BONDING
INDEMNIFICATION AND
INSURANCE
UNDER ERISA
TABLE OF EXHIBITS

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2. Failings of Commercial Crime Policy
3. Proper ERISA bond
4. Bonding Checklist
5. Sample Fiduciary Insurance Application
6. Exclusions From Coverage and Policy Comparison
7. Indemnity Clauses, Bad for fund, Good for Provider
8. Department of Labor Opinion Letter on Indemnity
EXHIBIT 1
ERISA Bonding

In conjunction with St. Paul Travelers, we are pleased to offer our clients the choice of two ERISA fidelity bond plans.

Plan A: Crime Plus Comprehensive Bond

This comprehensive bond, normally reserved for private businesses, is now available for our Taft-Hartley clients. Its important features not available on the standard ERISA bond include:

- **Broad Definition of Covered Persons** includes of course all plan trustees and employees, but goes beyond that to cover loss caused by leased employees, non-compensated persons, volunteers, and terminated employees up to 60 days after termination. To assure compliance with the ERISA regulations, this bond also **automatically covers** fidelity losses committed by:
  - Investment Managers
  - Third Party Administrators
  - All other natural persons required to be bonded under ERISA

- Revised Employee Dishonesty wording eliminates the “Manifest Intent” provision.

- Along with the ERISA bond, two other coverages may be purchased, either with individual limits or combined under the same loss limit as the bond:
  1. Forgery & Alteration of checks and other financial instruments
  2. Computer & Funds Transfer Fraud committed by non-employees.

- Loss Audit Expense coverage is included with a sub-limit of $5,000.

- Prior Dishonesty exclusion does not apply to an employee whose known prior dishonesty loss was $1,000 or less. Nor is coverage automatically canceled on an employee whose dishonesty loss while working for the plan is $1,000 or less.

- Inventory Records may be used to support the amount of a covered loss.

- **Coverage amounts are available in excess of the $500,000 ERISA usual maximum.**

Plan B: Standard ERISA Bond

In its standard form, the ERISA bond covers fidelity losses caused only by the plan trustees and employees. Investment managers, TPAs and other parties may also be covered but only by means of a rider specifically naming each person or entity to be covered.

Plan B is the more economical of the two bond forms, at roughly 66% of the premium for the Crime Plus Comprehensive Bond.
## Premium Comparison

<table>
<thead>
<tr>
<th>ERISA Bonds &amp; Fiduciary</th>
<th>Expiring Premium</th>
<th>Renewal Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vacation Trust Fund</td>
<td>$500,000</td>
<td>$603</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Welfare Fund</td>
<td>$500,000</td>
<td>$603</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Pension Fund</td>
<td>$500,000</td>
<td>$603</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>$2,000,000</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Retirement Savings Fund</td>
<td>$500,000</td>
<td>$603</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>S.U.B. Fund</td>
<td>$50,000</td>
<td>$252</td>
</tr>
<tr>
<td>$500,000</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Fiduciary Liability Insurance</td>
<td>$120,000</td>
<td>$114,000</td>
</tr>
</tbody>
</table>

### Notes:

1. Travelers has reduced the deductible on the Fiduciary Liability from $25,000 to $10,000, while also lowering the premium as shown above.

2. In addition, Travelers has offered to include the JATC in the Fiduciary Liability for a modest premium of $890 which is included in the renewal quotation shown.

3. The Expiring bond premiums are for the standard Plan B form previously described; the Renewal bond premiums are for the Plan A Comprehensive form. The premium calculations for the Comprehensive Bond consider the amount of plan assets and contributions, thus the differences in premium.
EXHIBIT 2
Failings of Commercial Crime Bonds

- Product drafted from other industries not designed for ERISA's broader application.

- ERISA expanded scope of coverage of persons for whom coverage is required. Most carriers did not keep pace with change.

- Scope of persons covered is not broad enough to comply with ERISA if "any person handling funds" particularly independent contractor service providers.

- Commercial crime policies excludes from scope certain fiduciaries and handlers who are independent contractors, i.e. "except an administrator or a manger who is an independent contractor".

- In today's complete environment almost all handlers of plan assets and independent contractors (i.e. TPA's, money managers, banks.

- Employee dishonesty form conditions recovery on dishonest actor's "manifest intent to cause plan to sustain loss" and to "obtain financial benefit".

ERISA bonds do not have a manifest intent condition.

Purchase an Agent's Rider Endorsement expands coverage capacity to non-employer fiduciaries with "Capacity of Agent" such as Investment Manager.

Require Service Provider to Name Fund as an Additional Insured on Service Providers Bond.
EXHIBIT 3
PENSION AND WELFARE FUND FIDUCIARY DISHONESTY POLICY
DECLARATIONS

Policy Number: UL · 0000001

rs Pension

Item 3. Policy Period From: 06/01/2007 To: 06/01/2008

(12:01 A.M. Standard Time at the address of the
Named Insured as stated herein.)

Item 4. Limit of Liability
A. Employee Theft $500,000 Per Occurrence

Item 5. Deductible $0.00

Item 6. Premium $500.00

Authorized Representative
PENSION AND WELFARE FUND FIDUCIARY DISHONESTY POLICY

Pension and Welfare
Fund Fiduciary
Dishonesty Policy

In consideration of payment of the required premium and subject to all of the terms and provisions of this policy, the Company agrees with the insured to pay the Insured for losses any Insured shall sustain or discover it has sustained during the policy period in the manner set forth below.

Insuring Clause

The Company agrees to pay and make good to the Insured all such losses as any such Insured may during the policy period sustain or discover it has sustained of money, securities and other property through any fraudulent or dishonest act or acts (including larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion or willful misapplication) committed by any Employee or Employees, acting alone or in collusion with others.

"Employee" or "Employees" means, respectively, any one or more of the natural persons while in the service of any Employee Benefit Plan (included as Insured herein) as fiduciary, trustee, administrator, officer or employee and any other natural person required to be bonded by Title 1 of the Employee Retirement Income Security Act of 1974 and also includes any ex-Employee during a period not exceeding thirty (30) days following the termination of such service.

General Agreements

Non-Accumulation of Liability

Regardless of the number of years this policy shall continue in force, and the number of premiums which shall be payable or paid or any other circumstances whatsoever, the liability of the Company under this policy with respect to any loss or losses shall not be cumulative from year to year or from period to period.

