer, the trustee, a pension committee, the actuary, or a combination thereof, without any details on the "how" of doing it. An intermediate form of provision—still general, but more indicative—is similarly vague but the determination is qualified by calling for "in an equitable manner" and/or "on an accepted actuarial basis." The third variety is that which purports to be definite in setting up employee categories of priority or allocation ratios for the benefits or fund.

For any plan containing one of these directive termination provisions, *i.e.*, where there is not a "built-in" automatic clause for paid-up annuities, the actuary—insurance company or consulting—is apt to be placed in the position of arbiter for values and decisions. The problems of termination of plan turn, in the last analysis, on the wording in the applicable provisions of the documents involved—plan, insurance contract, trust indenture, union agreement, etc.—and might thus be left to the lawyers. Since the actuary will become involved in any event, the purpose of this paper is to examine some of these potential problems. In doing so, I deal with termination provisions of the sort which have come to my attention; obviously with the thousands of plans extant, there are other varieties beyond my ken. Because of the recent proliferation of plans—particularly trust fund plans—this subject is, I believe, a new field in actuarial literature. I am hopeful that those discussing this paper will enlarge the treatment of it.

Some parts of the paper, and of the comments in the Appendix, deal with seemingly trivial points, but it is my thesis that trivial points can become important fulcrums in turning substantial values one way or another when actual discontinuance of plan determinations must be made.

1a. TERMINATION OF PLAN—INDIVIDUAL POLICY TYPE

There are many thousands of pension plans written through individual policies on employees. Mostly, these plans have an intermediary trustee to hold the policies and any incidental moneys or auxiliary invested funds. These plans are used principally among small-sized firms and will, consequently, experience a higher termination rate (of plan) than those for larger enterprises.

In the typical plan of this type there is apt to be early vesting of the policy if the employee leaves the company, and this simple transfer of ownership in the policy is merely carried one step further if the plan terminates; that is, all policies vest at termination of plan and are then transferred to the employees, whether or not this coincides with the termination of their employment or the closing out of the business. A sample termination of plan provision from an individual policy pension trust plan is given in Exhibit 1*a* of the Appendix. This transfer of policies, automatically including protection of employee contributions, if any, about completes the job, and the transferees are free to continue premiums themselves or proceed under nonforfeiture policy options. If there is incidental cash with the trustee, this may be applied to expenses, divided among the transferees in some way or returned to the employer, according to the provisions of the trust or the decisions of the empowered party.

There is one possible obstacle to this simple solution. This could apply for plans terminated during their first ten years. Through Mimeograph 5717, the Treasury Department (Internal Revenue Service) requires approved plans to place a limitation on distributions, in event of such early termination of plan, so that higher-paid employees may not receive full distribution. If this limitation is applicable, full transfer of certain policies would be curtailed and the values of the excluded portion of such policies would probably be cashed out and distributed in some nondiscriminatory form to employees not so limited. If the manner of allocation for this purpose is not spelled out in the trust, actuarial determinations may be called for and some of the later problems discussed herein may be encountered.

Where individual policies are only a part of the trust, with an auxiliary fund also constituting a substantial component of the trust, the termination of plan would bring this trust fund into a dispositional status—with or without definite provisions therefor, depending on how the plan was drafted—similar to that for the wholly trust fund type of plan taken up later herein. Hence, the trust fund type, section 4, may be referred to in connection with this auxiliary fund arrangement. It might be, however, where a plan of this type terminated, that the auxiliary fund would be applied to convert the policies, to the extent possible, to a form providing for deferred income; for instance, if the policies of the pension trust had been of the Ordinary Life form (with intention to convert—original age basis—at retirement, to a Retirement Income form), this conversion could be carried out at termination of plan to the extent possible, with the consequent Retirement Income policies being immediately placed on paid-up, or maintained in force by the employees (the new owners) paying the premiums thereafter, or indeed, surrendered for cash.

An individual policy pension plan may terminate in respect of part of its employee coverage while continuing in force for part.[2] For example, if a subsidiary becomes dissociated from the principal company the plan, per se, ends for the employees of the subsidiary. The subsidiary company, or its new acquiring company, may, of course, set up an identical plan and trust into which the previous policies of the affected employees could be brought without the transfer to the employees of policy ownership (if proper steps are taken); or such subsidiary or new company may proceed with no plan, or with a completely different plan, allowing ownership of the previous policies to pass to the affected individuals. In any event, the individual policy type of plan would be susceptible of handling in this regard with a minimum of actuarial determination of equities and, barring any necessity for securing individual waivers of immediate ownership in policy values, with ease in the administrative implementation of the plan's termination or its replacement elsewhere.

1*b*. TERMINATION OF PLAN—GROUP PERMANENT TYPE

Most of the discussion above for the individual policy type would be applicable, with the obvious modification of terms, to a pension plan implemented in whole or in part through a master group permanent contract. These contracts, like the individual form, may either be set up initially to provide the whole pension or they may be established in con-

[2] This does not refer to "partial termination" in the sense of reducing, or canceling out a part of, the benefit formula across the board; such action would call for amendments to the plan which, in themselves, would contain provisions for the treatment of any portion altered or canceled.

junction with an auxiliary trust fund (or deposit administration account). The former basis would use retirement income provisions (*i.e.*, with insurance) and/or retirement annuity provisions (*i.e.*, without insurance) and employee certificates, while the latter would use provisions and certificates on a lower premium form, supplemented by the auxiliary fund.

At the termination of a group permanent plan, each nonretired employee would receive evidence—a policy or special certificate—that reduced paid-up coverage had been vested in him, of the form which had theretofore been carried for him under the plan. Unlike the individual policy method, however, he could not readily continue to keep the full amount in force by meeting the subsequent premiums himself. If his paid-up insurance were less than some minimum statutory amount (*e.g.*, $2,000) he would generally have a conversion right for the balance.

Sample termination provisions for a group permanent plan and contract are given in Exhibit 1*b* of the Appendix.

2. TERMINATION OF PLAN—GROUP ANNUITY TYPE

In the traditional insured group annuity type of pension plan, the governing provisions of the plan are contained definitively in the master contract between the employer and the insurance company. These provisions in simplified form are communicated to the employees through the individual group certificate and are usually outlined, in popularized language, in an employee booklet. It is generally stressed that if the plan terminates, an employee's accrued unit benefits for service since the plan's inception will have been purchased and will stand in paid-up status for him pending attainment of retirement age. To the extent he takes a cash refund of his own contributions, if any, the vested paid-up deferred annuity would be reduced.

As far as the employee is concerned this makes for a simple straightforward winding up of the plan in respect of the accrued *current service* benefits—"what has been purchased, remains purchased."

Usually the position of the employees with respect to past service credits is equally definite in the master contract, though perhaps less clear in the descriptive material given the employees. The employer generally contributes for the past service cost over a period of years and it is common for the insurance company, in accordance with the terms of the particular contract, to apply these contributions as premiums for the purchase of past service annuities according to a scheme of priorities decided upon with the employer at the plan's inception.

Sometimes the past service is purchased by starting with those nearest retirement age and working downward, each senior employee's full past service annuity being met before proceeding to the next employee. Sometimes, a pro rata method is used, giving greatest weight to the oldest employees, but purchasing only partial past service annuities each year down the line by age on some graduated scheme. If all past service has been purchased for all employees by the time the plan terminates, no problem exists. If, however, the plan terminates prior to such full purchase, then certain employees, while obtaining all of their accrued current service rights, will not enjoy their past service credits, or will enjoy them only partially, to the extent then purchased. This nonfulfillment of past service purchase could include many younger employees and some ex-employees who had met the conditions for vesting, but could hardly include any already retired employees, whether early or normal retirements, since the usual insurance company requirement is that full purchase be accomplished before annuities commence. Thus, even for past service, there is no actuarial problem at termination of the group annuity plan—the rule of "what has been purchased, remains purchased" prevails.[3] A sample termination provision is given in Exhibit 2 of the Appendix.

From this brief review of the group annuity type it appears that no serious actuarial difficulties should arise in connection with allocations of employee interests when such pension plans are terminated. A similar procedure would apply if only a partial termination of coverage takes place in such instances as were mentioned above in the section on individual policy plans; that is, paid-up deferred annuities could carry along with the dissociating group.

Special problems may arise if the group annuity is discontinued, as the funding vehicle, with the plan it implemented being carried on under another form of funding medium, such as under an insured deposit administration contract or with a trustee under a trust indenture. Several variations of treatment of the antecedent group annuity contract would be possible here, ranging from the fully-paid-up condition described above to a complete metamorphosis to the new form, with transfer of reserves or other values from the group annuity to the new vehicle. Such latter steps would almost certainly involve various amendments to the antecedent plan and would necessitate special provisions in the substitute plan, with possible employee waivers, or choices, beyond the purpose of this paper to explore.

[3] The author has seen, however, one or two instances of group annuity contracts which set up an order of making past service annuity purchases as long as the plan remained active, but provided that if it terminated these purchases would, in effect, be "unmade" and a different order—broader sharing—of purchase would be substituted.

3. TERMINATION OF PLAN—DEPOSIT ADMINISTRATION TYPE

The insured deposit administration type of master contract for a pension plan may be of two main varieties. In one—let us call it Type I—the master contract contains the definitive specifications of the plan, relating to eligibility, service, benefit formula, retirement ages and conditions, vesting, separation from service, contributions, etc., as well as what happens if the plan terminates. In the other variety, Type II, the master contract is ancillary to a separate plan document and, like many pension trust-fund indentures, includes only by reference the plan itself.

Under both of these types, termination of plan automatically brings about a discontinuance (in an active sense) of the master contract. But the reverse, discontinuance of master contract, brings about automatic termination of plan only in the case of Type I. Under Type I, if the plan were to be continued elsewhere—using some other funding vehicle from then on—a complete new plan document would need to be drafted and pass through such channels—Internal Revenue Service approval, possible stockholder approval, etc.—as the employer's counsel might decide. For Type II, however, the plan could readily continue unchanged under a new funding vehicle from then on. This paper, however, is principally concerned with termination of plan, whether under a Type I or Type II variety of deposit administration contract.[4]

Under Type I, the chances are that the provisions for termination of plan will be quite definite, perhaps of the group annuity sort, with the previously unallocated deposit fund—active lives—being used (allocated) to purchase deferred annuities for accrued current service credit (definiteness of formula permitting) and the balance applied for past service annuity purchases to the extent, and in the order, prescribed in the contract. The treatment of any excess in the fund over that needed for these purposes might also be allocated, by some indicated rule in the contract, for the benefit of employees, or might become a reversion to the employer as an "actuarial error." An alternate to this use of the deposit fund for deferred annuity purchases could be to maintain the fund with the insurance company on an unallocated basis after the plan's active status had terminated, until each employee's actual retirement age is reached and then to apply it to the purchase of the appropriate annuities representing service credits up to the time the plan had terminated (this alternate

[4] The discussion will assume termination of such a plan while there is still an unallocated fund; if the D.A. contract (including the "immediate participation" variety) discontinues because funds are exhausted for further purchase purposes, it would constitute no termination problem, all the money having been translated into fixed annuities for retired lives.

might not be feasible if termination of plan is owing to the employer going out of business).

