LAW OFFICES

ARNOLD, NEWBOLD, WINTER & JACKSON, P.C.

MICHAEL C. ARNOLD
MICHAEL G. NEWBOLD
LINDA N. WINTER ◇
BRUCE C. JACKSON, JR.

◇ALSO ADMITTED IN WISCONSIN AND D.C.

1125 GRAND BOULEVARD
SUITE 1600
KANSAS CITY, MISSOURI 64106-2503
TELEPHONE: 816-421-5788
FACSIMILE: 816-471-5574

PAUL E. TORLINA *
BRADLEY J. SOLLARS ‡
SIMONE J. HOLLINS
RYAN T. DRYER *

*ALSO ADMITTED IN KANSAS
‡ ALSO ADMITTED IN KANSAS AND IOWA

1/10/11

January 7, 2011

**UPS NEXT DAY AIR**

Mr. James Mayhew
Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
Room 737-F-04
200 Independence Ave. SW
Washington, D.C. 20201

**Re: Cement Masons and Plasters Local 518 Health Care Fund**
**Health Care Reform**
**Our File No. FMC10-734**

Dear Mr. Mayhew:

The undersigned is Fund Counsel and is authorized by the Plan Sponsor, the Board of Trustees, to write this letter.

Please accept this letter as application for a request for a waiver from the restricted annual limit of $750,000 set forth in Section 2711(a)(2) of the PHS and the interim final regulations at 29 CFR §2590.715-2719 for the plan year beginning September 1, 2011. The following information is in support of this application:

***(1) The terms of the Plan for which a waiver is sought.***

Pursuant to the terms of the Plan, the schedule of benefits does not provide for an overall annual dollar limit. However, there is a lifetime maximum limit on Major Medical Benefits for active employees, Retirees and their eligible Dependents in the amount of $[redacted]. There are lower lifetime limits on specific benefits. This Plan has opted to maintain its grandfathered status in accordance with 29 CFR §2590.715-1251. This plan which was in existence on March 23, 2010, will lose its grandfathered status if it adopts an overall annual limit which is lower than the lifetime limit on March 23, 2010 ($[redacted]). However, this Plan would not be in compliance with the interim final regulations at 29 CFR §2590.715-2719 which provides for a minimum annual limit of $750,000. The Plan seeks a waiver of this provision in order to adopt the current lifetime limit of $[redacted] as their annual limit for the plan year beginning August 1,

2011. In addition there are specific annual limits for certain benefits that may be essential health benefits. We request the ability to maintain these limits.

***(2) The number of individuals covered by the plan submitted.***

The number of active Participants currently eligible for coverage under the Plan is Ex. 4 plus an additional Ex. 4 Retirees and Spouses. For funding projections, our actuary assumes that Ex. 4 % of all active Participants have at least Ex. 4 Dependent and Retired Participants had Ex. 4 Therefore, on average there are Ex. 4 Dependents per active Participants and Retirees. There are a total of Ex. 4 individuals currently covered under the Plan.

***(3) The annual limit(s) and rates applicable to the plan submitted.***

There is no overall annual dollar limit. However, the Plan has annual dollar limit on specific benefits.

Active Participants are not charged directly a monthly premium. Technically, all contributions paid into the Plan are "employer" contributions. However, these contributions are negotiated on the basis of a wage and benefit package. If contributions to the Welfare Plan must be increased during the term of the Collective Bargaining Agreement, the wage paid each hour will be reduced.

In addition, the Plan, in accordance with COBRA, offers continued coverage to Participants for a set premium. Retired employees are also allowed to elect coverage. The rates listed below are COBRA and Retiree Rates which the Trustees of the Fund have determined it would cost the Fund on a monthly basis to provide both single and family coverage to a Participant.

| **COBRA Composite Rates** | | | | |
|---|---|---|---|---|
| | **April 1, 2011** | | **Current** | |
| **Coverage** | **Normal** | **Extended (Disabled)** | **Normal** | **Extended (Disabled)** |
| Single | Ex. 4 [redacted] | | | |
| Family | | | | |
| Surviving Spouse & Child | | | | |
| Overage Dependent | | | | |

| Retiree Self Pay Rates Plan A<br>Effective April 1, 2011 | | |
|---|---|---|
| **Coverage** | **Single** | **Family** |
| Retiree Pre 65 | Ex. 4 [redacted] | |
| Retiree Post 65 | | |
| Retiree/Spouse Pre 65/Post 65 | | |

| Retiree Self Pay Rates Plan B<br>Effective April 1, 2011 | | |
|---|---|---|
| **Coverage** | **Single** | **Family** |
| Retiree Pre 65 | Ex. 4 [redacted] | |
| Retiree Post 65 | | |
| Retiree/Spouse Pre 65/Post 65 | | |

*There are currently no eligible participants in Plan B.

