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Reply to Minneapolis Office

April 15, 2010

Kristin Bromberg
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**RE: February 25th Conference Call
Our File No. 12788.000**

Dear Kristen:

I reviewed the notes on the February 25th conference call and have the following suggested changes:

1. The Section that is labeled "Unfunded Liability" should be revised to read:

Defined Benefit Pension Unfunded Liability/Withdrawal Liability

Many defined benefit pension plans, including the IUPAT Pension Plan, have unfunded liability. This means that when an employer ceases to have an obligation to contribute to the plan or ceases all operations under the plan, it can face withdrawal liability (that is paying its share of the unfunded liability).

There is a special construction industry rule for building and construction industry employers who contribute to a building and construction industry plan. Plans are allowed to adopt rules and regulations defining what it means to be a building and construction industry employer. For example, the Sheet Metal Workers National Pension Fund has an informal rule that in order to be a building and construction industry employer (and thus eligible for the application of the special rule) 85% or more of the employer's union workers have to

spend 25% or more of their time in the field doing installation work.

- **Partial Withdrawal Liability**

This occurs when there is a severe decline in contributions over a three year period of time. There is also a special rule for the building and construction industry employer with respect to withdrawal liability. Under this rule, an employer is only liable for partial withdrawal liability, if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.

- **Complete Withdrawal Liability**

For a building and construction industry employer, complete withdrawal liability would only be imposed if the employer ceased all operations that require contributions to the plan, but then started up such operations within a 5 year period of time, but did not contribute to the plan. Thus, there are only really two things that can cause a construction industry employer to be assessed complete withdrawal liability. The first would be negotiating out of the collective bargaining agreement, the obligation to contribute to the plan or going non-union. The sale of assets of the company, going bankrupt, or simply shutting down operations would not be sufficient to impose withdrawal liability on a building and construction industry employer.

- **Computing Withdrawal Liability**

Is computed for each employer based upon their contributions to the plan, compared with all employer contributions to the plan, over the same period of time.

In many instances, when employers leave a plan, they have no withdrawal liability for a variety of reasons. These reasons can include the diminimus adjustment, use of the special construction industry rule, the fact the employer may be bankrupt and cannot pay withdrawal liability. The withdrawal liability which remains unpaid, however, does not simply go away. It ends up being reallocated to the existing contributing employers.

- An asset sale by a building and construction industry employer typically does not result in imposition of withdrawal liability.
 - If a transaction has a principal purpose of avoiding or evading withdrawal liability, then the fund trustees may impose withdrawal liability.
- Construction industry plans are required to use the presumptive method for calculating withdrawal liability.
- All contributing employers to a plan theoretically have a say in regards to the selection of management trustees, and vice versa with labor having a say in the appointment of union trustees to the pension plan.
- National FCA is a fiduciary to the national pension plan fund to the extent that it appoints management trustees.
- Theoretically, if a *local* plan is 100 percent funded, it is better to remain in this plan than participate in another plan.
 - On a local level, plans have fared about the same as they have on the national level. This is due in fact for two reasons:
 - The stock market decline.
 - Decline of business in the construction industry hours are down, resulting in lower contributions.
- Defined contribution plans have no withdrawal liability. You cannot convert a defined benefit plan to a defined contribution plan.
- Pension Plan Zones
 - 80 percent or more funded = green zone
 - Less than 80 percent funded = endangered zone
 - Less than 65 percent funded = red zone
 - If the plan is less than 80 percent funded, and the contribution levels are expected to create a funding deficiency in five years or less, the plan is considered to be critical.
 - The orange zone is seriously endangered.

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- Stuart Binstock noted a few important tips that bargaining team should exemplify
 - Have a unified voice.
 - Use one spokesperson.
 - Bury the other side with data.

Yours very truly,

William K. Ecklund

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