A sample provision for a Type I deposit administration contract is given in Exhibit 3 of the Appendix. The point is that special decisions or actuarial allocations would be considerably minimized for termination of plan under the Type I deposit administration contract from those which could arise under the Type II form of contract or under the trust fund form of plan discussed later.

The Type II deposit administration contract may rely at termination of plan on the provisions of the separate plan document for the governing language in that connection. For instance, the contract may say that, unless the employer takes steps to transfer it elsewhere, the fund will stand to provide the premium consideration for purchase of annuities as retirement age is reached, the amount of such annuities being for service credits up to the time the plan was terminated.

The insurance company in this Type II contract (and this is also true for Type I) makes no representations of guaranteeing the adequacy of the fund while the plan and contract are in force and, hence, makes no representations as to the adequacy (or propriety of any allocations) of the deposit fund when the plan terminates. In general, the insurance company, under Type II, merely implements the provisions of the plan document as interpreted and directed to the insurance company by the plan's administrative authorities. Since the situation here is very close to that of the trust fund plan below, with the insurance company standing in locus of the trustee, the termination problems may more conveniently be discussed only once, under the trust fund section 4 below. These problems also include the question of partial termination of employee coverage and the dissociation of subsidiaries or other groups.

Before leaving the deposit administration type of plan, mention should be made of its facilities in the event the plan is not terminated but is changed to a different funding medium, such medium being either a substitute deposit administration contract (such as from Type I to Type II, and with either the same or a different insurance company), some other form of group annuity contract, a noninsured trust fund plan or any combination of these. In many deposit administration contracts, a provision appears allowing for a transfer (usually in instalments) of the minimum guaranteed fund (active lives) on an unallocated basis to a new medium. If said transfer is to be outside of the insurance company itself, a transfer charge, such as 5% of the fund, is imposed; some charge seems necessary to cover past expenses. If employees have contributed under the plan, there may be further limitations on the transfer conditions.

4. TERMINATION OF PLAN—TRUST FUND TYPE

Pension plans implemented through trust funds (with corporate or natural person trustees) may, parallel to the two types of deposit administration contracts, either carry the plan provisions as an integral part of the trust indenture or set forth the plan separately from the indenture with only reference to the plan being made therein. Which format for plan and trust is used, however, does not dictate the nature of the termination provisions. In either, the provisions may range from being wholly indefinite to being precisely definite. Furthermore, under either format, the trustee may or may not be made a party to the termination decisions and computations. When the trustee is not a party, the trustee will merely carry out the instructions of others for the allocation and distribution of the fund, possibly subject to a certification, by the employer, pension committee, counsel, actuary, etc., that such instructions have been determined in a nondiscriminatory manner consistent with the terms of the plan.

The terms of the plan for this purpose can, as mentioned earlier in this paper, probably be classified among three sorts, (i) the general and indefinite, (ii) the general but indicative and (iii) the definite or precise.

A sample of (i) above, a "general and indefinite" provision for termination of a trust fund pension plan, is given in Exhibit 5 of the Appendix. At some point in most plans a provision states or implies that uniform treatment in any phase of the plan will be accorded, as far as possible, for employees similarly situated, so that even under this indefinite type of termination provision it would be dangerous and illogical to allocate the fund, or the benefits therefrom, on a discretionary basis, as well as being anathema to the Internal Revenue Service. Allocation by youngest age first, or by shortest service, or allocation to active employees in preference to those retired, would be equally illogical and unfair. No doubt the administrators would seek actuarial and legal advice, with the result that a system of priorities, or allocation ratios, would be agreed upon, a posteriori. This would bring this type of provision into line with the definite third type, but without the authority of the latter since someone might still challenge the system of priorities decided upon as being capricious or unfair, and not stipulated in the plan.

The same conclusions—that a posteriori decision on priorities or ratios would be made—may be drawn even more certainly with respect to what would happen under the second variety of clause (ii) above, the "general but indicative form." A sample of this form is given in Exhibit 6 of the Appendix.

We may therefore examine the third type of termination provision—"definite or precise"—as representing the sort of procedure applicable in general under a trust fund plan's termination provision. The main possibilities for the definite allocation method are outlined below:

a) Immediate priority allocation method.—A method based on categories of employees—chosen by order of age or length of service—for priorities on the fund, with some sort of proration "across the board" within the last category in respect of which any remaining portion of the fund may reach but fall short of fully satisfying. The determination of each participant's percentage interest can be made with no delay, although the *dollar* amounts may be subject to later events relating to the continued investment and incidence of liquidation of the fund. Samples of this type of provision are given in Exhibits 7*a* and 7*b* of the Appendix.

b) Delayed priority allocation method.—A method involving similar categories of employees for priority treatment but without proration across the board for a final category. Instead, an unknown number of nonretired employees in each category, who will reach age 65 after the termination of the plan, will determine the ultimate allocation of fund or benefits. Thus, future mortality of the group is involved more directly than in (*a*) above. For example, if a category aged 60 to 64 were stipulated and 100 employees are found therein at termination of plan, this delayed method would say that such of these 100 employees as survived to age 65 would determine the allocation of a limited fund available for this category. Until the persons aged 60 had either died before 65 or reached 65, a final allocation, even for those now 64, could not be made. Here would be a 5-year delay in resolving the equities; retroactive adjustments might even be necessary in respect of those reaching age 65 first. A sample of this provision (in part) is given in Exhibit 8 of the Appendix.

c) Immediate ratio allocation method.—A method less frequently found, which ignores categories by age or service, is to prorate the fund over the whole field of covered employees, even possibly extending it to the already retired group such that even their pensions, as previously received, are reduced. The basis for such proration would be a further question for decision if not already precisely provided for in the termination provision of the plan. Samples of this provision—one where proration is based on certain actuarial reserve determinations and one where based on credited service—are given in Exhibits 9*a* and 9*b* of the Appendix.

Where the plan is not terminating in its entirety but only in respect of a certain group of employees, *e.g.*, subsidiary, etc., the termination provision of the plan may, perhaps, be invoked to claim, measure or establish the rights under, or the portion of, the fund which may be viewed or segregated for the benefit of such terminated group.

Where the plan is to continue but the funding medium is to be changed from an original trust fund to a new trust indenture or to a deposit administration type of insurance contract, there is a minimum of problems in respect of priority, allocation or transfer. The termination provisions of the plan need not then apply and the whole fund, after reservation for any final trustee costs, can be transferred to the superseding fiduciary. The termination provisions of the plan after the transfer should be consistent with such provisions before the transfer. Also, if the plan were on a unit benefit formula, it could, perhaps, be paralleled without substantive alteration, under a change to a group annuity contract. This, however, *would* entail a problem in priorities and allocation, since a "purchased" condition would have to obtain after the change.

5. RÉSUMÉ OF EMPLOYEE CATEGORIES

I have referred to the use of employee categories in, or for, the termination provisions of many trust fund pension plans, as well as to their being found in certain plans adjunctive to insurance company deposit administration contracts of Type II explained earlier. It is interesting, in Table 1, to find what a considerable list of employee categories can be set down, not that any single plan is apt to go so far as designating this many categories of priority, but it would be possible to do so under some plans of many benefit types.

TABLE 1

POSSIBLE CLASSES OF EMPLOYEES OR OTHER PERSONS UNDER A PLAN AT TIME OF TERMINATION

(Listed generally by order of imminence of pension payment and not necessarily on the basis of "rights" on the fund)

1. Retired employees:
   (i) as to their remaining pensions,
   (ii) as to any potential death benefit or contingent annuitant.
2. Existing contingent annuitants or installment beneficiaries of deceased retired employees.
3. Existing annuitants or installment beneficiaries of deceased active employees.
4. All nonretired employees in respect of their own accumulated contributions, if any, to the Plan.
5. Employees now over normal retirement age, or approved for early or disability retirement, whose actual pensions have not yet commenced.
6. Active employees between certain ages (*e.g.*, 55–64) or in the age interval of eligibility for early retirement.
7. Active employees who otherwise are of such age and length of service as to meet any vesting conditions of the plan.
8. Ex-employees below the normal retirement age who have previously terminated their service after meeting the conditions of vesting.
9. All other employees in the plan (or further classification of them by age, service or otherwise).

If an employer, in adopting a plan having all the features implied by this list, insisted on a termination provision which set up priorities for each classification of the list, it would be rather difficult to choose the priority position of some of these. Assuming that this employer was planning on substantial early funding, he could probably count on the plan's lasting long enough to meet the foreseeable liabilities for the first three classes above, in which event the order of their position would not particularly matter. Also, class 4 could probably be reasonably assured of being met because of the natural accounting segregation, by the trustee or insurance company each year, of the accumulated equities of the employees in respect of their own contributions; class 4 should thus stand on a par with the first three (perhaps the employer would want class 4 listed first).

Class 5 could be large in number if many retirements are to be deferred, but our employer deems this unlikely; however, he decides that this category should not be lower in order than fifth since, under a terminated plan, these persons would have to rely on their pensions rather than on seeking other work. Next, he feels that the position of class 6 is logical as comprising those who are nearing retirement age—but do all in class 6 deserve a place ahead of class 7? Some employees in class 6, by recency of hire, can have less service than some in class 7; the employer may feel that perhaps he should refine these two groups even further. Then, how about class 8? These fellows will be those who have left him and many of them will have taken other jobs, perhaps with a competitor; why should he put them ahead of class 9, or ahead of some of 9 at least?

Class 9 is the residual, and if at termination of plan any of the fund should reach into this category, our employer feels that any allocation thereof would spread very thin, at least until many years in the future have built up the funding. Hence, he may wonder whether he should provide for any further refinements of class 9.

I do not know of any instance where an employer has gone into this termination phase with any such thoroughness or soul-searching. When a plan is being established, it is not usual to study its termination. To settle on any reasonable-sounding clause, whether of the general or more specific type, seems suitable at that time. To many employees, however, the form and details of the termination provision, if it becomes operative, can mean the difference between much value and none.

6. METHOD FOR DETERMINING LIABILITIES AT TERMINATION OF PLAN

It may be of interest to set up a table of reference (Table 2) for the accrued liabilities, by categories, that might be found in a plan at time of termination. For the purpose of column (5) of this table a considerable difference in the figures could result according to what actuarial method was used to establish them, whether single premium method, entry-age-normal-cost method, annual premium reserve basis, or other. The termination provisions of many plans specify or strongly imply the single premium basis. In the absence of such guidance, it might at first be supposed that whatever method had been used for determining the contribution requirements of the plan would be employed for obtaining the

TABLE 2

STATUS OF PENSION PLAN AT DATE OF TERMINATION
ILLUSTRATIVE DISTRIBUTION OF EMPLOYEE CLASSIFICATIONS

Class Number (from Table 1) and Description of Class	Approximate Age Group	Number of Employees	Annual Amount of Accrued Pension	Aggregate Years of Credited Service	Single Premium Accrued Liability*
	(1)	(2)	(3)	(4)	(5)
1. Retired employees........	65 and over	120	$115,200	3,000	$1,267,200
2. Contingent annuitants (Deceased retired employees)...	60 and over	5	3,840	140†	57,600
5. Eligible to retire (At or over normal retirement age).....	65–69	20	21,600	540	280,800
6. Within interval for early retirement.................	55–64	420	252,000	8,400	2,268,000
7. Active employees; with vesting met (Excluding any Class 6)..................	40–54	700	283,500	10,500	1,843,000
8. Terminated employees; with vested interest............	40–64	80	32,000	1,280‡	224,000
9. All other covered employees	Under 45	1,800	216,000	10,800	1,036,800
Total of above groups.....	All ages	3,145	$924,140	34,660	$6,977,400

* Discounted at interest and mortality only; excludes any withdrawal decrement.
† Service of deceased pensioners.
‡ Service at time of termination of employment.