***(4) A brief description of why compliance with the interim final regulation would result in a significant decrease in access to benefits for those currently covered by such plan, or significant increase in premiums paid by those covered by such plans, along with any supporting documentation (enclosed is supporting documentation).***

Compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered under the Plan. This Plan is a self-funded multiemployer plan which relies primarily on employer contributions which are set by a collective bargaining agreement. The contribution rates are set for each participating unit and are applied to the number of hours worked by each participating employee. The contributions rates do not automatically increase annually. Increases not called for by the current Collective Bargaining Agreement would require a decrease in the wage to provide a greater employer contribution. The current average active hourly contribution rate is approximately $Ex. 4 per contribution hour. The hourly contribution rate needed to breakeven for fiscal year 2011-2012 is an additional $Ex. 4 (before Health Care Reform Compliance). The hourly breakeven contribution rate needed (after Health Care Reform Compliance), is $Ex. 4 per contribution hour.

The Trustees of the Fund have an obligation to maintain a financially stable Fund in order to provide the above benefits. This becomes more challenging as health care costs rise annually. The Fund actuary has projected an operating deficit without Health Care Reform compliance of $Ex. 4 for fiscal year 2011-2012. The Fund's actuary

has projected that compliance with the new annual limitation will increase the costs of the Plan by an additional $[redacted] per month for each active Participant. This increase is in addition to the $[redacted] per month for each active Participant with the new expanded children's coverage up to age 26. If the bargaining parties do not agree to increase the hourly contribution rate to address this added cost, the Plan's reserves are projected to be depleted by $[redacted], leaving a projected reserve of only $[redacted]. As no new employer contributions are required during the term of the current collective bargaining agreement, the only alternative to using reserves is for the bargaining parties to agree to a substantial wage cut, in these difficult economic times.

The construction industry in Kansas City has been affected deeply by the recent economic downturn. Beginning in November 2009 the Fund has experienced a steady decrease in employee work hours reported, as compared with previous fiscal years. When employee work hours are down, there is a decrease in employer contributions and a corresponding increase in the per member cost of the Plan. As of the fiscal year ended July 31, 2010, the employer contributions were down by [redacted]% in comparison to the prior fiscal year(s). The steady decline in employer contributions has put additional pressure on the fiscal stability of the Fund. In addition, the Fund pays Preferred Provider (PPO) fees, operating expenses and administrative fees out of their total assets and these expenses have continued to increase over the last three fiscal years. The Fund projects that costs will continue to increase for the 2011 fiscal year and revenue is projected to continue to decrease, as work hours have not recovered.

If this waiver is not granted for the Plan Year beginning August 1, 2011, the Fund faces an even greater financial burden by increased cost to the Fund. The Health Care Reform rules prevent the Trustees from increasing copays and deductibles in a corresponding amount to the increased costs of the annual maximum, without losing its grandfathered status. If the Fund loses its grandfathered status, it will incur the additional costs of Health Care Reform requirements that will be applicable to it.

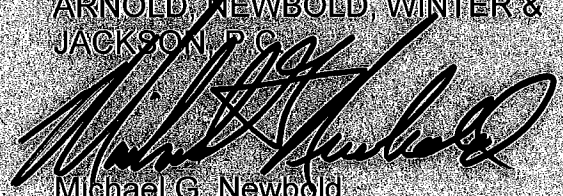
The bargaining parties will soon be faced with stark choices, decrease wages to pay for increased health care costs or terminate the Plan.

This Plan was created pursuant to the Taft-Hartley Act. The Collective Bargaining Agreement applicable to this Plan was effective April 1, 2009 and expires March 31, 2013.

I certify that the Cement Masons and Plasters Local 518 Health Care Fund was in effect prior to September 23, 2010 and that compliance with the restricted annual limits under Section 2711(a)(2) and the interim final regulation at 29 CFR §2590.715-2719 would result in a significant decrease in access to benefits for those currently covered under the Cement Masons and Plasters Local 518 Health Care Fund.