Limitation of Coverage

This policy does not cover any loss caused by any Employee who, to the best knowledge of any administrator or officer of the Insured (not in collusion with such Employee), has committed any fraudulent or dishonest act in the service of the Insured or otherwise, whether such act be committed before or after the date of such service or upon whom, prior to the issuance hereof, coverage under any fidelity bond or insurance in favor of the Insured or any predecessor in interest of the Insured shall have been cancelled by specific written notice by the insurer issuing such fidelity bond or insurance and not subsequently reinstated under the same or some superseding fidelity bond or insurance.

Discovery Period

This policy does not cover any loss not discovered within twelve (12) calendar months following the termination of this policy as an entirety or any loss sustained by any Plan not discovered within twelve (12) calendar months following the termination of this policy as to such Plan.

Joint Insured

The total liability of the Company for loss or losses sustained by any or all Plans included herein shall not exceed the amount of coverage specified herein and the Company shall not be liable for loss sustained by one Plan to the advantage of any other Plan. Only the Principal insured shall have any right to make, adjust, receive and enforce payment of any and all claims hereunder and shall be deemed to be the sole agent of all Plans for such purposes and for the giving or receiving of any notice required or permitted to be given by the terms hereof and for the purpose of affecting or accepting any amendments to or termination of this policy.
Joint Insured
(continued)
Each and every Plan shall be conclusively deemed to have consented and agreed that none of them shall have any direct beneficiary interest herein or any right of action hereunder whatsoever and that this policy or any right of action hereon shall not be assignable; but knowledge possessed or discovery made by any officer of any Insured shall constitute knowledge possessed or discovery made by all Insureds for the purposes of this policy. All losses and other payments, if any, payable by the Company hereunder shall be payable to the Principal Insured without regard to its obligations to others and the Company shall not be responsible for the proper application of any payment made hereunder to the Principal Insured.

Payover
In compliance with Title 1 of the Employee Retirement Income Security Act of 1974, payment by the Company under this policy to the Principal Insured shall be held by such Insured for the use and benefit of any Employee Benefit Plan(s) sustaining a loss. If such payment is in excess of the amount of coverage required by such Act for said Plan(s), such excess shall be held for the use and benefit of any other named Plan(s) should such Plan(s) also discover loss recoverable hereunder. If Money, Securities and other property of two or more Employee Benefit Plans is commingled, recovery hereunder for loss of such Money, Securities and other property shall be shared by such Plans on a pro rata basis in accordance with the amount of coverage each such Plan is required to carry by such Act.

Liability for Prior Losses
The liability of the Company for loss sustained prior to (1) the effective date of this policy or (2) the effective date additional Insureds are subsequently added, is subject to the following additional conditions and limitations:

1. the Insured or some predecessor in interest of the Insured carried some other fidelity bond or insurance which, at the time such loss was sustained, afforded on the person or persons causing such loss some or all of the coverage of this policy; and

2. such prior coverage and the right of claim for such loss hereunder continued under the same or some superseding fidelity bond or insurance without interruption from the time such loss was sustained until the date specified above; and

3. such loss shall have been discovered after the expiration of the time for discovery of such loss under the last such fidelity bond or insurance; and

4. the liability of the Company hereunder with respect to such loss shall not exceed the amount of such prior coverage in force at the time such loss was sustained, or the amount of coverage under this policy, whichever is smaller.

Total Liability
The payment of any loss under this policy shall not reduce the liability of the Company for other losses whenever sustained; provided, however, that the total liability of the Company for any loss or losses caused by any Employee or in which such Employee is concerned or implicated, is limited to the amount of coverage specified herein.
# PENSION AND WELFARE FUND FIDUCIARY DISHONESTY POLICY

THE PRECEDING INSURING CLAUSE AND GENERAL AGREEMENTS ARE SUBJECT TO THE FOLLOWING CONDITIONS AND LIMITATIONS:

<table>
<thead>
<tr>
<th>Ownership</th>
<th>The money, securities and other property covered under this policy may be owned by any Plan or as respects which any Plan is legally liable, or held by it in any capacity, whether or not such Plan is liable for the loss thereof.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Notice of Loss - Proof - Legal Proceedings</th>
<th>At the earliest practicable moment after discovery of any loss hereunder the insured shall give the Company written notice thereof and shall also within four (4) months after such discovery furnish to the Company affirmative proof of loss with full particulars. Legal proceedings for recovery of any loss hereunder shall not be brought after the expiration of twenty-four (24) months from the discovery of such loss. If any limitation embodied in this paragraph is prohibited by any law controlling the construction thereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Valuation</th>
<th>The value of any securities, for the loss of which a claim shall be made hereunder, shall be determined by the average market value of such securities on the business day next preceding the discovery of such loss. If no market price is quoted for such securities the value shall be fixed by agreement between the parties or by arbitration.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Recoveries</th>
<th>If any loss covered by this policy exceeds the amount of coverage provided by this policy, the Insured shall be entitled to all recoveries (except from suretyship, Insurance, reinsurance or Indemnity taken by or for the benefit of the Company) by whomsoever made, on account of such loss under this policy until fully reimbursed, less the actual cost of effecting the same; and any remainder shall be applied to the reimbursement of the Company.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Subrogation</th>
<th>In the event of any payment under this policy, the Company shall be subrogated to all the Insured’s rights of recovery against any person or organization, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Other Insurance</th>
<th>If the Insured, or any other party at interest in any loss, has any other bond indemnity or insurance which in the absence of this policy would cover such loss in whole or in part, then this policy shall be null and void, and shall not cover, to the extent of the amount of such other bond, Indemnity or Insurance; but shall attach to and cover, subject to its conditions and limitations, only the amount of such loss in excess of the amount of such other bond, indemnity or Insurance.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Termination as to Any Employee</th>
<th>This policy shall terminate as to any Employee (1) immediately upon discovery by any officer of the Insured (not in collusion with such Employee) of any fraudulent or dishonest act on the part of such Employee, without prejudice to the loss of any property then being conveyed by such Employee outside the Insured’s premises or (2) twenty days after the receipt by the Principal Insured of a written notice of termination from the Company.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Termination of Policy</strong></td>
<td>This policy shall terminate as an entirety (1) thirty days after the receipt by the Principal Insured of a written notice of termination from the Company, (2) upon the receipt by the Company of a written notice of termination from the Principal Insured, (3) at such other time as may be agreed upon by the Company and the Principal Insured or (4) as to any Plan upon such Plan's liquidation or dissolution. The Company shall refund the unearned premium computed at customary short rates if terminated by the Insured or pro rata if terminated by the Company. If, prior to the termination of this policy as an entirety, this policy is terminated as to any Plan included herein, there shall be no liability for any loss sustained by such Plan unless discovered within the applicable period specified in the Discovery Period clause of this policy, which period shall commence with the date of such termination.</td>
</tr>
<tr>
<td><strong>Alteration</strong></td>
<td>No change in or modification of this policy shall be effective except when made by written endorsement signed by an authorized representative of the Company.</td>
</tr>
</tbody>
</table>
EXHIBIT 4
### Insurance Checklist - Fiduciary Liability, Fidelity Bond & Fidelity Bond Worksheet

(ERISA compliance is measured at the beginning of the Plan year using financial information from the prior year’s Form 5500.)

