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\TO: Board of Trustees

FROM: Dick Grosboll, Legal Counsel

Re: **Summary of Key Provisions of the Multiemployer Pension Reform Act of 2014**
(Not Applicable to your Plan—For Your Information)
Law Allows Cutback of Pensions in Pay Status But only if the Plan is
Projected to be insolvent within 15-20 years)

A. MULTIEMPLOYER PENSION REFORM ACT OF 2014 SIGNED INTO LAW

On December 11, 2014, the House of Representatives adopted the Multiemployer Pension and Reform Act of 2014, the Senate approved it two days later and President Obama signed the law on December 16, 2014. The Act permanently extends the Pension Protection Act of 2006 ("PPA") multiemployer plan critical and endangered status funding rules that had been scheduled to sunset at the end of 2014. A principal goal of the new law is to provide the most distressed multiemployer pension plans the flexibility to take necessary action to avoid insolvencies.

The chief proponent of the law was the National Coordinating Committee for Multiemployer Plans ("NCCMP"). Most of the law's provisions are based on recommendations from the Retirement Security Review Commission of the NCCMP. In 2013 the Commission released its proposals in a report entitled Solutions Not Bailouts, based on 18 months of discussions among labor and employer organizations, plans and large employers that are involved with multiemployer plans.

B. CUTTING PENSION BENEFITS IN PAY STATUS: REMEDIATION
(Not Applicable for your Plan as you are in Green Status)

The provision receiving the most attention involves allowing deeply troubled plans nearing insolvency to reduce benefits, a process lawmakers call "remediation." **The law states that plans in "critical and declining status" can temporarily or permanently suspend current and future benefits. This suspension can include benefits already accrued for vested participants and benefits already being paid to retirees and beneficiaries.** *Critical and declining status* is defined as critical plans that are projected to become insolvent during the current plan year or the next 14 plan years (or 19 plan years if the plan has a ratio of inactive to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80% funded). There are clearly specified conditions for when suspensions may be made. Two such conditions include the inevitability of insolvency and that all other reasonable measures have been taken to avoid insolvency. (In essence, Congress created a new funding status called "Critical and Declining Status".)

First, not all Plans in Critical Status ("Red Zone") may reduce benefits in pay status. A Critical Status Plan also has to be in "declining status' to reduce some benefits, including benefits in pay status, subject to certain requirements. A Plan is in "Declining Status" if it is projected to become insolvent within 15 years (20 years if the inactive to active Participant ratio is more than 2-1 or if the Plan is less than 80 percent funded). **Not only is your plan not projected to be insolvent within 15 years, your Plan's condition has been improving**.

Second, the Trustees of a Plan in Critical Declining Status may suspend existing vested pension benefits in pay status only if the Trustees determine that all reasonable measures to avoid insolvency have been (and continue to be) taken, but the Plan is still projected to be insolvent, and the suspension of the benefits in pay status would allow the Plan to avoid insolvency indefinitely. For example,. I represent a Plan in which the Trustees have not taken many actions that could have been taken because the Trustees did not want to take these actions given that the Union members were willing to continue to allocate funds to the Pension Plan to avoid such from occurring. For example, the unreduced retirement age could be increased from age 55 to age 65, among other options. Benefits before age 65 could be reduced to the actuarial equivalent of the age 65 benefit. The Disability Pension could be eliminated. The lump sum pre-retirement alternative death benefit could be eliminated. Each of these options would have to be considered and most likely taken before Trustees could consider reducing the pensions of existing retirees.

Third, even if pension benefits could be reduced, there is an exception for retirees over age 80. Plus for those between age 75 and 80, there is a limitation on how much reduction could take place.

Fourth, reducing existing pension benefits does not just happen with Trustee action alone. The Plan would have to submit an application for reduced pension benefits in pay status to the U.S. Treasury Department and if after 225 days (approximately 7-1/2 months), the Treasury Department has not approved the application, it is deemed approved. When the Application is submitted, notice has to be given to the Participants, contributing employers and the Union.

Fifth, even if the Treasury Department approves a reduction of benefits in pay status, a majority of the Participants must approve the reduction. But even if the Participants reject the benefit reduction, the Treasury Department can allow the benefit reductions to take effect if the Plan is projected to cost the PBGC more than $1 billion in financial assistance.

C. MORE INFORMATION ON THE CUTBACK PROVISIONS

Although the cutback provisions are not applicable for your Plan, I provide more information:

1. Plan trustees have discretion in deciding how to allocate the cuts. For example, they can cut retirees' benefits more than those of active workers, and decide whether to reduce survivors' benefits.

2. Plan trustees are exempt from fiduciary responsibility in making cuts.

3. Trustees' decisions to cut benefits can be reversed only by the Department of Treasury, and then only if the Treasury determines that the trustees' decision to cut benefits or the extent of the benefit cuts is "clearly erroneous."

4. The law also sets limits. For example, the monthly benefit of any participant or beneficiary may not fall below 110% of the PBGC's guaranteed monthly benefit. Participants and beneficiaries aged

75 and older are afforded special protections, as are those with benefits based on disability. Benefit suspensions are to be distributed equitably among participants and beneficiaries.

5. Even if a majority of participants vote against cuts, the Treasury Department can override the vote and uphold the decision to make cuts if it concludes that a plan poses a "systemic" risk to the PBGC.

D. OTHER KEY PROVISIONS

1. Pension Protection Act (PPA) sunset: The law repeals the PPA's funding rule sunset date of December 31, 2014. Thus, the PPA continues.

2. Significant Increase in the PBGC premiums for the multiemployer program: For plan years beginning after December 31, 2014, the PBGC premium is doubled from $13 to $26 per participant. For subsequent plan years, the amount will be indexed (and thus it will not be necessary to go back to Congress for each increase).

3. Elect critical status: Plans that are not yet in critical status but are projected by actuaries to be in critical status within the next five plan years may elect to be in critical plan status for the current plan year. Because critical status provides trustees with the greatest flexibility for addressing funding challenges, this elective critical status would allow trustees to adopt these flexible tools (via a rehabilitation plan), including expense reductions, reductions in future benefit accruals, reductions in adjustable benefits and increases in employer contributions.

4. **Avoid Endangered Status if Long-term Projection is Healthy.** Yellow Zone plans that are projected to become Green Zone plans without taking any action do not have to certify as Yellow Zone. A notice is required but a Funding Improvement Plan is avoided. A Plan is not considered to be in endangered status if the plan is projected to no longer to be in endangered status as of the end of the tenth plan year ending after the plan year of the actuary's certification without any further action (without increasing contributions or decreasing benefits).

5. Mergers/Possible Financial Assistance from PBGC: The PBGC is given the authority to promote and facilitate the merger of two or more multiemployer pension plans if the action is in the interests of participants and beneficiaries of at least one of the plans and not detrimental to any of the participants and beneficiaries involved. Facilitation can involve training, mediation, technical assistance and communications. The PBGC is allowed to provide financial assistance to merged plans under certain circumstances. Notably, a merger must be in the interests of the Participants and beneficiaries of only one of the Plans (not both)..

For now, you may advise Participants that the new law is applicable.

cc: Judy Sargent, Fund Manager
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Other Plan Advisors