Very truly yours,

ARNOLD, NEWBOLD, WINTER & JACKSON, P.C.



Michael G. Newbold

MGN:tm

Pages 6 through 10 redacted for the following reasons:
- - - - - - - - - - - - - - - - - - - - - - - - - - - -
Exemption 4

**From:** Botwinick, Alexandra (HHS/OCIIO)
**Sent:** Monday, February 07, 2011 3:03 PM
**To:** 'mgnewbold@anwjj.com'
**Subject:** Request for additional information 2-7-2011

**Importance:** High

**Attachments:** Cement Masons and Plasterers Local 518 Health Care Fund Spreadsheet.xls

Mr. Newbold,

Thank you for taking the time to fill out the spreadsheet for the application for Cement Masons and Plasterers Local 518 Health Care Fund. I have gone through your application and have a few questions. I have attached here the spreadsheet with your application's information. I have highlighted the cells which still need to be populated.

At times the instructions for filling in the cells is unclear so I went through and filled in the cells with information found in the materials you included in your application. Please check over the cells to make sure they are correct.

Once you fill in the remainder of the cells I will be able to complete my review of your application and will get you our decision as soon as possible.

Please let me know if you have any questions.

Thanks,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
(301) 492-4177
alexandra.botwinick@hhs.gov

| **Annual Limit Waiver Request Applicant Name** | **Policy Name** (use a new row for each policy application) | **Applicant** (Plan/ Policy Situs) **City** | **Applicant** (Plan/ Policy Situs) **State** | **Plan/ Policy Effective Date** (mm/dd/yyyy) | **Contact Name** | **Street Address** | **City** | **State** | **Zip Code** | **Phone Number** (including area code) (xxx-xxx-xxx) |
|---|---|---|---|---|---|---|---|---|---|---|
| | *Use a new row for each unique plan and tier. (If no plan name, enter Plan 1, Plan 2, etc.)* | | | *Date between 09/23/2010 and 9/22/2011* | | | | | *Five Digit Zip Code* | |
| Applicant ABC | Plan 1 | Washington | DC | 01/01/2011 | Jane Doe | 100 ABC Drive | Washington | DC | 20201 | 800-ABC-1234 |
| Applicant ABC | Plan 1 | Washington | DC | 01/01/2011 | Jane Doe | 100 ABC Drive | Washington | DC | 20202 | 800-ABC-1234 |
| Applicant ABC | Plan 1 | Washington | DC | 01/01/2011 | Jane Doe | 100 ABC Drive | Washington | DC | 20202 | 800-ABC-1234 |
| Applicant ABC | Plan 2 | Washington | DC | 01/01/2011 | Jane Doe | 100 ABC Drive | Washington | DC | 20202 | 800-ABC-1234 |
| Cement Masons and Plasterers Local 518 Health Care Fund | Plan 1 | Kansas City | MO | 08/01/2011 | Michael G. Newbold | 1125 Grand Blvd., Suite 1600 | Kansas City | MO | 64106 | 816-421-5788 |

| **Email Address** | **Type of Coverage** (e.g., Limited Benefit, HRA, Rx only, Other) | **Self-Insured** | **Individual or Group Policy** | **Total Number of Individuals Covered by Policy** (include all dependents covered) | **Current Plan Annual Limit** (in dollars) | **Ambulatory** | **Emergency** | **Hospitalization** | **Laboratory** | **Pediatric** |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | *Numeric.*<br>*If None, Enter 0.* | *Numeric.*<br>*If No Annual Limit,*<br>*Type 999999.* | *Num*<br>*If No Annual Lin*<br>*If there is a Limit on Days/Visits and Amt per Day/*<br>*For example, Limit of $500 per da*<br>*(If you can't translate the Annual Limit information into a nu*<br>*If Not A Covered* | | | | |
| abc@abchealthplan.com | Limited Benefit | Yes | Group | 1,525 | $100,000 | $999,999,999 | $5,000 | $999,999,999 | $999,999,999 | $999,999,999 |
| abc@abchealthplan.com | Limited Benefit | Yes | Group | 825 | $100,000 | $999,999,999 | $5,000 | $999,999,999 | $999,999,999 | $999,999,999 |
| abc@abchealthplan.com | Limited Benefit | Yes | Group | 701 | $100,000 | $999,999,999 | $5,000 | $999,999,999 | $999,999,999 | $999,999,999 |
| abc@abchealthplan.com | Limited Benefit | Yes | Group | 105 | $50,000 | $10,000 | $3,000 | $10,000 | $1,000 | $999,999,999 |
| mgnewbold@anwjj.com | Limited Benefit | Yes | Group | | | | | | | |