**Plan Name and Case #**

**Plan Year Beginning -**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Does a separate trust fund exist?</td>
</tr>
<tr>
<td>2.</td>
<td>Are there insurance or annuity contracts?</td>
</tr>
<tr>
<td>3.</td>
<td>Are there separate accounts in the books of the employer or do separate funds or other property exist in the name of the Plan?</td>
</tr>
</tbody>
</table>

**NOTE:** If item 1 or 3 is answered "Yes", bonding is usually required. If item 2 is answered "Yes", bonding may be required. Determine whether insurance dividends belong to the Plan or to the employer. If they belong to the Plan, bonding is required. If cash surrender values exist and the Plan can obtain those values, bonding is required.

| 4. | Are benefits paid from the general assets of the Plan Sponsor? |
| 5. | Is there any segregation of the Plan funds? |
| 6. | Are there separate accounts on the Sponsor's books or are there separate books of account for the Plan? |

**NOTE:** If item 4 is answered "Yes" and items 5 and 6 are "No", the Plan is unfunded and bonding is not required.

<table>
<thead>
<tr>
<th>7.</th>
<th>With respect to Plan assets, do any trustees or Plan employees have:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.</td>
<td>Physical possession of assets?</td>
</tr>
<tr>
<td>b.</td>
<td>The power to obtain physical possession of assets?</td>
</tr>
<tr>
<td>c.</td>
<td>The power to transfer assets?</td>
</tr>
<tr>
<td>d.</td>
<td>The authority to disburse funds directly or indirectly?</td>
</tr>
<tr>
<td>e.</td>
<td>The authority to sign or endorse checks?</td>
</tr>
<tr>
<td>f.</td>
<td>The authority to make investments?</td>
</tr>
</tbody>
</table>

**NOTE:** If any items 7a through 7f are answered "Yes", "handling" of Plan funds is indicated and bonding is required for each individual who has the above authority. If a corporate trustee holds the Plan assets but the Plan trustees can direct payment of benefits by the corporate trustee or direct investments to be made by the corporate trustee, the Plan trustees can "handle" funds and bonding is required.

<table>
<thead>
<tr>
<th>8.</th>
<th>Does the sponsor carry fiduciary liability insurance?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If applicable, enter name of insurance company, policy #, and amount of coverage -</td>
</tr>
</tbody>
</table>

| 9. | Based on answers to the above questions, is a fidelity bond required for the Plan? |

**If item 9 is "No", do not complete the remainder of this checklist or the fidelity bond computation worksheet.**

Source of Information:
(e.g. Bond Policy, Form 5500, etc.)
Plan Name and Case #
Plan Year Beginning -

10. If item 9 is "Yes", does the Plan have fidelity bond coverage?

If item 10 is "No", do not complete the remainder of the checklist and skip to the fidelity bond computation worksheet.

11. Name of bonding company & policy #

12. Is the bonding company listed in Treasury Circular 570?
   For current listings see: http://www.fms.treas.gov/c570/c570.html

13. Date of Update for Circular 570

14. Policy lapse date

15. Is the Plan named as the insured?

16. Does the bond provide for payment to the Plan in the event of a loss?

NOTE: The Plan must be named as an "insured" and the payover rider must be attached unless the Plan is the sole insured under the bond. The definition of employee in the bond must cover all persons who "handle" funds.

17. How many plans are covered by the Bond?

18. How many non-plan entities are covered by the Bond?

19. If more than one plan and/or a non-plan entity is covered, is a pay-over rider attached? #VALUE!

20. If the bond contains a deductible, is the "elimination of deductible" rider attached with respect to the Plan?

21. Does the Bond protect against fraud or dishonesty?

22. Does the Bond cover all persons who "handle" funds?

NOTE: Without a "Definition of Employee" rider, a bond generally excludes "Officers, Directors and Trustees" from coverage.

22. Does the Bond have a one-year discovery period?
<table>
<thead>
<tr>
<th>A</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-a</td>
<td>Cash (non-interest bearing)</td>
</tr>
<tr>
<td>1-c-1</td>
<td>Cash (interest-bearing)</td>
</tr>
<tr>
<td>1-c-2</td>
<td>Government Securities</td>
</tr>
<tr>
<td>1-c-3</td>
<td>Corporate Debt</td>
</tr>
<tr>
<td>1-c-4</td>
<td>Corporate Stock</td>
</tr>
<tr>
<td>1-c-5</td>
<td>Partnership/joint venture interests</td>
</tr>
<tr>
<td>1-c-6</td>
<td>Real Estate</td>
</tr>
<tr>
<td>1-c-7</td>
<td>Loans other than participant loans</td>
</tr>
<tr>
<td>1-c-8</td>
<td>Participant loans</td>
</tr>
<tr>
<td>1-c-9</td>
<td>Value of interest in Common Collective Trusts</td>
</tr>
<tr>
<td>1-c-10</td>
<td>Value of interest in Pooled Separate Accounts</td>
</tr>
<tr>
<td>1-c-11</td>
<td>Value of interest in Master Trust investment accounts</td>
</tr>
<tr>
<td>1-c-12</td>
<td>Value of interest in 103-12 investment entities</td>
</tr>
<tr>
<td>1-c-13</td>
<td>Value of interest in registered investment companies (mutual funds)</td>
</tr>
<tr>
<td>1-c-14</td>
<td>Value of funds held in insurance company general account (GICs &amp; annuity contracts)</td>
</tr>
<tr>
<td>1-c-15</td>
<td>Other Assets - Miscellaneous</td>
</tr>
<tr>
<td>1-d-1</td>
<td>Other Assets - Employer securities</td>
</tr>
<tr>
<td>1-d-2</td>
<td>Other Assets - Employer real property</td>
</tr>
<tr>
<td>1-e</td>
<td>Other Assets - Buildings and other property used in plan operations</td>
</tr>
<tr>
<td>1-k</td>
<td>Total Liabilities (enter as negative number to balance to 5500 ONLY)</td>
</tr>
</tbody>
</table>