"liabilities" by category at termination of plan. This does not necessarily follow, however, since what are being valued at termination of plan are the benefits deemed to exist at that time and not those of a future time under a going plan. It is my opinion that, for employee categories or otherwise, the values for termination purposes can most meaningfully and equitably be established by a single premium value of the accrued benefits, in preference to any different method, including that which had been previously used as a structure for an orderly system of annual premiums or contributions under the plan.

The most troublesome detail in using the single premium method would arise under that type of benefit formula which does not contain a one-to-one relationship between the amount of benefit and the credited years of service and/or past compensation. For example, consider a flat-amount pension formula, with or without a Social Security offset; at termination of plan, it might be difficult to demonstrate conclusively what amount represented credited service to date. Or, again, consider a formula involving use of the final-five-year average salary before retirement; would the average be taken for the five-year period before termination of plan, or should the salary scale be used to project the formula to the pension amount that might have emerged at retirement age and said amount be then reduced proportionately for service at termination of plan? To resolve these problems to a basis suitable for single premium valuation of pension equities at termination of plan may require considerable ingenuity but probably could be managed.

However, the actuary may conclude, in some cases, that the liabilities corresponding to column (5) of Table 2 cannot be brought out—in a practical or acceptable sense—by a single premium method. If the termination of plan provisions do not prevent it, he may decide, or be instructed to assume, that the basis used for previous contributions should be followed, even to the extent of including all of the previous actuarial factors for withdrawal rate, salary scale, retirement age, etc. This, to me, would be giving undue weight to "form" and not enough to "substance."

To further examine the aspects of the single premium approach, consider the situation whereunder the assets are found to exceed the single premium liabilities because of the form of the contribution method previously employed; that is, where a single premium valuation (of the benefits deemed to have accrued) results in a lower amount than the existing assets developed from the actual contributions made. Such a situation could be found, for instance, where a "level annual premium" contribution method had obtained, or it could occur under certain forms of "aggregate" contribution method. It would be more apt to occur, for these methods, under plans involving little or no past service credit, or under plans of rather long standing such that the past service credit had considerably diminished relative to the service credited since the inception of plan.

If this condition, of assets being higher than single premium liabilities, were found, it could offer some interesting ruminations on the character of such excess. One point of view could be taken that, since the value of the accrued benefits was exceeded, the excess should—language of the plan permitting—revert to the employer as "actuarial error" (see section 10 later herein). The proponents of this view would contend that the contribution structure which caused this excess had been only a device for the employer's convenience in the orderly and secure funding of the plan, and if it brought out more than enough, he should get back the balance.

A different viewpoint—and this might be strengthened if employees had also contributed—could be that regardless of what structure had been used for the employer contributions, they were essentially made for the benefit of the covered employees; a provision supporting this viewpoint is found in the documents of many plans. If this "for benefit of employees" viewpoint prevailed, the respective single premium values of the accrued benefits would still furnish, I believe, the most appropriate basis to use for apportioning the full assets among the covered employees.

In any event, the liabilities shown in Table 2 have been based on the single premium method and may be taken as present values of the accrued benefits, figured as well as possible, for service to date of termination of plan. Furthermore, even though the previous actuarial procedures used for contribution purposes had employed a withdrawal rate assumption, the termination of plan valuation for Table 2 does not carry such an assumption. The concept of fully vested benefits (as far as method and assets permit) seems to be the logical one at termination of plan, and is the one stated, or implied, in most termination of plan provisions. In fact, if the employer were shortly to go out of business, an employee withdrawal rate assumption would be clearly anomalous; they would all be going to lose employment.

In order to simplify Table 2, the plan represented is assumed to be of the noncontributory type; the early priority of any employee contributions would be clearly recognized under any contributory plan. It is also assumed that the plan has not provided any form of death benefit (at least of an income type) before retirement; a contingent annuitant option at retirement has, however, been assumed. The table shows illustrative ages, numbers of persons, accrued pensions (or best approximation thereto), aggregate credited service and accrued liability, for each category. The first column, classification number, refers to the list previously given in Table 1 and, as just explained, some of the list of numbers of Table 1 are assumed to be inapplicable for this Table 2 hypothetical case.

7. ALLOCATION OF ASSETS—APPLICATION OF TABLE 2 IN CERTAIN SITUATIONS

It may be of interest to assume certain assets to be in the fund when the plan ends and to follow the allocation of such assets by the scheme of Table 2 under one or two different termination provisions.

(*a*) Obviously, if we found assets equal to the total liabilities of

$6,977,400, it would be hoped that all classes would be provided for—a fully funded plan. This would still depend, however, on the capacity of the continuing trust or deposit administration fund to meet the deferred pensions when due (neither type of fund being guaranteed to do so), or upon finding cheap enough single premium rates if purchase of full deferred annuities were immediately to be made. Of course, if the unusual settlement of cash distribution were to be made forthwith, the values in the table would be used, subject, if a trust fund plan, to liquidation market price deviations and to wind-up expenses.

(*b*) Suppose the assets are found to be less than the full list of liabilities, then the application would depend upon the particular termination provision and its interpretation.

Let us consider the priority language in the clause given in Exhibit 7*a* of the Appendix. This would immediately allocate the fund for the bene-

TABLE 3

PRIORITIES FOR EXHIBIT 7*a* CLAUSE

Category and Description	Number	Liability
First: Retired	120	$1,267,200
Second: Eligible to retire	20	280,800
Third: In age range of early retirement	420	2,268,000
Fourth: All others	2,500	2,879,800
Total covered group	3,060	$6,695,800

fit of individuals according to four particular priority categories. The first category of this Exhibit 7*a* clause corresponds to class 1, retired lives, of Table 2. The second category of the clause, those eligible to retire, corresponds to class 5 of Table 2 (class 2, survivor annuitants, not being applicable in the Exhibit 7*a* plan). Third for the clause, early retirement ages, corresponds to class 6 of the table, and fourth, all others, corresponds to classes 7 and 9 of the table combined, there being no vested benefits in the plan to which the clause applies (*e.g.*, class 7 of Table 2 would merge with class 9, and class 8 would be inapplicable).

The single premium liabilities from column (5) of Table 2 for those four categories would then be as shown in Table 3.

Suppose we find the assets in the fund, as valued by the trustee, to be $1,407,600. This valuation of assets should probably be made at the approximate market value of the securities and not at their book, or other, value—although this would depend upon the subsequent procedure for meeting the benefits, such as need for immediate cash. The above amount of assets, it can be assumed, would cover, in full, the first category[5] in Table 3 and would extend well into the second category; hence, either a tentative or permanent reduction in the pensions for this second group would apply. This reduction would be permanent and fixed if annuities were to be purchased (unless equity annuities are then available, and used), but the reduction would be subject to adjustment in the future if the pensions were to come from a continued trust; that is, change in income, market value, mortality, etc., could affect this preliminary reduction, up or down. The reduction would be established as the ratio of the portion of the fund allocable to the second category, *viz.* $140,400, to the single premium liability for the group of $280,800; thus, this category could expect to receive pensions immediately, of about 50% of their full pensions. This illustrative situation is, I hope, largely academic; most plans would have larger relative assets than this for a category so near pension status as this one.

Going back to Table 3, if the assets came to $2,548,000, the third category would be reached, and pensions for them could be expected to commence at age 65 in the amount of about 44% of their respective accrued benefits for service to the plan's termination date, or the value thereof could be applied to provide lesser pensions at their then early retirement age. Decisions on the exact manner, or alternates, for distribution would need to be made by the employer, trustee or other empowered party.

If the assets were $2,000,000 higher than in the preceding paragraph, and came to $4,548,000, then allocations would work into the fourth category of employees, to about 25% of the value of their pension interests. Exactly what those interests are and how they would be met would call for further actuarial determinations and administrative decisions; perhaps all of the quite small interests would be discharged by cash payment, as allowed for in the Exhibit 7*a* clause we are considering.

The above has illustrated the allocation method for priority groups under that type of clause in a trust fund plan. Under an insured deposit administration type of plan, the procedure could be much the same except that the terminal decisions might well be minimized and the premium rate basis of the contract might readily be utilized to implement the conditions and distributions of the allocated values.

Consider the allocation of assets under a plan with another type of priority termination clause. For instance, an Exhibit 8 clause would allocate assets along lines parallel to the above but the settlement thereof would be even less distinct. Literally followed, an Exhibit 8 provision

[5] Any IRS Mimeo. 5717 limitations applicable would need to be observed.

would require a long delay before the final answer, even roughly, for some categories, such as the age 60 to 65 group, could be given. This might be avoided by reaching some interpretative agreement—perhaps involving all the employees affected in order to eliminate later claims—concerning the procedures and allocations under the provision. To amend the termination provision at the last minute, as it were, might be possible for clarifying procedure, but it would be necessary to test this action against the usual plan provision that asserts that no amendment will affect adversely any employee rights theretofore acquired. Would changing a termination provision just before termination meet this test?

When the termination provision is not of the priority type, but is of the complete pro rata type, such as in Exhibit 9*a* of the Appendix, then the proportion of the benefit interest is the ratio of the total assets to the total liabilities, applied as a percentage "across the board." In such a case, ratios could be determined as uniform proportions of the single premium liability value, which basis would probably be the most equitable one for a ratio method. However, other ratio schemes can be found in certain plans. For instance, the clause of Exhibit 9*b* provides for first taking care of those already retired, but then allocating the fund to the remaining employees in proportion to their length of credited service.[6]

To illustrate the differences between a priority method and two ratio schemes, refer to Table 3 for the respective categories and assume that the assets amounted to $3,347,900 or 50% of the liabilities shown in that table. This would mean that under the Exhibit 9*a* ratio clause, the different categories would receive significantly different amounts than under a clause based entirely on length of service, and both of these ratio results would greatly favor the younger employees as against the priority method. These points are exemplified in Table 4.

It seems particularly harsh, under either column (3) or (4) of Table 4, for employees already retired to suffer a heavy reduction in their pensions; it is hoped that the number of plans with this sort of provision is few, or at least that outright terminations will not eventualize in such cases before a fully funded condition is reached.