EX. 4

| **Maternity/ Newborn** | **Mental Health/ Substance Abuse** | **Rehabilitative/ Devices** | **Preventive/ Wellness** | **Prescription** | **Plan Deductible** | **Copay** (if applicable) | **Coinsurance** (if applicable) | **Copay** (if applicable) | **Coinsurance** (if applicable) | **Copay** (if applicable) | **Coinsurance** (if applicable) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| *neric.*<br>*nit, Type 999999.*<br>*/Visit, perform calculation and enter numeric result.*<br>*ay for 4 days is entered as $2,000.*<br>*umber, leave cell blank and enter information in Comments.)*<br>*l Benefit, Enter 0.* | | | | | *Numeric.*<br>*If None, Enter 0.*<br>*(If more than one deductible, Enter In-Network, Individual Deductible. Add optional information in comments.)* | *If None, Enter 0.*<br>*Enter In-Network Cost Share Amount*<br>*For Rx, Enter Generic Retail Cost Share Amount*<br>*Optionally enter additional comments in "Comments" section* | | | | | |
| $999,999,999 | $999,999,999 | $999,999,999 | $999,999,999 | $3,000 | $500 | $15.00 | 50% | $100.00 | 50% | $100.00 | 20% |
| $999,999,999 | $999,999,999 | $999,999,999 | $999,999,999 | $3,000 | $1,000 | $15.00 | 50% | $100.00 | 50% | $100.00 | 20% |
| $999,999,999 | $999,999,999 | $999,999,999 | $999,999,999 | $3,000 | $1,000 | $15.00 | 50% | $100.00 | 50% | $100.00 | 20% |
| $999,999,999 | $0 | $0 | $999,999,999 | $1,000 | $1,000 | $0.00 | 30% | $0.00 | 30% | $0.00 | 30% |

Ex. 4

| **Copay** (if applicable) | **Coinsurance** (if applicable) | **Individual/ Employee Tier*** | **Employee contribution** | **Employer contribution** | **Total** | **Employee contribution** | **Employer contribution** | **Total** | **Employee contribution** | **Employer contribution** | **Total** |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | *Enter a new row for each tier.* | *Dollar Amount. If None, Enter 0. Total Column should always be populated.* | | | | | | | | |
| $10.00 | 0% | Employee | $100.00 | $600.00 | $700.00 | $110.00 | $650.00 | $760.00 | $125.00 | $800.00 | $925.00 |
| $10.00 | 0% | Employee + 1 | $110.00 | $1,100.00 | $1,210.00 | $115.00 | $1,150.00 | $1,265.00 | $150.00 | $1,400.00 | $1,550.00 |
| $10.00 | 0% | Employee + Family | $125.00 | $1,250.00 | $1,375.00 | $135.00 | $1,300.00 | $1,435.00 | $150.00 | $1,480.00 | $1,630.00 |
| $10.00 | 0% | Employee | $80.00 | $500.00 | $580.00 | $90.00 | $550.00 | $640.00 | $150.00 | $700.00 | $850.00 |

Ex. 4

| **Projected Rate Increase that would result from compliance with $750,000 Annual Limit Restriction** (in dollars)(Average Premium by Individual) (Difference of Column AT and AQ divided by Column AQ) | **Decrease in Access to Benefits that would result from compliance with $750,000 Annual Limit Restriction** (describe briefly) | **Plan Administrator/ CEO of Health Insurance Issuer Name** | **Title of Individual Providing Attestation** |
|---|---|---|---|
| *Automaticaly Computed: (AT - AQ) / AQ* | | | |
| 21.71% | [brief description] | Jane Doe | Plan Administrator |
| 22.53% | See Attachment A | Jane Doe | Plan Administrator |
| 13.59% | [brief description] | Jane Doe | Plan Administrator |
| 32.81% | Please see attached for narrative. | Jane Doe | Plan Administrator |
| [redacted] Ex. 4 | Please see attached for narrative. | Board of Trustees | Fund Counsel |

