

June 29, 2010

## MEMORANDUM TO CLIENTS

**RE: Pension Relief Act Extends Amortization Periods for Single and Multiemployer Plan Funding**

On June 25th, President Obama signed the "Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010." The Act, which notably includes a temporary delay of the reduction in Medicare payments to doctors, also provides assistance to defined benefit plans by offering options designed to lower required annual contributions. The law provides options for relief for both single-employer and multiemployer plans, although there are strings attached.

**Relief for Single Employer Plans**

A plan sponsor's required annual contribution to a single-employer pension plan is based in part on the difference between the assets and liabilities of the plan for a given plan year. The amount determined each year – a shortfall amortization base – generally is amortized over a seven-year period. The Act permits employers to change the amortizations in one of two ways. The employer may pay interest only on the shortfall amortization base for two years, and then amortize principal over the following seven-year period. Alternatively, an employer may elect to extend the seven-year amortization period to fifteen years. The relief is available for up to two plan years beginning in 2008 through 2011 for which contributions are due on or after June 25, 2010. The plan years chosen need not be consecutive, but the same form of relief must be used for both years.

The plan sponsor must notify plan participants and beneficiaries and the Pension Benefit Guaranty Corporation ("PBGC") of an election to use this relief. Further guidance will be provided on the procedure for making an election. Once made, an election may not be revoked without the approval of the Secretary of Treasury, with an opportunity for comment by PBGC.

The key set of "strings" attached to this relief relates to executive and shareholder compensation. If the plan sponsor that elected relief, or any other company in its controlled group (*e.g.*, a direct or indirect parent or subsidiary corporation), pays any "excess compensation" (generally compensation in excess of \$1 million) to an individual, or makes an extraordinary dividend or redemption of stock, the Act requires an additional contribution to the pension plan equal to the aggregate amount of such excess compensation and extraordinary dividends and redemptions. These strings can substantially limit the effectiveness of the Act's relief – and create compliance burdens – in the case of plans sponsored by companies in large controlled groups. The Act does not limit these constraints to U.S. members of the plan sponsor's controlled group.

**Relief for Multiemployer Plans**

Minimum funding requirements for multiemployer pension plans are determined using a ledger, referred to as the plan's funding standard account, on which various credits and charges must be entered for each plan year of the plan. Some of these credits and charges are amortized over periods of years. For example, the net experience loss (if any) for a plan year is amortized

over a period of 15 plan years. Under the Act, certain multiemployer plans are now permitted to amortize net investment losses for the two consecutive plan years ending on or after August 31, 2008 over a 30 year period. To be eligible for this relief, the plan must satisfy a solvency test. This requires the plan actuary must certify that the plan is projected to have assets sufficient to meet benefits obligations and expected expenses over the amortization period, taking into account the 30-year extension.

To help minimize volatility in year-to-year contribution requirements, current law allows multiemployer plans are permitted to "smooth" asset values over a period of up to five years for purposes of the funding rules, so long as the smoothed value falls within a defined corridor surrounding the market value of plan assets. The Act allows multiemployer plans to extend the five year smoothing period to ten years, and liberalizes the smoothing corridor to a range of 80%/130% of the fair market value of assets.

If a plan elects to use the amortization extension or the extended smoothing period for a plan year, a plan amendment that increases benefits may not go into effect during the two year period following such plan year unless certain funding requirements are met or unless the amendment is required by law.

The plan sponsor of a participating multiemployer plan that elects this relief is required to notify participants, beneficiaries, and the PBGC of its election to use the relief provisions.

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If you have any questions, please contact your regular Groom contact or any of the attorneys listed below:

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