8. DISSOCIATION OF GROUPS

As mentioned earlier, partial termination of a plan may come about through the breaking off of a portion of the employees, with the balance continuing to be covered as before. The dissociation of a subsidiary, the

[6] The allocation of any pension fund—even one with a flat benefit formula—in proportion to the length of service of the respective employees does not appear to the author to be an equitable basis; it would mean that the employee age 60 with 20 years of service would get no more weight than a person age 40 with 20 years of service.

closing down of a plant, the cancellation of a union pension agreement, etc., would bring about problems as to whether *any* allocation of the fund must, or should, be made, and if so, on what basis. The plan itself may or may not have contemplated this possibility by including, or not including, provisions to cover. Generally, I would say, plans are silent, or very indefinite, on this possibility; I do not recall having seen a plan which spells it out in great detail.

Let us assume that a mass exodus of an employee category takes place and that no directions for this event are contained in the plan. It then becomes a matter of interpretation and equity. The first question is probably whether such termination should be viewed merely as a sudden

TABLE 4

ALLOCATIONS BY A PRIORITY CLAUSE AND BY TWO PRO RATA CLAUSES

Category and Description	Number	Allocation of Assets		
		By Priority Clause of Exhibit 7a	By Exhibit 9a Clause 50% across the Board	By Length of Service Clause*
	(1)	(2)	(3)	(4)
First: Retired	120	$1,267,200	$ 633,600	$ 302,200
Second: Eligible to retire	20	280,800	140,400	54,200
Third: Range of Early Retirement	420	1,799,900	1,134,000	845,800
Fourth: All others	2,500	(Nil)	1,439,900	2,144,700
Total Covered group	3,060	$3,347,900	$3,347,900	$3,347,900

* Allocated on the basis of the applicable aggregate length of service shown in column (4) of Table 2.

high rate of termination of employment, with no benefit interest involved except for, and to the extent of, any vesting provision. If, on the other hand, it is deemed to be more fundamental than an unusually heavy severance of employment per se, and is viewed as a situation which should command special treatment, then several lines of procedure could be considered.

The problem here has a double aspect; it is not solely concerned with arranging allocations of the fund on a prescribed, or equitable, basis for employees alone, but it also involves the employer's subsequent pension costs. Concerning the latter, whatever part of the fund is segregated for the benefit of the mass terminations will reduce the balance of the fund to be applicable for the continuing plan on the remaining employees. Thus, to the extent segregation for the outgoing group can be minimized, the better off the employer is as a base for future funding of the plan. It resolves itself, therefore, into both a question of appropriate treatment for the mass terminations and that of proper cost protection for the employer. In any event, three possible lines of procedure (there are probably others) could be considered.

(1) If it is a subsidiary that is dissociating from a plan with a pooled fund (of course, if the subsidiary has maintained a separate fund all along, there is no problem), it is not unlikely that separate cost accounting has produced a historical record of the subsidiary's portion of the contributions, and it would also be possible, if, indeed, records have not been kept for this also, to determine the past benefit outgo on a year-to-year basis with respect to the retired employees (and any other benefit group) of the subsidiary. Even if a subsidiary company is not involved, the previous cost accounting of the employer might be susceptible to producing the same sort of contribution and disbursement record for the group being terminated, *e.g.*, the closing of a plant where accounting for its pension costs had been carried on. In cases of this sort, one possible method for segregating the pooled fund would be to compute, for the outgoing unit, the annual excess of the contributions over the benefit outgo and to bring this forward at interest, such interest being computed either at the actuary's valuation rate or at the investment rate earned yearly by the fund. An argument for the valuation rate would be that a relatively smaller fund for the subsidiary alone would not be apt to have earned the investment return of the larger fund, or even that the valuation rate itself might be higher than what a smaller fund could have accomplished with equal safety; or that the valuation rate had been used in determining the contributions and thus represents a stable index over the whole period involved. The argument for using the investment return rate would be that the subsidiary's contributions were actually part of the fund which had been "in use" in developing a more favorable investment rate than the actuarial rate (if that is the case). In any event, the accumulated excess described above would represent the assets allocable for the subsidiary, (i) without further adjustment if the already retired employees of the subsidiary are to receive their future pensions from these allocated assets, or (ii) subject to a reduction equal to the present value of the future pensions for these already retired employees, if, as would seem somewhat more logical, they are to continue to receive their pensions from the original plan and fund under which they were retired.

(2) Another method which might be deemed an appropriate basis for segregating the fund would be to have an up-to-date actuarial valuation of the plan made for the group of employees being terminated. This

valuation would be on the same basis as had been used for the whole group, and the results thereof would be compared with a parallel valuation for the whole group (including those to be terminated). From these valuations, ratios could be obtained by comparing the resulting respective "gross liabilities,"[7] and such a ratio could be deemed to represent an appropriate portion of the then assets (*i.e.*, the already funded costs) for the dissociating group. Since the already retired employees of the dissociating subsidiary, plant, etc., would usually continue to look, for their pensions and the security thereof, to the original plan and its fund, the method just described should, where applicable, be adjusted for this. This adjustment would be to subtract from the total assets the value of future pensions for the whole of the already retired group and to confine the ratio for dividing the balance of the assets to that represented by the respective gross liabilities for the nonretired lives. Thus, none of the assets applicable to the already retired group would be involved in the portion allocated for the outgoing nonretired group.

(3) A method based on a different rationale, which might seem appropriate for a plan with a priority type of termination clause, would be to pose the question: "If the whole plan were being terminated, what would be the interest of the employees of the subsidiary according to the termination provision of the plan; that is, how would employees of that group stand 'assetwise' in relation to other employees?" By this method the employee data for the entire plan would be examined by the priorities stipulated in the plan's termination provision. It would then be determined by actuarial tests as to how far the total present assets, after provision for all the already retired employees (assuming the original plan and fund will continue to carry them), would reach for the total group of nonretired employees and how the employees of the subsidiary would fall in among them. The amount to be segregated would be the sum of the single premium liabilities in respect of so many of the nonretired employees of the subsidiary as were encompassed by the application of the "nonretired" assets to the total group of nonretired employees.

The segregation of a pooled fund with respect to a union group breaking off from the plan might, if the situation is not provided for in the plan or union agreement, and if such exodus is not deemed to be in the nature of just heavy terminations of employment, require negotiations with the union, or with several unions if certain union groups remained in the plan and certain others were in the terminating group. Another possible ques-

[7] The term "gross liabilities" is used here to mean the present value of the benefits minus the present value of future contributions; that is, assets on hand are not deducted.

tion—in the legal field—in respect of segregating a part of the fund for a group breaking off under a plan whose provisions were silent on the matter, would be whether the individual employees themselves, either in the group which was remaining or in the outgoing group, would have any enforceable rights against the employer, trustee, etc., in connection with decisions bearing on the determination of the amount of the fund to be segregated and on the ways and means of its allocation.

9. POSITION OF VESTED EMPLOYEES

A subject somewhat allied to the previous section is that of the position of employees terminating service with a company after having met the age and service conditions for a vested benefit, if such feature is in the plan. Whether under a deposit administration or trust fund vehicle, the provisions of the plan with respect to its final termination probably provide for a priority niche—whether early or late on the list—for cases which had met the vesting conditions of age and service. Such employees and ex-employees would not generally, under such a type of funding vehicle, be guaranteed their vested benefit merely because of their termination of employment while the plan is in effect. Naturally, the actuary would compute the liability for such ex-employees (to the extent they can be traced or estimated) at each valuation, but the mere label, "vested," would not assure the benefit to them if, later on, the plan terminated and the then assets did not reach their niche. Generally, the fund and the plan's provisions for its allocation represent the extent to which the pension formula can be met, and unless the employer, by his own agreement (or by improper, unintended, wording of the documents) accepts liability for benefits which the fund cannot meet, then these vested cases must take their chance with other classifications of being "in" or "out" when termination of plan occurs.

I have spoken earlier of mass terminations. If such breaking off of a group includes a large number of vested cases, so that it is decided to let the vested position take the place of any segregation of the fund itself for the group broken off, this could be quite a different thing from effecting such a segregation because, as pointed out in the preceding paragraph, the benefit position of the vested cases in the pooled fund would not be assured in event of later termination of plan. Their position for the same purpose under a segregated fund might be relatively more advantageous, depending upon the terms for subsequent disposition of the segregated fund.

10. "ACTUARIAL ERROR"

Most plans contain a provision that after the satisfaction of all liabilities with respect to employees' pension interests, any excess in the fund reverts to the employer. This reversion is acceptable under the Internal Revenue Service Regulations (see Regulations 118, Section 39.165—2(b), or the corresponding 1954 Regulations). This excess, when not derived because of a reduction in the benefit formula by amendment, is given the interesting name, in the Regulations, of "actuarial error." That is, the actuary—insurance company or consulting—made a miscalculation in adopting his assumptions, including (for our immediate focus) the assumption of withdrawal rate.

Consider this "actuarial error" concept in connection with an employer whose business is gradually going down hill, where he is successively laying off group after group of employees. Suppose, furthermore, that the pension plan does not contain any vesting provision. Obviously, this means that as the work force dwindles, the previous fund in respect of the terminating employees is metamorphosed into a substantial excess fund (actuarial error). Hence, when the final wind-up of the plan occurs—probably concurrent with the employer's ceasing to do business—a substantial reversion would be available to the "residual legatees" of the employer (not without attracting tax, however, since the previous contributions had been free of tax).

The above possibility might be manipulated by an employer not having the employee benefit interests at heart, to his own substantial advantage. Of course, the Internal Revenue Service might feel that the pension plan, under such "slow death" of a company, came within its regulatory province, but I do not see just what they could do about it if this "final illness" were demonstrably due to business conditions.[8] One thing that such an employer *could* do about it, however, when groups began to be permanently sloughed off, would be to amend the plan to introduce a vesting clause. In this way the fund, otherwise released through actuarial error, would attach for the benefit of the terminating employees thus vested.[9]

[8] But see Ain, Samuel N., "Pension and Profit Sharing Digest," *Trusts and Estates*, March, 1955, p. 245.

[9] Revenue Ruling 55-186 (IRB 1955-14) requires that employee interests be vested upon the discontinuance of employer contributions (even if the plan—a profit-sharing one in this instance—continues with respect to the then fund); on this basis subsequent terminations of employment could not divest such interests. This is a different situation from the one I am discussing which contemplates terminations of employment prior to any steps being taken to terminate the plan or discontinue contributions. An example of this latter (which parallels the result I outline except that the remaining employees get the benefit of the "actuarial error," instead of the employer) may be found in a recent decision of the Tax Court—*Ryan School et al. versus Commissioner*, 24 TC—Docket No. 49445—April 29, 1955.

CONCLUSION

The Appendix, hereinafter, sets forth a number of different termination of pension plan clauses as contained in the documents—plan, insurance contract, union agreement or trust indenture. The previous text has, at appropriate times, referred to the various Exhibits making up this Appendix. The termination provisions contained in the Appendix come from actual plans and have only been edited to the extent of clearing out section references and points not germane to termination and allied features. Vagueness in some termination clauses may be felt to carry advantages of retaining control of decisions and of only "crossing the bridge" when the time comes. The point has been raised, however, that such vagueness may turn out to be a trap for legal difficulties and contests later on. Of course, it may be that the range of permissible wording for the termination provisions of pension and profit-sharing plans will be narrowed by the Internal Revenue Service in respect of its approval of such plans.