**From:** Botwinick, Alexandra (HHS/OCIIO)
**Sent:** Thursday, March 17, 2011 2:07 PM
**To:** 'mgnewbold@anwjj.com'
**Subject:** Appoval of Waiver for Cement Masons and Plasterers Local 518 Health Care Fund 3-17-2011

**Importance:** High

**Follow Up Flag:** Follow up
**Flag Status:** Blue

**Attachments:** August 2011 Approval.pdf
Good Afternoon,

Thank you for submitting an application for a Waiver of the Annual Limits Requirements of the PHS Act Section 2711 for Cement Masons and Plasterers Local 518 Health Care Fund. HHS has reviewed your application and made its determination. Please see the attached letter.

Please confirm receipt of this letter by replying to this e-mail.

Please let me know if I can be of further assistance.

Sincerely,

Alexandra Botwinick

Office of Oversight
HHS/OCIIO
(301) 492-4177
alexandra.botwinick@hhs.gov

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

CMS
CENTERS for MEDICARE & MEDICAID SERVICES

**Date:** February 2011

**From:** Gary M. Cohen, Acting Director, Office of Oversight

**Subject:** Application for Waiver of the Annual Limits Requirements of PHS Act Section 2711

Dear Waiver Applicant:

Section 2711(a)(2) of the Public Health Service Act (PHS Act), as added by the Patient Protection and Affordable Care Act (Affordable Care Act), requires the Secretary to impose restrictions on the imposition of annual limits on the dollar value of essential health benefits (as defined in section 1302(b) of the Affordable Care Act) for any participant or beneficiary in a new or existing group health plan or a new policy in the individual market for plan or policy years beginning on or after September 23, 2010 and prior to January 1, 2014. Specifically, the Secretary is granted the authority to determine what constitutes a "restricted annual limit" that can still be imposed under such plans or policies prior to January 1, 2014.

The interim final regulations published on June 28, 2010 (codified at 26 CFR § 54.9815-2719T; 29 CFR § 2590.715-2719; and 45 CFR §147.126) established such restricted annual limits. The regulations also provided that these restricted annual limits may be waived by the Secretary of Health and Human Services (HHS) if compliance with the interim final regulations would result in a significant decrease in access to benefits or a significant increase in premiums. Pursuant to the regulation, HHS issued guidance on September 3 regarding the scope and process for applying for a waiver.

The Center for Consumer Information and Insurance Oversight, Office of Insurance Oversight received and processed your application for the plan(s) or policy(ies) year beginning August 1, 2011. We have determined that your application has met the criteria to obtain a waiver of the restricted annual limits requirements because compliance with the interim final regulations would result in a significant decrease in access to benefits for those currently covered by such plans or policies, or a significant increase in premiums paid by those covered by such plans or policies. To the extent you make any change to your benefit package after March 23, 2010, you must determine whether the change(s) will trigger loss of grandfathering status pursuant to 45 CFR §147.140(g)(1).

An approval of your request for waiver of the restricted annual limits requirements granted under this process applies only to the annual limit(s) provided in your application for the plan or policy year beginning between September 23, 2010 and September 23, 2011. This waiver only applies to the annual limits requirements in Section 2711 of the ACA and does not apply to any other requirement of the Affordable Care Act, ERISA, the IRS Code or the PHS Act. In addition, this waiver does not apply to the compliance requirements of the Mental Health Parity Act of 1996,

the Mental Health Parity and Addiction Equity Act of 2008, or the Newborns' and Mothers' Health Protection Act of 1996. Further, a group health plan or health insurance issuer must reapply for any subsequent plan or policy year prior to January 1, 2014 when this waiver expires in accordance with future guidance from HHS. HHS may modify this waiver approval process memorandum and other relevant information.

Finally, approved plans with effective dates on or before February 1, 2011 must provide enrollees with consumer notices within 60 days of receipt of an approval letter. The form and content of the notice can be found in the December 9, 2010 guidance, and it must be reproduced exactly with only slight modifications as allowed in the bracketed portions. Please go the following URL to read the guidance: http://www.healthcare.gov/center/regulations/guidance_limited_benefit_2nd_supp_bulletin_120910.pdf.

If you have any questions regarding this letter, please email OCIIOOversight@hhs.gov.