**Net Assets per Form 5500**

**TOTAL PART 'A' (without Line 1-k liabilities)**

<table>
<thead>
<tr>
<th>B</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-a-3</td>
<td>Contributions (whatever source or form)</td>
</tr>
<tr>
<td>2-b-1-G</td>
<td>Interest</td>
</tr>
<tr>
<td>2-b-2-C</td>
<td>Dividends</td>
</tr>
<tr>
<td>2-b-3</td>
<td>Rents</td>
</tr>
<tr>
<td>2-b-4-C</td>
<td>Net gain (loss) on sale of assets</td>
</tr>
<tr>
<td>2-c</td>
<td>Other income</td>
</tr>
</tbody>
</table>

**NOTE:** Do not include unrealized depreciation on investments and gain (loss) from common collective trusts, pooled separate accounts, master trusts, 103-12 entities, mutual funds, and Insurance Company General Accounts

**TOTAL PART 'B'** $0

<table>
<thead>
<tr>
<th>C</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-b</td>
<td>Accounts Receivable---Beginning of Year</td>
</tr>
<tr>
<td>1-b</td>
<td>Accounts Receivable---End of Year</td>
</tr>
<tr>
<td></td>
<td>Other (no 5500 reference - usually not used unless unusual circumstances)</td>
</tr>
</tbody>
</table>

**TOTAL PART 'C'** $0

<table>
<thead>
<tr>
<th>D</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Funds Handled (Total of Parts A, B and C)</td>
</tr>
</tbody>
</table>

**Required 10%** $0

<table>
<thead>
<tr>
<th>E</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Required Bond - Minimum - $1,000 Maximum - $500,000 (ROUNDED UP TO NEAREST THOUS)</td>
</tr>
</tbody>
</table>

**F** Bond Coverage in Force for Applicable Period $0

<table>
<thead>
<tr>
<th>G</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Difference - Excess (Shortage) in Coverage</td>
</tr>
</tbody>
</table>

**$0**

Source of Information:
(e.g. Bond Policy, Form 5500, etc.)
EXHIBIT 5
NEW BUSINESS APPLICATION

For Claims-Made
Trustee and Fiduciary Liability Insurance

Important Information and Instructions:

1. All questions must be answered fully and completely. Please type or print clearly in ink. If a question does not apply to the Trust or Plan, state "N/A".
2. All information identified in Section E (Requested Attachments) must be submitted with this application.
3. If a single policy is desired for more than one Trust or Plan, please submit a separate application for each Trust or Plan.
4. The policy for which application is made is written on a claims-made basis. The coverage afforded by this policy is limited to liability for only those claims first made during the policy period specified on the Policy Certificate resulting from wrongful acts and which are subsequently reported to Hudson Insurance Company as soon as practicable. This is a policy with claims expenses included in the Limits of Liability. The Limits of Liability shall be reduced, and may be exhausted, by claims expenses and, to the extent that the Limits of Liability are thereby exceeded, Hudson Insurance Company shall not be liable for claims expenses or any other loss. Please read the policy carefully.
5. Please submit application and all required attachments to your insurance representative/broker.
6. Insurance representative/broker, please submit application and all required attachments to:
A. General Information

1. Name of Trust or Plan:

________________________________________________________________________

________________________________________________________________________

EIN Number(s):

________________________________________________________________________

2. Address of Trust or Plan: __________________________________________________________________________ Telephone No. ______________________

3. Date Trust or Plan was established: __________________________________________________________________________

4. Insurance Representative/Broker: __________________________________________________________________________ Telephone No. ______________________

5. Address of Insurance Representative/Broker: __________________________________________________________________________ Telephone No. ______________________

B. Coverage Request

6. Requested Effective Date: __________/________/______

Note: The earliest Effective Date we can grant, if the application is approved, is the date the completed application is received at ULLICO Casualty Group.

7. Requested Limits of Liability: Limit Each Claim / Aggregate Per Policy Period (Check one)

   ___ $500,000 / $500,000

   ___ $1,000,000 / $1,000,000

   ___ $2,000,000 / $2,000,000

   ___ $3,000,000 / $3,000,000

   ___ $5,000,000 / $5,000,000

   ___ $10,000,000 / $10,000,000

   ___ $15,000,000 / $15,000,000

C. Prior Insurance

8. Provide names of fiduciary liability insurance carriers, limits of liability, deductible, coverage period, and premium of all fiduciary liability insurance policies under which the Trust or Plan has been insured during each of the past five (5) years:

<table>
<thead>
<tr>
<th>Insurance Carrier</th>
<th>Limits of Liability</th>
<th>Deductible</th>
<th>Coverage Period From/To</th>
<th>Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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D. Trust/Plan Information and Management

9. Indicate type of Trust or Plan (Check one):

   ___ Defined Benefit  ___ Health and/or Welfare  ___ Other: __________________________

   ___ Defined Contribution  ___ Training/Education

10. Provide the total assets, number of participants, and annual contributions for the past three (3) Trust or Plan years:

<table>
<thead>
<tr>
<th>Plan Year</th>
<th>Total Assets</th>
<th>Number of Participants</th>
<th>Annual Contributions</th>
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11. Provide the percentage (%) of Trust or Plan benefits secured by insurance and/or self-insured:

Insurance (e.g. annuity, medical, etc):

Self-Insured:

If insured, indicate type of insurance and provide name of insurance company or companies:


12. Provide total number of present Trustees and any employees of the Trust or Plan:

Trustees (including signatory to this application):

Employees (including inside administrators and all administrative/clerical staff):

13. Provide names and years of service for the following service providers:

<table>
<thead>
<tr>
<th>Name of Provider</th>
<th>Years of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Administrator</td>
<td></td>
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<tr>
<td>Consultant/Actuary</td>
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<tr>
<td>Legal Counsel</td>
<td></td>
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<tr>
<td>Certified Public Accountant</td>
<td></td>
</tr>
<tr>
<td>Custodian of Assets</td>
<td></td>
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<tr>
<td>Investment Manager</td>
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</tbody>
</table>

If changes have been made in any of the above service providers during the past three (3) years, please provide details:

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________________________________________________________________

____________________________

____________________________

____________________________

____________________________

____________________________

NOTE: If you answer YES to questions 14-30 below, you must provide a detailed, written narrative and pertinent documentation.