The provisions illustrated in the Appendix are neither intended to represent the gamut of such type of clause nor to furnish any particular recommended language for a plan. They are presented as illustrative sources and for purposes of reference in this paper. For certain of the Exhibits, a paragraph or two of comments concerning the particular clause is added.

This paper has dealt with a topic which I believe has not been covered heretofore as a single subject, either in actuarial or other pension literature. Because of the likelihood that terminations of plan (if they must happen) will create a number of problems, involving one or more of the employer, insurance company, trustee, legal counsel, actuary, labor union, the employee's own interests, the Internal Revenue Service, and, possibly, the courts, this topic strikes me as one which has become of more immediacy than in previous years. The traditional group annuity contract originating several decades ago was wholly specific in its termination provisions as noted earlier herein, and the relatively few trust fund plans of earlier years had much greater latitude for decision and discretion—free of unions, I.R.S. and other possible limitations—than is the case today.

We actuaries—insurance company and consulting—in the industrial pension field have of late been hard at work establishing thousands of pension plans; by the very natural attrition from future events, many of these plans will merge, break off or terminate over the years ahead. Perhaps, we should now begin getting ready for the actuarial and other technical problems of such mergers and terminations as will come our way. I hope this paper may prove of some help as background for such a beginning.

APPENDIX

INDEX OF EXHIBITS

Exhibit 1a

TERMINATION OF PLAN PROVISIONS

INDIVIDUAL POLICY PENSION TRUST (NONCONTRIBUTORY, WITH VESTING)

Plan and Trust Combined

The Corporation may at any time revoke or amend or terminate this Indenture and the Trusts hereby created, as the Board of Directors may deem advisable; any such revocation or amendment or termination to be evidenced by an instrument in writing filed with the Trustee, and executed on behalf of the Corporation, in such manner as the Board of Directors of the Corporation shall by resolution determine; provided, that no amendment shall increase the duties or responsibilities of the Trustee without its consent thereto in writing, or permit of any of the moneys, policies, properties, securities or investments at any time held by the Trustee under this Indenture, or the proceeds or avails thereof, under any circumstances, to revert to or for the benefit of the Corporation; and no amendment of this Indenture shall permit any part of the corpus or income of the Trusts hereby created to be used for or diverted to purposes other than the exclusive benefit of the Participants hereunder, prior to the satisfaction of all liabilities with respect to such Participants under this Trust. In the event of the revocation or termination by the Corporation or otherwise of the Indenture, and of the Trusts created hereby, and upon the dissolution or liquidation of the Corporation, all cash, policies, and other assets then held by the Trustee under any of the provisions of this Indenture for the benefit of any of the Participants shall be transferred or paid over to such Participants in accordance with written instructions from the Corporation, such distribution of cash and other assets except the policies, to be made to such Participants pro rata in proportion to the cash surrender values of the policies then held for the benefit of each such Participants.

COMMENTS

Under this clause, termination of plan would be relatively simple. Policies would be turned over to the employees in respect of whom they were purchased, and any other assets would be allocated to these employees pro rata according to the respective cash values of the policies. Since retirement income and annuity policies make up the principal holdings of the particular trust—there is no functional auxiliary trust fund—these other assets would probably be quite small. Note that such decisions as would be necessary are to be made by the employer, not the Trustee.

Exhibit 1b

TERMINATION OF PLAN PROVISIONS

Group Permanent Contract Plan (Contributory, with Vesting)

Plan

If the Plan is discontinued, each employee shall be entitled (subject to the provisions of (Mimeo. 5717 temporary limitations)) to the benefits resulting from his own contributions and from the contributions by the Company previously made in his behalf. In the case of an employee insured under a contract certificate, such rights and benefits will be described in the contract certificate held by him. In the case of an employee insured under an individual policy, ownership of such policy will be transferred to such employee and his rights and benefits will be determined in accordance with the provisions of such individual policy.

Master Contract

The payment of all premium and annuity consideration payments under this policy shall cease, if

a) (Insurance Company receives written notice of such cessation)
b) (Any premium remains unpaid at end of grace period)
c) (Coverage drops below minimum)

On and after the effective date of such cessation, no further premium or annuity consideration payments shall be payable and the Insurance Company shall be obligated only as hereinafter provided.

On the effective date of Cessation of all Payments to the Insurance Company in lieu of all other benefits under this policy:

a) The Full Termination Value of the insurance hereunder on the life of each employee shall be applied to provide Reduced Paid-up Endowment Insurance, payable upon his death in the same manner and under the same conditions as the insurance hereunder on his life on such effective date, and payable in event he survives to his Retirement Date, in accordance with the provisions hereof. The amount of such Reduced Paid-up Endowment Insurance will be such as said Full Termination Value will purchase when applied as a net single premium, based on the American Men Ultimate Table of Mortality and interest at two and one-half percent, at his age nearest birthday on such effective date:

b) Also, the Full Termination Value of any Retirement Annuity hereunder on his life shall be applied to provide Reduced Paid-up Retirement Annuity, payable in the same manner and under the same conditions as any Retirement Annuity hereunder on his life on such effective date. The amount of such Reduced Paid-up Retirement Annuity will be such as said Full Termination Value will purchase when applied as a net single annuity consideration, based on the 1937 Standard Annuity Table of Mortality and interest at two and one-half per cent, at his age nearest birthday on such effective date.

If any employee who has the right to convert insurance in accordance with the terms hereof should die before exercising such right and during such thirty-one days, the Insurance Company will pay the amount of Reduced Paid-up Insurance provided under paragraph (*a*) above, together with the amount of Insurance which he was entitled to convert and the Full Termination Value of any Retirement Annuity in force hereunder on his life on the effective date of such cessation.

If an employee insured hereunder on the effective date of Cessation of All Payments to the Insurance Company has been continuously insured for at least five years under a Group Life Insurance Policy or Policies issued by this Insurance Company, such employee may, within thirty-one days after such effective date and without evidence of insurability, obtain an individual policy of life insurance, as hereinafter provided, upon application therefor in writing and payment, at any time within said thirty-one days, of the first premium payment thereon. Such individual policy shall become effective only at the end of said thirty-one days, and may be on any one of the forms then customarily issued by the Insurance Company (excepting a policy of term insurance or a policy providing benefits in event of total and permanent disability or additional benefits in event of accidental death) for an amount of insurance which shall not exceed the lesser of:

a) The amount of insurance hereunder on the life of such employee on the effective date of such Cessation, less
   (i) the amount of Reduced Paid-up Endowment Insurance provided under the preceding paragraph, and less
   (ii) any amount of insurance for which he may become eligible under any Group Life Insurance policy issued or reissued within thirty-one days after such effective date, by this Insurance Company or any other insurance carrier, and

b) $2,000.

The premium for such individual policy shall be at the then current rates of the Insurance Company according to the class of occupational risk to which he belongs and the age attained by him at the end of said thirty-one days.

If on the effective date of Cessation of All Payments to the Insurance Company or any Policy Anniversary thereafter there remain any dividends or other amounts which, in accordance with the provisions hereof, are to be applied toward the payment of premium and annuity consideration payments but have not been actually so applied by such date, then and in lieu of such application they shall be paid to the employer.

COMMENTS

The above clause of the Plan indicates that the individual policy and the group permanent mediums were both originally contemplated. A group permanent medium being used, the language under the master contract given above implies that at termination of plan and discontinuance of premiums the termination procedures should be quite straightforward and simplified. Paid-up insurance and annuity values on a vested basis would pass to the employees in respect of whom they had been provided theretofore. There is no auxiliary fund problem here. Employees could convert any balance of insurance over the amount of paid-up to the extent the total did not exceed $2,000.

Exhibit 2

TERMINATION OF PLAN PROVISIONS

GROUP ANNUITY PLAN (NONCONTRIBUTORY, WITH VESTING)

Master Contract and Plan Combined

A. Cause and Effective Date of Discontinuance of Contract

(1) (Grace period for premiums expires)

(2) (Coverage drops below minimum)

(3) (Notice from Employer)

(4) If the Employer shall be a corporation and shall lose its corporate entity by means of dissolution, merger, or otherwise, or shall be adjudicated bankrupt or placed in receivership, or if the Employer shall be a partnership and the partnership shall be dissolved (but the addition of partners shall not be considered a dissolution within the meaning of this section), or the partnership or any partner shall be adjudicated bankrupt or placed in receivership, or if the Employer shall be a natural person and shall die or shall cease to control his business as the proprietor, or shall be adjudicated bankrupt or placed in receivership, this contract shall discontinue as of the day before the happening of any such event unless theretofore or within six months thereafter the Insurance Company shall have agreed with the Employer, its or his successors, executors, administrators, or assigns, to substitute a new Employer for the purposes of this contract, in which case this contract shall be deemed to have discontinued only with respect to employees who on the day before the happening of such event were in the employ of the Employer but on the day following the happening of such event were not in the employ of the Employer.

(5) The Employer shall notify the United States Commissioner of Internal Revenue in the event that this contract shall be discontinued.

B. Effect of Discontinuance of Contract

(1) No Retirement Annuities shall be purchased after discontinuance, but all Retirement Annuities purchased prior to discontinuance and in force at discontinuance shall remain in force, regardless of continued employment by the Employer, subject, however, to the terms of this contract.

(2) If this contract shall be discontinued with respect to a part of the employees, the rights of all parties with respect to the coverage of such employees shall be the same as if this entire contract had discontinued.

COMMENTS

This termination clause, for the plan and group annuity contract combined, sets out a straightforward procedure. Such deferred annuities as have been purchased remain purchased for, and vested in, the respective employees. No reference is made to any special treatment in respect of past service, so that presumably a schedule for past service purchases had been set up and followed, and if past service annuities had not been reached for purchase prior to the termination of plan, certain employees would necessarily lose out on that part of their pension. Note that no further purchases under the contract are allowed for and that no cash, or other assets, are contemplated as being on hand for any special disposition.

This particular plan is noncontributory. Were it contributory, the only difference in the provision above would probably be to permit the employee to withdraw his contribution equity at will, any time after termination of plan, thereby reducing, but not forfeiting, his paid-up vested deferred annuity.

Exhibit 3

TERMINATION OF PLAN PROVISIONS

Deposit Administration Plan, Type I (Noncontributory, with Vesting)

Master Contract and Plan Combined

Section 1.—*Cause and Effective Date of Termination of Contract*

This contract with the Employer shall terminate upon the happening of the first of the following events:

a) (Employer notice of Termination)
b) (Coverage drops below minimum)
c) (Exhaustion of purchase fund)
d) (Grace period expires)

Section 2.—*Effect of Termination of Contract*

a) In the event that this contract is terminated as described under Section 1, then the Deposit Account as of such date of termination of contract shall be applied, as described under (*b*) and (*c*) below.

b) For purpose of this Section 2, each Participant who is included under this contract as of the date of termination of contract and for whom a retirement annuity has not already been purchased shall be classified as follows, depending upon his status as of the date of termination of contract:

(1) A Class I Participant is a Participant who has met the vesting conditions hereunder on or before the date of termination of contract, and

(2) A Class II Participant is a Participant who is not a Class I Participant.

c) The Deposit Account shall be applied to purchase the retirement annuities accrued to date of termination of contract for all Participants, being first applied to Class I Participants, and then to Class II Participants; provided that, if the balance remaining in the Deposit Account is not sufficient to purchase such retirement annuities for all Participants in any Class of Participants, the balance shall be applied to purchase a uniform proportion of such retirement annuity for each Participant in such Class of Participants, such uniform proportion being equal to the ratio of the total amount of such balance to the present value of retirement annuities accrued to date of termination of contract for all such Participants in such Class of Participants.

d) (Concerns the commencement of annuities under (*c*))

e) If the Deposit Account is more than sufficient to purchase the retirement annuities accrued to date of termination of contract for all Participants, then the excess shall be applied to purchase an additional retirement annuity accrued to date of termination of contract.

f) Termination of contract shall in no way affect the payment of retirement annuities to Participants for whom retirement annuities have already been purchased, except as may be provided under (Internal Revenue Mimeo. 5717 limitations).

