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July 9, 2010

By U.S. Mail

U.S. Department of Labor
Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
Attn: RIN1210-AB42
200 Constitution Avenue N.W.
Washington D.C. 20210

Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Attn: OCHIO-9991-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

Internal Revenue Service
CC:PA:LPD:PR (Reg-118412-10)
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington D.C. 20004

**Re: Further Comments on Interim Final Rule Regarding
Status of Grandfathered Plans**

To Whom It May Concern:

On June 21, 2010 and again on June 28, 2010, we wrote to you concerning certain issues arising under the captioned regulations. We have yet another question, this time concerning the interpretation of Subsection (g)(v)(A).

As you know, this Subsection specifies that grandfathered status will be lost if there is a decrease in the employer's share of the cost of coverage by more than five percentage points. However, the use of the words "the employer" implies that the plan is a single-employer plan. How is this to be applied to multiemployer plans?

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One plan that our firm represents is funded by more than 230 current collective bargaining agreements. Many of these collective bargaining agreements contain limits on the employers' contribution obligations. When these limits are reached any increase in contributions necessary to fund the plan are borne by the employees.

For some collective bargaining agreements the employer's contribution has already reached the limit, and for others the limit will be reached well before the expiration of those agreements. This means that while the employer's contribution will not decrease in absolute terms, it will decrease as a percentage of the plan's cost of coverage. As we are sure you understand, the plan's cost of coverage will increase in the future, both because of the implementation of changes required for all plans (including grandfathered plans) as well as by increases in health care costs in general.

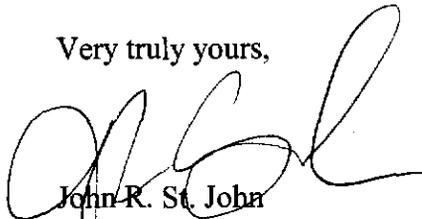
It is therefore virtually certain that at least one participating employer, during the term of its current collective bargaining agreement, will have a decrease in its share of the cost of coverage that exceeds five percentage points. Would this cause the plan to lose its status as a grandfathered plan?

For a multiemployer plan, subsection (g)(v)(A) could be interpreted in two ways:

- (A) Loss of grandfathered status will occur if any participating employer's share of the cost of coverage drops by more than five percentage points; or
- (B) Loss of grandfathered status will occur only if the average share of the cost of coverage for all participating employers falls by more than five percentage points.

The plan year for the plan we have described above begins on October 1, 2010. Since the regulations are applicable to plan years beginning after September 23, 2010, the new regulations, including the rules on loss of grandfathered status, will apply to the plan on October 1. Prompt clarification of this issue is therefore needed.

Very truly yours,



John R. St. John
Of ST. JOHN, WALLACE, BRENNAN & FOLAN LLP

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cc: Gerry Crews
Peter Meliak
Kathy Dyche