YES  NO

14. In the past three (3) years has the name of the Trust or Plan been changed?

15. In the past three (3) years has any other trust or plan merged with or been merged into the Trust or Plan or is any anticipated to be merged with or into the Trust or Plan in the next twelve (12) months?

16. In the past three (3) years have there been any Trust or Plan amendments or do you anticipate any Trust or Plan amendments that will result in a reduction in benefits?
17. Has the Trust or Plan been terminated?  

```
[ ] YES  [ ] NO
```

18. Has the Trust or Plan experienced an event reportable to the PBGC within the past three (3) years?  

```
[ ] YES  [ ] NO
```

19. Has the IRS withdrawn or threatened to withdraw the tax-exempt status of the Trust or Plan?  

```
[ ] YES  [ ] NO
```

20. Is any Trust or Plan loan, lease or debt obligation in default or classified as uncollectible?  

```
[ ] YES  [ ] NO
```

21. In the past year, has the Trust or Plan set an allowance for doubtful/uncollectible employer contributions?  

```
[ ] YES  [ ] NO
```

22. Has the Trust or Plan filed for exemption from a prohibited transaction?  

```
[ ] YES  [ ] NO
```

23. In the past three (3) years, has the Trust or Plan engaged in any non-exempt prohibited transactions, including, but not limited to, any transactions with any other multiemployer trust or plan?  

```
[ ] YES  [ ] NO
```

24. Has the Trust or Plan or any of the present Trustees or employees, or to their knowledge, any service providers presently or previously employed by the Trust or Plan, or any of the past Trustees or employees, been the subject of any investigation or audit by the DOL, IRS, or any other regulatory or governmental agency in the past three (3) years or been notified of the possibility thereof?  

```
[ ] YES  [ ] NO
```

25. Have any fiduciary liability claims been made during the past five years against the Trust or Plan or any past or present Trustees or employees?  

```
[ ] YES  [ ] NO
```

26. Does the Trust or Plan or any Trustee or employee have knowledge of or information about any facts, circumstances, situations or incidents which may result in a claim being made against them under the proposed policy?  

```
[ ] YES  [ ] NO
```

NOTE: IT IS AGREED THAT WITH RESPECT TO QUESTIONS 23, 24, 25 AND 26 ABOVE, IF SUCH TRANSACTION, INVESTIGATION, CLAIM, FACT, CIRCUMSTANCE, SITUATION OR INCIDENT EXIST, WHETHER OR NOT DISCLOSED, ANY CLAIM ARISING THEREFROM IS EXCLUDED FROM THIS PROPOSED COVERAGE.

27. Has any Trustee for whom insurance is to be provided been:  

a. accused, found guilty or held liable for a breach of trust or fiduciary duty?  

```
[ ] YES  [ ] NO
```

b. accused or convicted of a criminal act?  

```
[ ] YES  [ ] NO
```

c. refused coverage under a fidelity bond?  

```
[ ] YES  [ ] NO
```

28. Has any application for fiduciary liability insurance made on behalf of the Trust or Plan or any of the present Trustees, or to their knowledge, on behalf of their predecessors Trustees, ever been declined or has any such insurance ever been cancelled or renewal refused?  

```
[ ] YES  [ ] NO
```

29. As of this date, does the Trust or Plan have any real estate and/or mortgage investments including those held in pooled mortgages and/or Collaterized Mortgage Obligations (other than guaranteed governmental mortgage pools, including GNMA, FNMA & FHLMC)? 

If yes, what percentage (%) of the Trust's or Plan's total assets is committed to such investments: _____%  

If more than 10%, provide a current schedule of real estate and/or mortgage investments, including cost, current value and description ( & location of real estate), plus the name(s) of the independent investment manager(s) responsible for such investment(s).  

```
[ ] YES  [ ] NO
```

30. As of this date, does the Trust or Plan have investments of more than 5% of total assets that do not have a fair market value that is readily determinable on an established market nor set by an independent third party appraiser?  

If yes, provide a current schedule of such investments, including cost, current value, description and the name(s) of the independent investment manager(s) responsible for such investment(s).  

```
[ ] YES  [ ] NO
```
REMINDER: If you answered YES to questions 14-30 above, you must provide a detailed, written narrative and pertinent documentation.

31. Does the Trust or Plan retain one or more independent investment managers who have responsibility for all investment decisions? [ ] YES [ ] NO

If no, please provide the name of the person(s) responsible for investment decisions, his or her qualifications with respect to investment management, and a schedule/portfolio of Trust or Plan assets under management by such individual(s).

32. Is each Trust or Plan reviewed periodically to assure there are no violations of prohibited transactions or party-in-interest rules of ERISA? [ ] YES [ ] NO

If no, please explain (attach additional pages as needed): __________________________________________

33. Does the Trust or Plan have current coverage under an ERISA fidelity bond? [ ] YES [ ] NO

If no, please explain (attach additional pages as needed): __________________________________________

34. Does the Trust or Plan have and uniformly apply a systematic and diligent collection procedure for employer contributions? [ ] YES [ ] NO

If no, please explain (attach additional pages as needed): __________________________________________

35. Does the Trust or Plan conform to the standards of eligibility, participation, vesting, funding and other provisions of ERISA? [ ] YES [ ] NO

If no, please provide a detailed, written narrative and pertinent documentation.

E. Required Attachments

Provide the following material with respect to the Trust or Plan:

1. Latest CPA audited annual financial statement (including investment schedule/portfolio).

2. Latest IRS Form 5500 (or 990) and all completed schedules.

3. Names and home addresses of Trustees of the Trust or Plan, both present and former for prior six (6) years, including their dates of service and name of their employer or union.

Additional information may be requested based on specific applicant characteristics.