COMMENTS

This particular provision proceeds on the basis of bringing the pooled deposit fund to an end and of forthwith making definite deferred annuity purchase to the extent possible. It is straightforward and simple in execution. There are no loose ends requiring special decisions.

Another form of Type I provision might have continued the deposit fund on a pooled basis with purchase made only when age 65, or earlier retirement age, was reached. Such a method could not guarantee the exact amount of annuity ahead of time, and employees might get less or more annuity under it than under the provision quoted above, depending on the subsequent experience (including mortality) of the unallocated fund.

Exhibit 4

TERMINATION OF PLAN PROVISIONS

Deposit Administration Plan, Type II (Contributory, with Vesting)

Plan

In the event of any final termination of the Pension Plan, the fund then in the possession of the Trustee or the Insurance Company contract,* after the payment of any expenses, taxes or proper charges of the Trustee or Insurance Company, shall be for the exclusive benefit of the then retired employees, contingent annuitants and other employees, beneficiaries and terminated employees having a continuing interest under the Plan. Such Fund shall be allocated to, or such contract shall provide for, such persons in the following order: first, to provide for safeguarding the rights of all persons in respect of employee contributions previously made, and interest thereon; second, to provide for the continuance of pensions to retired employees and contingent annuitants, if any; third, to provide the pensions for employees who have reached their normal retirement date but have not commenced to receive their pensions prior to the date of termination of the Pension Plan; fourth, to provide pensions, immediate or deferred, for employees eligible for early retirement on the date of termination of the Pension Plan; fifth, toward the potential rights of terminated employees having a continuing interest under the Plan on an equitable and nondiscriminatory basis according to accepted actuarial principles; sixth, toward the potential rights of other nonretired employees on an equitable and nondiscriminatory basis according to accepted actuarial principles; seventh, should any funds remain after satisfaction of all liabilities for benefits as aforesaid, any surplus in the Fund or under the Contract shall be delivered over and paid to the Employer. The allocation above shall be distributed, pursuant to instructions given to the Trustee or Insurance Company by the Employer, in cash or in annuities purchased for the benefit of the persons involved or in such other manner as may be agreed upon by the Employer and the Trustee or Insurance Company. The allocation of funds and benefits according to this paragraph shall be subject to the provisions of (Internal Revenue Mimeo. 5717 limitations). No retired employee or other employee or person shall have any rights or claims under the Pension Plan beyond the capacity of the Fund or insurance company contract to provide benefits in accordance with the above provisions.

Master Contract

The payment of all considerations and contributions shall be discontinued on and after the Consideration Due Date specified in a written notice which may be given

(i) (by Employer)

(ii) (by Company, after grace period)

* This paragraph admits of either a trustee or insurance company funding vehicle; the plan was actually written through an insured deposit administration medium.

(iii) (by Company, for coverage below minimum)

(iv) by the Company to the Employer in event the Company has previously declared its intention to exercise its right to modify the terms hereof and the Employer has failed to assent to such modification, or

(v) by the Company to the Employer in the event the Employer wishes to change any provisions which the contract provides are to be agreed upon between the Employer and the Company (*viz.* the Employer's Pension Plan) in a manner such that the Company shall in its sole discretion then determine that it is not sound business practice to continue to purchase Retirement Annuities hereunder according to such changed provisions (of the Plan).

Discontinuance of the payment of all considerations and contributions shall not affect the terms or conditions of any Retirement Annuity already purchased hereunder except as specifically provided in this Contract. Notwithstanding the discontinuance of payment of all considerations and contributions, deductions from the Employees' Fund and the Deposit Administration Fund and the purchase of Annuities shall continue (at retirement age, as provided elsewhere in the contract).

The first paragraph of this Section may become operative with respect to one or more of the Associated Employers or to the Principal Employer, in which event the payment of all considerations and contributions hereunder shall be discontinued with respect to employees of such Associated Employer, Associated Employers or Principal Employer, but without effect upon the payment hereunder of considerations and contributions with respect to any other employees.

If discontinuance of the payment of all considerations and contributions is not for all employees covered hereunder, the Employer shall notify the Company what portion of the Deposit Administration Fund is attributable to employees with respect to whom such payment of all considerations and contributions is to be discontinued, and thereafter the purchase of any Retirement Annuities for such employees shall be made only from the portion of the Deposit Administration Fund which the Employer so notified the Company was attributable to such employees.

Unless discontinuance of the payment of all considerations and contributions hereunder occurs, the liquidation, dissolution, bankruptcy, or receivership of the Principal Employer or any Associated Employer shall not of itself result in the discontinuance of the payment of all considerations and contributions.

This contract shall finally terminate when the Company shall have completed all payments due hereunder. If at the time all Retirement Annuities to be purchased hereunder have been purchased any balance remains in the Deposit Administration Fund, the Company shall, unless the other provisions of this paragraph become applicable, in discharge of all its liability with respect to such fund, return 95% of such balance to the Employer in cash as a cash surrender value. The Company reserves the right to make such payment in successive equal monthly instalments over a period of not more than sixty months with the first payment due on the date such 95% of such balance would otherwise be payable to the Employer. Interest at the rate of two per cent per annum, compounded annually, shall be allowed on each unpaid instalment from the date such 95% of such balance otherwise would be payable to the Employer. In lieu of making such payment to the Employer in one sum or in monthly instalments, such balance shall be applied in such manner as may be requested by the Employer and agreed to by the Company.

Nothing in this Section shall be applicable to an employee of an Associated Employer or the Principal Employer with respect to which discontinuance of the payment of all considerations and contributions occurs, in the event such employee is transferred, on or before the date of such discontinuance of the payment of all considerations and contributions, to the employ of a corporation, partnership, association or business trust which is included in the term "Employer" and discontinuance of the payment of all considerations and contributions has not occurred with respect to such organization.

COMMENTS

Here we find a rather comprehensive set of priority classifications. The master contract, unlike that in Exhibit 3, provides for the continuation of the pooled fund, with purchase of pensions therefrom made at retirement age. A strict adherence to this basis could be in conflict with a strict following of the wording of the plan. For instance, a person in the fifth category might be just at the purchase point—retirement age—when the plan terminated; the contract would seem to say that such purchase would be made on schedule, but the plan seems to say that he should not be provided for until all those in the fourth category are provided for. Concerning inconsistencies such as this, and other decisions required at termination of plan, it is probable that the insurance company would agree to follow the terms of the plan as interpreted by the employer. Since the insurance company has made no guarantees to nonretired employees, reasonable flexibility in the application of its contract provisions to accommodate termination of plan would seem to be in order; in fact, flexibility of operations is claimed by the insurance companies as a principal attribute of the Deposit Administration contracts.

Exhibit 5

TERMINATION OF PLAN PROVISION

THE GENERAL AND INDEFINITE TYPE (NONCONTRIBUTORY, NO VESTING)

Plan

The Company hopes and expects to continue the Plan, but necessarily reserves the right at any time to reduce or discontinue payments provided to be made by it hereunder. The Company also reserves the right to amend or discontinue the Plan at any time, but no such action shall operate to recapture for the Company any payments previously made under the Plan by the Company, nor, except to the extent required to permit the Plan to meet the requirements of the Internal Revenue Code, or the requirements of any governmental authority, to affect adversely in any way any rights theretofore acquired by the employees, subject, however, to the temporary limitations of (Internal Revenue Mimeo. 5717 limitations).

In the event of the reduction or discontinuance of contributions or the amendment or discontinuance of the Plan, the retirement benefits shall be only such as are procurable with the funds in the hands of the Trustee or any insurance company at that time. All of the terms and provisions of the Plan herein contained are subject to the provisions of this paragraph.

Trust Agreement

While the Company hopes and expects to continue the payments to be made by it under the plan until all participating employees retire, die or withdraw from service, the Company expressly reserves the right, as stated in the Plan, to amend or discontinue the Plan at any time, and the right to reduce from time to time or to discontinue such payments provided for under the Plan. Should such payments be discontinued, and the business of the Company be continued, then the Trustee shall take such action as in its opinion is appropriate and in accord with the purposes of this trust to provide retirement benefits to participating employees. If such payments should be discontinued and the business of the Company discontinued, under conditions not providing for such business to be carried on by a successor corporation which may assume the position of the Company under the Plan and this trust, or if the Plan be discontinued pursuant to its terms, then this trust shall terminate and the Trustee shall distribute to the respective employees entitled thereto the trust assets held for their benefit; but prior to such distribution the Trustee may, if so directed by the Company, purchase with cash or securities available, annuity contracts for the benefit of participating employees.

COMMENTS

Note how wide-open this termination provision is—no priorities, no instructions, no qualifications for actuarial equity, no mandates against discrimination. Nevertheless, for the reasons given on page 233, the mechanics set up for any actual termination would need to follow some definite, fair scheme of allocation and distribution; something along the lines of Exhibit 7*a* would probably be decided on.

Exhibit 6

TERMINATION OF PLAN PROVISIONS

THE GENERAL, BUT INDICATIVE TYPE (NONCONTRIBUTORY, WITH VESTING)

Plan

In the event of the discontinuance of the Plan, the retirement benefits shall be only such as are procurable in accordance with the Trust Agreement, with the funds then or thereafter in the hands of the Trustees or under any contracts which have theretofore been purchased, or may thereafter be purchased, with the funds then, or thereafter, in the hands of the Trustee, to provide the benefits under the Plan.

Trust

While the Company hopes and expects to continue the payments to be made by it under the Plan until all Participants retire, die or withdraw from service, the Company expressly reserves the right, as stated in the Plan, to modify, amend, terminate or discontinue the Plan at any time and to reduce from time to time, or to discontinue, contributions thereto. Should contributions be discontinued and the business of the Company continued, then the Trustees* shall take such action *as in their opinion is appropriate, actuarially equitable and in accordance with the purposes and provisions of the Plan and of the Trust Agreement to provide retirement and other benefits to Participants* out of the assets and property belonging to the Trust. If such payments shall be discontinued and the business of the Company discontinued under conditions not providing for such business to be carried on by a successor Company which may assume the position of the Company under the Plan and the Trust Agreement, then the Trust shall terminate and the Trustee shall distribute to the respective persons entitled thereto the assets held in trust for their benefit, either by way of cash distribution or the purchase of annuity contracts; *such distribution shall be on an actuarial basis and in an equitable and nondiscriminatory manner.* All provisions of this paragraph are subject to the Bureau of Internal Revenue temporary limitations of Section . . . of this Plan. (Italics supplied.)

