NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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April 12, 2006

The Honorable John A. Boehner
Majority Leader
Office of the House Majority Leader
House of Representatives
U.S. Capitol
Room H-107
Washington, D.C. 20515

Re: Section 307 of the Pension Protection Act ("PPA"), which amends § 502(a)(3) of the Employee Retirement Income Security Act ("ERISA")

Dear Majority Leader Boehner:

The National Coordinating Committee for Multiemployer Plans (the "NCCMP") is pleased to endorse the proposed change to ERISA contained in Section 307 of the PPA. As you know, the NCCMP was created in 1974 and remains today the only organization whose sole purpose is to advocate on behalf of multiemployer plans and their participants. In this respect, we believe that Section 307 of the PPA contains a necessary correction to recent court decisions that have called into question the ability of multiemployer plans to provide a valuable service to plan participants who are involved in accidents that may be the responsibility of an unrelated third party.

Subrogation is good for the participants of jointly sponsored multiemployer plans. With the notable exception of workers' compensation claims, multiemployer plans commonly advance payment for health benefit claims on behalf of participants who have been injured as a result of a third party's negligence under the subrogation provisions of the plans and trusts. Although *the plans are not responsible for payment of such claims that are ultimately found to be the responsibility of a third party*, they have traditionally agreed to advance such payments rather than having the participant caught in the middle between the health care provider and the other responsible party while the ultimate determination of such responsibility is made. However, that practice is contingent upon the participant's agreement to reimburse the plan if the participant recovers from the negligent third party that caused his injuries. If multiemployer plans cannot seek reimbursement for those amounts, they will have no recourse than to stop advancing such payments for those injuries and such claims will be treated in the same way that workers' compensation claims are today (i.e. denied pending a final determination of liability). Ultimately, claim payments to providers will be slowed, participants will be dunned while awaiting adjudication by the other payers, participants' credit will be adversely affected, and additional health care resources will be consumed by yet an additional layer of administrative expense.

We are aware of claims by some that subrogation provisions put participants at a disadvantage by allowing plans to recover funds intended for payment of medical claims. This position is simply indefensible. What these provisions allow is the recovery of payments already advanced by the plans for the medical claims in question. The "sole and exclusive benefit" provisions of §302 (c)(5) the Labor Management Relations Act of 1947 (and the subsequent provisions governing fiduciary duties as carried forth in Section 404 of ERISA) as well as the terms commonly found in most trust agreements, clearly prohibit the use of trust assets to pay for claims that are not the responsibility of the fund. While it is reasonable to advance funds that are either the responsibility of the fund or to provide an administrative convenience to the participant in circumstances where funds are recoverable from the responsible party, such a convenience would clearly be improper if plans are no longer permitted to recover these expenses. In fact, rather than satisfying the "sole and exclusive benefit" provisions such expenditures would be a clear violation of these provisions by providing a benefit to the responsible third party at the expense of all plan participants.

The argument that section 307 would give ERISA plans a remedy that is not afforded to participants is similarly incorrect. Under ERISA, participants *do* have a right to sue to get the benefits that they are due under the terms of the plan. Section 307 gives multiemployer plans that same right – the right to obtain reimbursement for the benefits payments advanced under the notion of subrogation – and nothing more. Section 307 is a narrow, technical clarification of ERISA, not an expansion of remedies available under §502 of that Act.

An amendment that would expand ERISA remedies would hurt multiemployer plans by needlessly driving up costs. We urge the Conferees to adopt the language currently included in Section 307 to protect this valuable benefit for plan participants and to oppose any other changes to the language of that provision.

Sincerely,

Randy G. DeFrehn
Executive Director

cc: Members of the Conference Committee