FRAUD WARNINGS

NOTICE TO COLORADO APPLICANTS: It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

NOTICE TO NEW YORK APPLICANTS: Any person who knowingly or with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any material false information, conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.
NOTICE TO OHIO APPLICANTS: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

NOTICE TO OREGON APPLICANTS: Any person who knowingly and with intent to injure, deceive, defraud any insurer or other person files an application or a claim containing any false, incomplete or misleading information or conceals information concerning any material fact may be guilty of insurance fraud, which is a crime and may subject such person to criminal and civil penalties.

NOTICE TO APPLICANTS IN AR, FL, KY, MN, NJ, OK, AND PA: Any person who knowingly and with intent to defraud any insurance company or other person files an application for Insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and subjects such person to criminal and civil penalties.

NOTICE TO TENNESSEE APPLICANTS: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

NOTICE TO ALL OTHER APPLICANTS: Any person who knowingly and with intent to injure, deceive, defraud any insurer or other person files an application or a claim containing any false, incomplete or misleading information or conceals information concerning any material fact commits insurance fraud, which is a crime and subjects such person to criminal and civil penalties.

The undersigned represents, after inquiry, that to the best of his or her knowledge and belief the statements set forth herein are true, and he or she has not withheld any information which is reasonably likely to influence the judgment of Hudson Insurance Company in considering this application for fiduciary liability insurance. The undersigned further represents that if the information supplied by him or her on this application changes between the date of this application and the effective date of the insurance or the time when the policy is bound (whichever is later), the undersigned will immediately notify Hudson Insurance Company in writing of such changes and the Insurer may withdraw or modify any outstanding quotations based upon such changes. The signing of this application does not bind the Insurer to complete the insurance, but it is agreed that this application and any attachments form the basis of the contract should a policy be issued and shall be deemed attached to and form part of a policy. Hudson Insurance Company is hereby authorized to make any investigation and inquiry in connection with this application it deems necessary.

Signature of Trustee: ___________________________________________ Date: ________________________

Print Name: ______________________________________________________

**ULLICO Labor Protection Group is administered by ULLICO Casualty Group, Inc., a/k/a Ullico Insurance Group, Inc.; in CA and NY, Ullico Insurance Agency. CA License # 0E16939 and FL (Daniel Aronowitz) License # P003599**
EXHIBIT 6
Summary of exclusions, relevant terms and conditions contained in the standard Fiduciary Liability insurance policy of three leading writers of this insurance.

**Exclusions**: no coverage is provided, except as noted, for claims arising out of:

<table>
<thead>
<tr>
<th>TRAVELERS</th>
<th>ULICO</th>
<th>CHUBB</th>
</tr>
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<tbody>
<tr>
<td>Dishonest, fraudulent or criminal acts, or willful violation of any statute. <em>By implication, defense will be provided against such charges until a judgment or other final adjudication establishes that they were acts of active deliberate dishonesty.</em> Claims by a fidelity bond carrier against a person whose dishonesty resulted in a loss paid the carrier are also excluded.</td>
<td>Same as to deliberately fraudulent act or omission or willful violation of a statute, again with the implication that defense of charges will be provided until established in fact. Silent as to claims due to paid fidelity bond loss.</td>
<td>Same</td>
</tr>
<tr>
<td>Libel or Slander</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Bodily Injury and Property Damage to tangible property</td>
<td>Same, but with additional exclusion for mental distress.</td>
<td>Same as Ullico</td>
</tr>
<tr>
<td>Workers Comp, Disability, and Unemployment laws</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Failure to procure and maintain sufficient insurance and bonds on plan assets</td>
<td>Silent</td>
<td>Silent</td>
</tr>
<tr>
<td>Contractually assumed liability of others, unless made in accordance with the Agreement and Declaration of Trust</td>
<td>Nearly the same, but narrowed to cover liability of insureds which would have existed in the absence of contract.</td>
<td>Same as Ullico</td>
</tr>
<tr>
<td>Illegal personal profit or advantage, or repayment of remuneration received, if same &quot;shall be held by the courts to have been in violation of the law&quot;. Thus defense may be provided.</td>
<td>Same, if &quot;gained in fact&quot; so presumably this means that defense will be provided until so established.</td>
<td>Same as Both</td>
</tr>
<tr>
<td>Failure to collect contributions unless due to negligence, or for repayment of contributions if repayment could be charged to the trust. <em>However, defense is provided for such claims.</em></td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Payment of benefits unless such payment would be the personal obligation of an insured person(s).</td>
<td>Same, but exclusion is expanded to require a covered Wrongful Act.</td>
<td>Same as Ullico</td>
</tr>
<tr>
<td>Fines, penalties, taxes, punitive damages, except 502(c) (i) (I), HIPPA.</td>
<td>Same</td>
<td>Same</td>
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</table>

Pollution | Same | Same
NOTABLE EXTENSIONS, DEFINITIONS, OR LIMITATIONS:

- All three carriers will allow the selection of dense counsel subject to carrier notification and approval.

- Travelers Waiver of Recourse is Blanket, covering all insureds automatically, though charging only the trustees. Ulico and Chubb grant the waiver only to the individuals who purchase the Waiver of Recourse rider! Because plan trustees are usually the only persons who pay for this rider, the employees are exposed to subrogation with these two carriers.

- 'Claim' is undefined in the Travelers policy, which is to the benefit of the insureds by virtue of not imposing very broad reporting requirements. 'Claim' is defined by Ulico and Chubb; Chubb requires notice of virtually any proceeding, perhaps including routine regulatory audits; failure to do so jeopardizes coverage so such a definition may be a 'trap door'. Ulico has a narrower definition of claim than Chubb, requiring reporting legal action "seeking to hold an insured liable for a Wrongful Act".
b. Voluntary Compliance Program Expenditures incurred by Insureds as a result of the Insureds' participation during the extended reporting period in a Voluntary Compliance Program, but only if such participation commences during the extended reporting period and involves a Plan's actual or alleged inadvertent noncompliance with any statute, rule or regulation before the effective date of such termination or non-renewal.

2. The additional premium for the extended reporting period will be that amount set forth in ITEM 9(e) of the Policy Certificate. This additional premium shall be paid within thirty (30) days after the effective date of the termination or non-renewal of the policy, and will be deemed to have been fully earned immediately upon the inception of the extended reporting period.