COMMENTS

Two points may be noted here. One is that while there are no priorities stated, the implications of "actuarial," "equitable" and "nondiscriminatory" would necessarily lead to setting up some scheme of priorities or proration for allocating the assets. The second point of interest is that it is the Trustee who must make the decisions, not the Company (in many cases, the reverse is true).

Exhibit 7a

TERMINATION OF PLAN PROVISIONS

DEFINITE PRIORITY CLASSIFICATION TYPE (NONCONTRIBUTORY, NO VESTING)

Plan

The amount of the trust fund assets held by the trustee shall be allocated, subject to provision for expenses of administration or liquidation, for the following pension purposes and in the following manner and order to the extent of the sufficiency of such assets.

(i) First, to provide the pensions for life to the persons who are pensioners under the Plan on its date of termination. The allocation of the amount for this

* In this case, natural person trustees are used, including certain of the Company's employees.

purpose shall be based on immediate life annuity values without death benefit, as determined by the actuary of the Plan. Any reductions in such pensions revealed as necessary by the insufficiency of the trust fund assets at or after the date of termination of Plan shall be determined by the actuary in a uniform manner on the basis of similar annuity values.

(ii) Second, if any such assets remain after complete allocation for the purposes of (i) above, to provide the pensions for life, to the extent possible, to the employees who (*a*) have reached their normal retirement date, or (*b*) have been approved for disability pensions, but have not commenced to receive their pensions by the date of termination of the Plan. The allocation of the amounts, if any, for full or reduced pensions for such employees shall be on the basis of immediate life annuity values without death benefit in the same manner, with application for reduction of pensions, as in (i) above.

(iii) Third, if any such assets remain, after complete allocation for the purposes of (i) and (ii) above, they shall be allocated to the employees who were eligible to retire under the early retirement provisions on the date of termination of the Plan. The allocation of the amount for this purpose shall be computed on the early retirement pension to which they would have been entitled on such date if then retired and shall be based on immediate life annuity values without death benefit in the same manner, with application for reduction of pensions, as in (i) above.

(iv) Fourth, if any such assets remain after the complete allocation for the purposes of (i), (ii) and (iii) above, they shall be allocated to employees who remain who have a pension interest because of credited service on the date of termination of the Plan, but not beyond the value of such interest, on a basis proportionate to the actuarial value of such interests of such employees.

The allocation referred to, when determined by the actuary and trustee, may be implemented through the continuance of the existing trust fund or through a new trust instrument for that purpose or through the purchase by the trustee of insurance company annuity contracts or by a combination of these media.

If the allocations produce a pension of less than $40 a year for any person, the trustee may pay in lieu of a pension a lump sum of equivalent actuarial value.

Trust Agreement

The Employer may at any time segregate the plan and trust of any participating subsidiary and such subsidiary may then continue the same in accordance with the provisions of the Plan and of this Agreement as though such subsidiary were the sole creator of the Plan and of this Agreement. In such event, the Employer shall direct the Trustee to deliver to itself as Trustee of such separate trust such part of the Fund as may be determined by the Employer to constitute the appropriate share of the Fund then held in respect of the employees of such subsidiary. Such subsidiary may thereafter exercise in respect of such separate Plan and Trust Agreement all the rights and powers reserved to the Employer under the provisions of the Plan and of this Agreement.

If any unit, not separately incorporated, of the business of the Employer or of any participating subsidiary is disposed of, and the Employer shall certify to such disposal and direct the segregation of assets of the Fund as if the employees regularly employed by such unit at the time of such disposal were employees of a segregated subsidiary, the Trustee shall hold such segregated assets in the same manner and for the same purposes as provided above in the event of segregation of a subsidiary, and any successor owner of the segregated unit shall have the rights hereinabove provided for a segregated subsidiary.

In the event of a complete termination of the Plan or of a partial termination of the Plan which affects the Fund, the Trustee shall dispose of the Fund or that portion thereof determined by the Employer to be affected by such termination as directed by the Employer pursuant to the provisions of the Plan, and the Trustee shall not be under any duty to inquire as to the compliance of any such direction with the provisions of the Plan.

When no property remains in the hands of the Trustee the trust shall terminate.

COMMENTS

This provision calls for determinations to be made along quite specific lines. The allocation of the fund for the first priority group is to equal the full amount of single premium value of their pensions, and similar allocations are to be made for junior priority groups, in order, as far as the assets permit. In the last group reached by any asset allocation, the reduced pensions shall be proportionate to the single premium values for unreduced pensions.

Note that the actuary appears to play the major role in establishing the allocations and, where necessary, the pension reductions. The implementation, for distribution purposes, of the allocations, once determined, is—while not definitely stated—probably to be assumed by the Employer.

Exhibit 7b

TERMINATION OF PLAN PROVISION

DEFINITE PRIORITY CLASSIFICATION TYPE (CONTRIBUTORY, NO VESTING)

Plan

In the event of the termination of the Plan, the Pension Fund shall be administered as follows:

a) The assets comprising the Pension Fund shall be allocated by the Actuary, subject to provision for expenses of administration or liquidation, in the following manner and order, to the extent of the sufficiency of such assets.

1. First, there shall be allocated to each participant who has not theretofore retired an amount equal to 100% of his own contributions plus interest on such contributions at 2% compounded annually from the anniversary date following the Plan Year in which such contributions were made up to the beginning of the month in which the Plan is terminated; and there

shall also be allocated to each pensioner then receiving a pension an amount equal to the excess, if any, of his own contributions, plus interest as aforesaid to the beginning of the month in which his retirement occurred, over the aggregate of the pension payments received by him up to the date of the termination of the Plan.

2. Second, there shall be allocated to each person who is a pensioner at the date of the termination of the Plan an amount equal to the actuarial value (without death benefit), at the date of the termination of the Plan, of the pension payable to him under the Plan.
3. Third, there shall be allocated to each Employee who, at the date of termination of the Plan, was not receiving any pension under the Plan but had become eligible for a normal retirement pension upon his retirement, or had been approved for a disability pension, an amount equal to the actuarial value (without death benefit), at the date of the termination of the Plan, of the pension payable to him under the Plan if he retired on such date, computed upon the assumption that such pension will commence with the month next following the month in which the termination of Plan occurs.
4. Fourth, there shall be allocated to each Employee who, at the date of the termination of the Plan, was not receiving any pension under the Plan but had become eligible for an early retirement pension upon his retirement with the consent of his Employer but had not become eligible for any normal retirement pension and had not been approved for any disability pension, an amount equal to the actuarial value (without death benefit), at the date of the termination of the Plan, of the pension payable to him under the Plan if he retired early on such date, computed upon the assumption that such pension will commence with the month next following the month in which the termination of the Plan occurs.
5. Fifth, there shall be allocated to each Employee (other than Employees to whom allocations shall have been made under the foregoing Paragraph 3 or 4) who, at the date of the termination of the Plan, has a pension interest because of credited service prior to the date of the termination of the Plan, an amount equal to the actuarial value of such interest.
6. Each allocation to a pensioner or Employee pursuant to the provisions of the foregoing Paragraphs 2 to 5, both inclusive, shall make due allowance for any amount allocated to such pensioner or Employee under Paragraph 1 above.
7. If the assets of the Pension Fund available for allocation to persons in any one of the classes described in the foregoing Paragraphs 1 to 5, both inclusive, are insufficient to provide a full allocation for all persons within such class, the allocation to each person within such class shall be reduced to such extent and in such manner as the Actuary shall determine; provided, however, that any such reduction shall be made in a uniform manner on the basis of similar annuity values.

b) All allocations made pursuant to the provisions of the foregoing Subsection (*a*) may be implemented through the continuance of the Pension Fund existing upon the date of the termination of the Plan, through the creation of one or more new funds for that purpose, through the purchase of insurance company annuity contracts, or through a combination of the foregoing media. If the foregoing allocations produce a pension for any person of less than $40.00 a year, the Trustee may make to such person, in lieu of all other benefits, a lump-sum payment of equivalent actuarial value.

Trust Agreement

The Trustee shall dispose of the Pension Fund, including both the income therefrom and the principal thereof, as follows:

1. Unless and until the Plan is terminated, the Trustee shall apply the Pension Fund to the payment of pensions and other benefits to such persons, in such amounts and at such times as the Company from time to time shall direct in writing and certify to be payable under the Plan.

2. Upon written notice from the Company that the Plan has been terminated as therein provided, the Trustee, in conjunction with an actuary designated by the Company for the purpose, shall allocate the amount of the Pension Fund for the benefit of certain employees and former employees of the Employers in the manner provided in the Plan. The Company shall furnish to the Trustee and such actuary all information reasonably required by them for the purpose of making such allocations, and the Trustee shall be fully protected in relying upon the accuracy of any and all information so furnished and upon any actuarial examinations made by such actuary on the basis of such information. After such allocations are made, the Trustee shall implement said allocations either (*a*) through distribution of the Pension Fund, to the extent so allocated, to such of the persons for whose benefit such allocations are made and in such amounts and at such times as the Company from time to time shall direct in writing, (*b*) through creation of one or more new funds for the purpose of distributing the Pension Fund, to the extent so allocated, to such persons for whose benefit such allocations are made and in such amounts and at such times as the Company shall from time to time direct in writing, or (*c*) through application of any amounts so allocated to the purchase from an insurance company of such immediate or deferred annuities for such of the persons for whose benefit such amounts are allocated as the Company from time to time shall direct in writing, or by such of the foregoing means of implementation, or by such combination of the foregoing means of implementation, as the Company from time to time shall direct in writing. In the event that an Employer other than the Company shall withdraw from the Plan as therein provided, and thereupon terminate the Plan as to such Employer, the Trustee shall set aside a portion of the assets then held in the Pension Fund in an amount which such actuary, upon the basis of an actuarial evaluation, shall determine to be fair and equitable, taking into account the contributions made by such former Employer and its Employees, the payments made to retired Employees of such former Employer and

other relevant factors; and the portion of the assets so set aside shall be held as a separate fund and allocated, administered and liquidated for the benefit of certain Employees and former Employees of such former Employer in accordance with the provisions of the Plan and this Section 2, applicable upon termination of the Plan.

3. The Trustee shall have no duty to inquire into the propriety of any written direction of the Company, and the Trustee shall make the payment specified therein until the same shall be superseded by a further written direction. The obligation of the Trustee to make any payment hereunder shall in all events be limited to the amount of the Pension Fund at the time any such payment shall become due.

4. Upon written notice from the Company that the Plan has been terminated, that all liabilities of the Plan have been satisfied or provided for in full as set forth in the Plan or in this Agreement and that there is an amount remaining in the Pension Fund due to erroneous actuarial computations, all within the meaning of Section 165(a) of the Internal Revenue Code and the Regulations and rulings issued thereunder, then the Trustee shall pay over such amount to the Employers; but no part of the Pension Fund shall otherwise be distributed to any Employer. In determining the amount which any Employer shall receive under this Paragraph 4, the Trustee shall take into consideration the contributions made by such Employer, the pension payments made to retired employees of such Employer, and such other factors as it shall deem relevant.

