Internal Revenue Service

Significant Index No. 0401.00-00

Department of the Treasury

200047051

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:
T:EP:RA:T:A1

Date: SEP 01 2000

In re:

Employer =

This letter constitutes notice that with respect to the above-named defined benefit pension plan the five plan amendments described below are reasonable and provide only for de minimis increases in the liabilities of the Plan.

Section 401(a)(33)(A) of the Internal Revenue Code provides that a plan is not a qualified plan if there is an amendment that increases the liabilities of the plan in the case where the plan is maintained by an employer that is a debtor in a case under title 11 of the United States Code. However, section 401(a)(33)(B)(ii) provides an exception to section 401(a)(33)(A) if the Secretary determines that such amendment is reasonable and provides only for de minimis increases in plan liabilities.

Section 204(i)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) prohibits a plan amendment that increases the liabilities of a plan maintained by an employer that is a debtor in a case under title 11 of the United States Code. Section 204(i)(2) provides an exception to section 204(i)(1) if the Secretary of Treasury determines that such amendment is reasonable and provides only for de minimis increases in plan liabilities.

On May 15, 1995, the Employer filed for protection under Chapter 11 of the U.S. Bankruptcy Code. The Employer has not yet been reorganized. The Employer proposes five amendments to the Plan subject to the restrictions of Code section 401(a)(33). The amendments are described below.

Amendment 1

Effective January 1, 1998, employees of a wholly owned subsidiary will be eligible to participate in the Plan. Employees of the subsidiary will receive past service credit for vesting and eligibility purposes.

The Employer has stated that the increase in current liability for this amendment will be approximately $400,000. However, annual contributions of $300,000 to a money purchase plan on behalf of these employees will cease. The stated purpose of this amendment is to include employees of the Employer who are engaged in similar businesses.

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Amendment 2

Effective January 1, 1998, a participant may elect a 10 year certain and life annuity as a form of payment.

The Employer has stated that this change is cost neutral because the benefit is the actuarial equivalent of a straight life annuity. The purpose of this amendment is to provide unmarried participants with an alternative form of benefit. Currently, unmarried participants may only receive a straight life annuity.

Amendment 3

Effective January 1, 1997, the automatic death benefit for active employees working past early retirement eligibility will be increased from the survivor's portion of a joint and 50% survivor benefit to the survivor's portion of a joint and 100% survivor benefit.

The Employer has stated that the increase in current liability due to this amendment is $2,314,002. The stated purpose of this amendment is to remove an incentive for participants to retire in order to protect beneficiaries. Currently, if an active employee dies, the survivor benefit is the survivor's portion of a joint and 50% survivor benefit.

Amendment 4

Effective January 1, 1998, a death benefit will be paid for unmarried employees who work past early retirement eligibility. The amount of the benefit is that which would have been paid if the participant had retired on his or her date of death and elected a 10 year certain and life option. The benefit will be paid for 120 months.

The Employer has stated that the increase in current liability for this amendment is $550,797. The stated purpose of this amendment is to retain experienced workers.

Amendment 5

Effective January 1, 1998, the monthly benefit payable to retirees who retired prior to 1983 will be increased according to the following schedule:

- If retired before April 1, 1970, the benefit will be increased by 20%.
- If retired on or after April 1, 1970 but before June 1, 1975, the benefit will be increased 12%.
- If retired on or after June 1, 1975 but before January 1, 1983, the benefit will be increased by 6%.

The Employer has stated that the increase in current liability for this amendment is $1,157,840. The stated purpose of this amendment is to increase payments to reflect the impact inflation has had since the plan last granted an increase.

As of January 1, 1999, the Plan had the following funded status:

- Actuarial value of assets: $606,675,113
- Current Liability: $651,520,307
- Present value of accrued benefits: $479,898,676

The actuarial assumptions for determining the Plan's current liability were the RPA current liability mortality table (the blended 83GAM Table) and an interest rate of 6%. The actuarial assumptions for determining the Plan's present value of accrued benefits were the 83GAM-Males Table, with a six-year setback for females, and an interest rate of 8.75%. The Plan's assets were equal to 126.4% of the present value of accrued benefits. The Plan's assets were equal to 93.1% of the Plan's current liability.

The combined increase in current liability for the five Plan amendments is approximately $4,022,639. This amount is .6% of the Plan's current liability. The plan has a full funding limitation of zero within the meaning of section 412(c)(7) of the Code and section 302(c)(7) of ERISA, both with and without the amendments in effect. Therefore, the plan has a minimum funding requirement of zero both with and without the amendments in effect. If these five amendments were enacted, the increase in the minimum funding requirement would be zero.

The Plan has a funded current liability percentage of less than 100% and the Employer is a debtor in a case under title 11 of the United States Code. The amendments have some legitimate business purpose, and the Plan is fully funded within the meaning of section 412(c)(7) of the Code and section 302(c)(7) of ERISA. The combined effect of these amendments is to increase current liability by .6%, and there is no increase in the minimum required contribution. Accordingly, the five plan amendments are reasonable and provide only a de minimis increase in the liabilities of the Plan.

This ruling considers only the application of section 401(a)(33) of the Code and section 204(i) of ERISA to the amendments described in your May 27, 1998 ruling request and does not consider any other issues that may arise in connection with the Plan.

This ruling letter is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited by others as precedent.

We have sent a copy of this letter to the Employee Plans Area Manager for the Area in

Sincerely yours,

Ken Yednock

Ken Yednock, Manager
Employee Plans Technical
Tax Exempt and Government Entities
Division