3. The Insurer's limits of liability for Loss from Claims first made or deemed made during the extended reporting period and for Voluntary Compliance Program Expenditures resulting from the Insureds' participation during the extended reporting period in a Voluntary Compliance Program will be the same as, and not in addition to, the limits of liability stated in ITEM 4 of the Policy Certificate, which are applicable to all Loss for which this policy provides coverage.

4. The Insurer reserves the right to approve an extension for the extended reporting period not to exceed seventy-two (72) months, for such additional premium as the Insurer may require.

V. EXCLUSIONS

A. The Insurer will not be liable for any Loss on account of any Claim against any Insured based upon:

1. any act, error or omission of such Insured, if a judgment or any settlement has been entered against such Insured, unless it is finally adjudicated that such a judgment or settlement is incorrect or without foundation.

2. any act, error or omission of such Insured having gained in fact any personal profit, remuneration or advantage to which such Insured was not legally entitled;

3. any actual or alleged libel or slander;

4. any actual or alleged bodily injury to, or mental or emotional distress, sickness, disease or death of, any person, or damage to or destruction, loss or loss of use of any tangible property;

5. any act, error or omission of such Insured, if a judgment or any settlement has been entered against such Insured, unless it is finally adjudicated that such a judgment or settlement is incorrect or without foundation.

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c. any voluntary decision to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any Pollutants;

including but not limited to any financial loss to any Insured or any beneficiaries, security holders or creditors thereof based upon, arising from or in consequence of any matter described in this exclusion;

6. based upon, arising from, or in consequence of the failure of the Insured to comply with any law governing workers' compensation, unemployment, social security or disability benefits or any similar law;

7. based upon, arising from or in consequence of any liability of others assumed by any Insured under any contract or agreement, whether oral or written, other than an agreement or declaration of trust or similar agreement made in establishing a Plan provided, that this exclusion will not apply to the extent that the Insured would have been liable in the absence of such contract or agreement; or

8. based upon, arising from or in consequence of:

   a. any act, error, omission, neglect, misrepresentation, misstatement, transaction, event, decision or Wrongful Act if written notice thereof has been given under any policy of which this policy is renewal or replacement in which policy affords coverage or, but for the exclusion of its limits or limits of liability, would have afforded coverage for such Loss, whether in part, as a result of such notice,

   b. any demand, suit, or other proceedings, or order, decree or judgment rendered, against any Insured, or prior to the Pending or Prior Proceeding Date set forth in ITEM 7 of the Policy Certificate of this policy, or the same or substantially similar fact, circumstance, situation, transaction, event, decision or Wrongful Act occurring or allegedly occurring prior to the Continuity Date set forth in ITEM 6 of the Policy Certificate of this policy;

   c. any act, omission, fact, circumstance, situation, transaction, event, decision or Wrongful Act occurring or allegedly occurring prior to the Continuity Date set forth in ITEM 6 of the Policy Certificate of this policy.

B. The Insured shall not be liable for any Damages, other than Claim Expenses, on account of any Claim against any Insured which constitute the return to any employer of any contributions if such amounts are or could be chargeable to a Trust or Plan;

which constitute benefits due or to become due under the terms of any Plan or Trust unless and to the extent that, (i) the Insured is a natural person and the benefits are payable by such Insured as a personal obligation, and (ii) recovery for the benefits is based upon a covered Wrongful Act, provided, however, that Damages shall include a monetary award in, or fund for settling, a Claim against any Insured to the extent it alleges a loss to a Plan or Trust or loss in the actual accounts of participants in a Plan or Trust by reason of an alleged breach of fiduciary duty resulting in a change in value of the investments held by that Plan or Trust; or

3. solely alleging Wrongful Acts as defined in Section II.N.4 of this policy.

C. No facts pertaining to or knowledge possessed by any Insured will be imputed to any other Insured to determine the application of any of the above exclusions.
EXHIBIT 7
INDEMNITY LANGUAGE

Service providers, such as TPA, Banks and Money Managers often seek that the Fund indemnify them or limit their exposure to gross negligence. Such clauses should be rejected.

SECTION 4.0 INDEMNIFICATION

(a) The Trustees’ Indemnification of Fund Administrator. The Trustees agree to indemnify and hold harmless Fund Administrator, its officers, directors, agents, and employees from any claim, liability, cost, loss, expense or damage (including reasonable attorney and accountant fees) which may be made by any Welfare Plan participant or any other person or persons (including any governmental authority) resulting from or in connection with the operation of the Welfare Plan or Welfare Fund, the Trustees’ failure to timely fund its claims obligations, Fund Administrator’s services under the terms of this Agreement, or any action or inaction by the Trustees pursuant to this Agreement, unless such claim, liability, cost, loss, expense or damage results from Fund Administrator’s gross negligence, willful misconduct or fraud.

(b) Fund Administrator’s Indemnification of the Welfare Fund and Trustees. Fund Administrator agrees to indemnify and hold harmless the Welfare Fund, its officers, directors, agents, and employees, and the Trustees from any claim, liability, cost, loss, expense or damage (including reasonable attorney and accountant fees) which results from Fund Administrator’s gross negligence, willful misconduct or fraud in carrying out its duties pursuant to this Agreement. The Trustees agree that in no event shall the indemnification obligations of this Subparagraph (b) apply to that portion of any liability, settlement, and related expenses caused by the acts or omissions of any healthcare providers with respect to Welfare Plan participants.
Funds should seek to obtain indemnity from service providers as follows:

U. (1) Indemnity from the Custodian.

(a) The Custodian agrees to indemnify and hold harmless the Named Fiduciaries, the Fund, its employees and agents (any and all of whom is/are referred to as “Indemnified Party”), jointly and severally, from and against any and all losses, claims, damages, judgments, or liabilities (any and all of which is/are referred to as “Damages”), joint or several, of every kind and description, to which the Indemnified Party may become subject under any applicable federal or state law, including allegations of negligence or breach of fiduciary duty, or otherwise, insofar as such Damages are caused by or arise, directly or indirectly, out of:

(1) actions or omissions of the Custodian under this Agreement, or actions or omissions of any nominee, agent or appointee of the Custodian including, without limitation:

(i) the negligent performance by the Custodian of any duty or responsibility pursuant to this Agreement;

(ii) the breach or nonfulfillment by the Custodian of any representation or warranty contained in this Agreement;

(iii) the breach or nonfulfillment by the Custodian of any covenant or agreement pursuant to this Agreement;

(iv) any untrue statement or alleged untrue statement of a material fact contained in information furnished to an Indemnified Party by the Custodian or the omission or the alleged omission to state therein a material fact necessary in order to make statements therein not misleading in light of the circumstances under which they were made;

(v) the breach by the Custodian or any nominee, agent or appointee of the Custodian of any fiduciary duty or fiduciary responsibility under the Employee Retirement Income Security Act of 1974 (“ERISA”), or otherwise (excluding any such breaches by the Trustees or their employees);

(vi) any act or omission of the Custodian or any nominee, agent or appointee of the Custodian with regard to any asset;

(vii) any conflict of interest of the Custodian or any nominee, agent or appointee of the Custodian.