COMMENTS

The above provisions of both the Plan and the Trust Agreement are more than usually definite and comprehensive; compare them for instance, with the brief and general provisions of Exhibit 5. Also, note the important function of the actuary explicitly written into the documents; he is to determine the allocations at termination of plan in accordance with the priority classes set forth.

This Plan—from the language above—apparently covers subsidiary or affiliated employers, since paragraph 2 of the Trust Agreement provision admits of special treatment in case such an Employer withdraws from the Plan. Note that in such a case the fund allocated in respect of the withdrawing Employer is not necessarily based on the priority classes of the Plan, there being an implication that prior contributions made by such Employer could be used as a basis. This is one of the possibilities mentioned in section 8.

In spite of the rather elaborate spelling out of these termination provisions, there would still remain, in actual practice, many points at which actuarial judgment, and considered decisions of others, would need to be exercised in the final termination procedure.

Exhibit 8

TERMINATION OF PLAN PROVISION

Type Providing Certain Priorities, and the Balance Pro Rata (Noncontributory, with Vesting)

Plan

1. Should the Plan, for any reason, be terminated, the Trustee, in so far as there are funds in the Trust Fund, shall:

a) Provide the continued payment of retirement benefits to employees, and to ex-employees whose vested deferred benefit has commenced, who are retired employees at the time of termination of the Plan;

b) If funds remain after full allocation for (*a*) above, provide normal retirement benefits upon normal retirement to employees age 65 or over on the date of termination of the Plan, without reference to the order in which they shall have reached age 65;

c) If funds remain after full allocation for (*b*) above, provide disability retirement benefits to employees who shall have applied for such benefits prior to the date of termination of the Plan and who are determined to have been eligible for such benefits under provisions of the Plan prior to such date of termination of the Plan, without reference to the order in which they filed application or met eligibility requirements;

d) If funds remain after full allocation for (*c*) above, provide normal retirement benefits upon normal retirement to employees age sixty (60) or over but less than sixty-five (65) on the date of termination of the Plan, without reference to the order in which they shall reach age 65;

e) If funds remain after full allocation for (*d*) above, distribute any remaining funds to the employees who are in the Company's employ on the date of the termination of the Plan in shares proportionate to the length of Credited Service of such employees. Within this group shall be included ex-employees having a deferred vested interest, provided such ex-employees can be contacted within a period of one year following the date of termination of the Plan.

Should the funds be insufficient to cover the full allocation for a particular group such remaining fund shall be prorated to employees included in that group.

2. The Trustee, in carrying out the foregoing provisions, may take such action as it deems appropriate, including, but not limited to, the continuation of the Trust Fund or the creation of a new fund.

3. The Trust Agreement shall include such provisions as are necessary to carry out the foregoing provisions.

Trust Agreement

In the event of the termination of the Plan, the Trustee shall dispose of the Fund, in accordance with written authorization of the pension committee, exclusively for the benefit of retired employees and employees eligible to participate in the distribution of the Fund by virtue of the termination provisions of the Plan, (*a*) by first providing for the payment in full of all benefits theretofore granted retired employees, if any, and, if the Fund is insufficient therefor, it shall be applied pro rata in accordance with the interests of such retired employees, and (*b*) from the balance then remaining by providing for the payment of benefits in accordance with the Plan to all others who are employees at the date of termination in the amounts respectively accrued to each such employee at such date on the basis of the actuarial equivalent thereof and, if such balance is insufficient therefor, it shall be used and applied on a pro rata basis in accordance with the interests of such employees. For the foregoing purposes, the Fund shall be continued and the Company and the Trustee shall continue to act under the provisions of the Plan and Trust Agreement until the Fund shall have been so used and applied, whereupon the Trust shall cease and be at an end. The Trustee, upon making payments in accordance with written authorization, as in this Section provided, shall be relieved of any responsibility with respect thereto.

COMMENTS

This example of termination of plan provision is included because quite a number of plans, especially many negotiated plans in the automotive and allied industries, set up priority classes wherein this directive, "without reference to the order," etc., appears. Note that, while the priority categories could be the same, an analysis of the wording between this type and the type of Exhibit 7*a* or 7*b* reveals a considerable difference. Exhibits 7*a* and 7*b* permit allocations to individuals within a category as soon as the amount of assets for that category can be determined. The literal wording in the plan for this Exhibit 8, however, does not permit this.

Take class (*d*) for instance. Employees between 60 and 65 are to receive pensions at 65 "without reference to the order in which they shall reach" that age. If the assets have taken care of classes (*a*), (*b*), and (*c*) and reach partly into (*d*), the person then age 60 is to receive the same relative treatment at 65 as the person then age 64. But what can be done in this uniform manner must depend on whether the employee age 60 (and others 60 to 64) lives to age 65. That is, the proportion of pension that can be provided for any of the group cannot be known until the youngest in the group attains (or fails to attain) age 65.

Even if the assets seemed clearly adequate to cover class (*d*) if they all lived to 65, the balance left for class (*e*) could not be fully determined until it was seen just how many of class (*d*) did so survive. Class (*e*), itself, calls for allocation, of whatever balance does turn out to be available, by length of credited service, which, as pointed out in the text, is of questionable equity.

I have always felt that this Exhibit 8 type of clause was very fuzzy, and such as to cause delay in final wind-up determinations. It would not seem to admit, for example, of the purchase of deferred annuities for class (*d*) employees (and some plans have more than one class of this character); for if annuities were purchased, and deaths occurred before 65, it could be claimed that the money so used for premiums really belonged to those who lived through to 65.

It may also be noted in this Exhibit 8, that the Trust Agreement language is not strictly in conformance with the Plan. For example, the Agreement speaks of the "actuarial equivalent" as the measuring stick, whereas, for class (*d*) at least, the Plan ignores the order of reaching 65, an order implicit in actuarial measurements.

Exhibit 9a

TERMINATION OF PLAN PROVISIONS

PRO RATA "ACROSS THE BOARD" TYPE (CONTRIBUTORY, NO VESTING)

Plan

Provision A.—In the event of termination of the plan, the trustee shall determine the value of the assets of the plan and shall liquidate the trust fund as of the date of such termination. The trustee shall apportion the amount so liquidated to all participants, in proportion to their respective reserves, determined as specified in Provision B hereof, in cash or in the form of insured paid-up annuities, or by transfer in whole or in part to another trust fund, or otherwise—all as the Pension Committee may direct.

Provision B.—(*a*) The reserve for any participant, whether still in service or retired on pension (including a disability pension), shall, for the purpose of determining benefits based thereon and payable to the participant, be as follows:

(1) The actuarial value of his accrued future service pension; and

(2) The actuarial value of the funded portion of his past service pension, if any.

(*b*) The actuarial value of the funded portion of any past service pension shall be computed as follows:

The amount of assets held for past service pensions, as defined in Provision C, shall be apportioned, in respect of all participants entitled to past service pensions, in proportion to the then actuarial values of such pensions, and such apportionment for each participant shall be the actuarial value of the funded portion of his past service pension.

(*c*) At any anniversary, the reserve for any participant shall be deemed to be his reserve as of the next preceding anniversary plus the future service contributions made by the participant and the Company, if any, and the past service contribution, if any, made by the Company apportioned to him as provided in Provision C, and less the pension payments made to the participant, if any, since the said date, with interest thereon at the rate then in effect for the purposes of the plan.

Provision C.—The actuary shall compute the actuarial value of all future service pensions and disability pensions then accrued. The total amount of the assets of the Plan, as certified by the trustee, less such actuarial value, shall be deemed to be the amount of assets held for past service pensions. The amount of past service contributions made by the company in any year shall be deemed to be apportioned, in respect of all participants entitled to past service pensions, in proportion to the then actuarial values of their past service pensions.

Trust Agreement

(This document was not available.)

COMMENTS

Here is a termination of plan provision with no priority classes, not even for the then retired group. Except for the fact that the method is likely to reduce pensions for those already receiving them, actuarial support for the method might well be found. It discards the principle of meeting pensions in full for oldest active employees first and then by priority groups down the line in age, in favor of allocating the fund according to the actuarial reserve values of the accrued pensions. Since this would automatically give greatest weight to those nearest retirement, the method cannot be harshly criticized, except in respect of the retired group.

Exhibit 9b

TERMINATION OF PLAN PROVISION

PRIORITY FOR PENSIONERS AND THEN PRO RATA TYPE (NONCONTRIBUTORY, NO VESTING)

Plan

1. Should the Plan, for any reason, be terminated, the Trustee, in so far as there are funds in the Trust Fund, shall:

a) Assure the continued payment of retirement benefits to employees who are retired employees at the time of termination of the Plan;

b) Distribute any remaining funds to the employees who are in the Company's employ on the date of the termination of the Plan, in shares proportionate to the length of credited service of such employees.

2. The Trustee, in carrying out the foregoing provisions, may take such action as it deems appropriate, including, but not limited to, the continuation of the Trust Fund or the creation of a new fund.

3. The Trust Agreement shall include such provisions as are necessary to carry out the foregoing provisions.

Trust Agreement

In the event of the termination of the Plan, the Trustee shall dispose of the Fund, in accordance with written authorization of the pension committee, exclusively for the benefit of retired employees and employees eligible to participate in the distribution of the Fund by virtue of the termination provisions of the Plan, (*a*) by first providing for the payment in full of all benefits theretofore granted retired employees, if any, and, if the Fund is insufficient therefor, it shall be applied pro rata in accordance with the interests of such retired employees, and (*b*) from the balance then remaining by providing for the payment of benefits in accordance with the Plan to all others who are employees at the date of termination in the amounts respectively accrued to each such employee at such date on the basis of the actuarial equivalent thereof and, if such balance is insufficient therefor, it shall be used and applied on a pro rata basis in accordance with the interests of such employees. For the foregoing purposes, the Fund shall be continued and the Company and the Trustee shall continue to act under the provisions of the Plan and Trust Agreement until the Fund shall have been so used and applied, whereupon the Trust shall cease and be at an end. The Trustee, upon making payments in accordance with written authorization, as in this Section provided, shall be relieved of any responsibility with respect thereto.

COMMENTS

Unlike Exhibit 9*a*, this plan's clause first takes care of the then pensioners and after that goes on to allocate the balance by a pro rata method. But, again, unlike Exhibit 9*a*, the pro rata method set forth has little regard for actuarial values for its allocations. Its pro rata basis is that of *credited service*, so that the employee age 40 with 20 years of service gets as much weight as the employee age 64. This can make quite a chasm in value between the person just retired at age 65 (full pension) and the one age 64, about to retire (a possible small fraction of his pension).

Note that the Trust Agreement wording (which is similar to that of Exhibit 8) does not conform very well with that of the Plan, since the latter prorates by length of service while the former implies a measurement based on the "actuarial equivalent" of accrued benefits. These two concepts—of service and benefit value—are quite different things.