(2) any contract or other such agreement which the Custodian, in its capacity as such, has entered into with any nominee, agent or appointee of the Custodian, whether or not the Named Fiduciaries shall have consented to the entry into such contract or agreement.

(b) The Custodian shall indemnify and hold harmless an Indemnified Party, jointly and severally, for all costs and expenses (including attorneys' fees) incurred by an Indemnified Party, in connection with any investigation, claim, action, suit, proceeding, demand, or judgment, whether or not resulting in any liability, which is subject to the above indemnities.

(c) Notwithstanding the provisions for indemnification for costs and expenses in Section (U)(1)(b), the Custodian shall not be required to pay any costs and expenses or attorneys' fees incurred by the Indemnified Party in connection with any action or suit commenced by the Indemnified Party as plaintiff against the Custodian, except in the event of a final judgment in favor of the Indemnified Party, in which event the Indemnified Party shall be reimbursed by the Custodian for all such costs, expenses and attorneys' fees incurred by the Indemnified Party.
EXHIBIT 8
August 20, 2002

Michael A. Crabtree, Esq.

Central Pension Fund of the International Union of Operating Engineers and Participating Employers

15 Chesapeake Street, NW
Washington, DC 20016-4665

To Mr. Crabtree:

This is in response to your request for an advisory opinion on behalf of the Central Pension Fund of the International Union of Operating Engineers and Participating Employers (the Fund”) concerning the application of the provisions of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Specifically, you have requested the views of the Department as to whether inclusion of certain indemnification and hold-harmless provisions in a plan’s service provider contract would violate the fiduciary provisions of ERISA.

It is my understanding that the Fund has decided not to retain the actuarial firm, opting instead for a firm that required no specific limitation of liability or indemnification provision. Limitation of liability and indemnification provisions may be becoming increasingly popular with such firms according to press and other reports. Given the current and future issues presented to fiduciaries with respect to the engagement of service providers with actual limitations of liability or indemnification provisions, you have requested an advisory opinion from the Department concerning the permissibility of such provisions under ERISA.

It is not clear whether the Fund would be able to recover from the actuarial firm an amount in excess of the greater of $250,000 or one year’s fee for any damage caused to the Fund “regardless of the cause of action,” and indemnify and hold the actuarial firm harmless for any amount exceeding the same. This indemnification provision is from, or in connection with, the firm’s services to the Fund. The Fund’s insurer has informed the Fund that its fiduciary liability policy would not cover the Fund’s losses if the Fund suffered losses in excess of $250,000 as a result of the actuarial firm’s actions that were not recovered because of the proposed limitation of liability and indemnification provisions. The insurer explained that the policy is not designed to cover professional liability exposures normally associated with actuarial and O&M coverage.

While the Fund has decided not to retain the actuarial firm, it is required no specific limitation of liability or indemnification provision. Limitation of liability and indemnification provisions may be becoming increasingly popular with such firms according to press and other reports. Given the current and future issues presented to fiduciaries with respect to the engagement of service providers with actual limitations of liability or indemnification provisions, you have requested an advisory opinion from the Department concerning the permissibility of such provisions under ERISA.

404(a)(1) of ERISA requires, among other things, that a fiduciary discharge his or duties with respect to a plan solely in the interest of the participants and beneficiaries with the care, skill, prudence, and diligence under the circumstances then prevailing a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character with like aims. The prohibited transaction provisions state, in section 406(a)(1)(C) and (D) of ERISA, that a fiduciary with respect to an employee benefit plan shall not cause the plan to engage in a transaction if he or she knows or should know that such transaction constitutes a direct or indirect furnishing of...
services between the plan and a party in interest with respect to the plan, or transfer to, or by or for the benefit of, a party in interest, of any assets of the plan. Section 408(b)(2) of ERISA provides a statutory exemption from the prohibitions of section 406(a) for contracting or making reasonable arrangements with a party in interest, including a fiduciary, for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid for such services.

With regard to the selection of service providers under ERISA, the Department has previously indicated that the responsible plan fiduciary must engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. In addition, such process should be designed to avoid self-dealing, conflicts of interest or other improper influence. What constitutes an appropriate method of selecting a service provider, however, will depend upon the particular facts and circumstances. Soliciting bids among service providers is a means by which a fiduciary can obtain the necessary information relevant to the decision-making process, including information about contractual provisions such as those identified in your letter relating to limitations of liability and indemnification.

The Department does not believe that, in and of themselves, most limitations of liability and indemnification provisions in a service provider contract are either per se imprudent under ERISA section 404(a)(1)(B) or per se unreasonable under ERISA section 408(b)(2). The department believes, however, that provisions that purport to apply to fraud or willful misconduct by the service provider are void as against public policy and that it would not be prudent or reasonable to agree to such provisions. Other limitations of liability and indemnification provisions, applying to negligence and unintentional malpractice, may be consistent with sections 404(a)(1) and 408(b)(2) of ERISA when considered in connection with the reasonableness of the arrangement as a whole and the potential risks to participants and beneficiaries. At a minimum, compliance with these standards would require that a fiduciary assess the plan’s ability to obtain comparable services at comparable costs either from service providers without having to agree to such provisions, from service providers who have provisions that provide greater protection to the plan.

The Department's view, compliance with ERISA's fiduciary provisions, including section 408(b)(2), also would require that a fiduciary assess the potential risk of loss and costs to a plan that might result from a service provider's act or omission subject to a proposed limitation of liability or indemnification provision. In making such an assessment, a fiduciary should consider the potential for, and outside limits of, such a loss, as well as additional actions that may be available to the plan to minimize such a loss.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 relating to effect of advisory opinions.

celerly,

J. Campagna

Division of Fiduciary Interpretations

Office of Regulations and Interpretations

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