U.S. Department of Labor

Employee Benefits Security Administration
J.F. Kennedy Federal Building, Room 575
Boston, MA 02203
Phone: (617) 565-9600
Telefax: (617) 565-9666

JUL 01 2008

BY CERTIFIED MAIL

Plan Administrator

, New York,

Dear

The Department of Labor (the "Department") has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Title I establishes standards governing the operation of employee benefit plans such as

It is our position that the
is subject to ERISA Title I, and must therefore comply with the various provisions under the law.

By virtue of the Retirement Committee's ("the Committee") having been named Plan Administrator and, having control over the administration and management of the Plan and its assets, the members are fiduciaries under ERISA 3(21)(A), which reads in pertinent part:

> (A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 405(c)(1)(B) [29 USC §1105(c)(1)(B)].

Moreover, as set forth in ERISA section 409, below, as fiduciaries, the members of the Retirement Committee are personally liable for any losses to the Plan resulting from any breach of fiduciary duties.

Section 409(a):

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other

equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. . . .

It is therefore our opinion that the members of the Retirement Committee are responsible for administering the Plan according to the guidelines prescribed by ERISA.

Investigator [redacted] has concluded her investigation of the Plan and the Retirement Committee's activities as a fiduciary with respect to the Plan. Based on the facts gathered during this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that the Committee may have breached its fiduciary duties to the Plan in violation of ERISA. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

As we understand the facts, many of which were provided by to this office during the course of our investigation, ") maintain operations in sixteen countries. but is headquartered at The Company was publicly traded on the New York Stock Exchange until , 0, when it was acquired by private equity funds advised by and their co-investors. These funds and their co-investors hold the company's common stock through its parent,

Prior to March ' maintained individual defined benefit retirement plans for itself as well as each of its direct and indirect wholly owned subsidiaries. Effective March ', the Company established the . and Employees Retirement Income Fund ("the Plan"), a master defined benefit plan, for the purpose of centralizing and merging the ') plans which were sponsored by the Company and its subsidiaries at the time. Over time, additional plans were merged into the Plan as their operations were acquired.

The Plan is administered by a Retirement Committee comprised of three (3) or more members who are appointed by the Board of Directors of The Board of Directors is also required to establish a Trust Committee, consisting of three (3) or more members.

When transitioned to private ownership in , it also experienced a transition with respect to its corporate officers as well as the administration of the Plan. The corporate officers became the Retirement Committee and Trust Committee and retain their seats on these committees for as long as they serve as officers of the Company.

Eligibility varies by employee group, but is generally immediately upon hire or upon completion of one year of service and/or attaining age twenty-one (21). Participants

become fully vested in the Plan upon completing five (5) years of service or attaining normal retirement age.

The Plan is invested in a number of types of investments including corporate debt instruments, treasury obligations, common stock, cash and cash equivalents, partnership and joint venture interests, and shares of registered investment companies. In all cases, utilizes the services of relationship with is fee based and usually runs the company between to per year. acts solely in the capacity of investment advisor and monitor of investment strategy. does not purchase any securities from or through also utilizes or has utilized the following individual portfolio managers:

Each of these firms was engaged to manage specific funds.

Since transition in 2000 from publicly traded to privately owned, the Retirement Committee has worked to shift the Plan's portfolio to reflect a more conservative investment strategy. Specifically, the evolution has been to shift the portfolio toward fixed income investments and further away from equity investments. Prior to 2000, the Plan's portfolio was split 60% equities/40%fixed income. As of February , the Plan was invested in approximately twelve (12) limited partnership-type investments, with a total value of approximately million dollars, representing 14% of the Trust's total assets. As of February , the Plan was invested in only six (6) such investments, at a value of approximately $26 million dollars, representing approximately 7.5% of the total value of the Trust's assets as of that date. These investments are identified as "Other Assets" on the Plan's Asset Statement Schedule.

You have indicated that routinely issues monthly financial statements for the Plan, which include the valuation of assets based upon the most recent available information as of month-end. You review this report and circulate a summary of its contents to the other members of the Committee. The Committee then meets, as needed, to discuss the results, usually monthly or quarterly. The Committee also relies on to review the monthly reports and provide quarterly reports which cover investment performance, asset valuation, and other relevant items based on their review of the Plan's investment activity as well as their knowledge of the performance of similarly situated funds and markets.

It is also our understanding that investments in limited partnerships and joint ventures are valued at estimated fair market value based on the financial information received from the investment advisor and/or general partner. Depending upon the investment, the Committee generally receives this information monthly, quarterly or annually. Most of these financial statements are audited, but a small number are not.

It is incumbent on the Plan Administrator to establish a process to evaluate the fair market value of any hard to value assets held by the Plan. Such a process would include a complete understanding of the underlying investments and the fund's investment strategy. In addition, the Plan Administrator must have a thorough knowledge of the general partner's valuation methodology to assure it comports with the fund's written

valuation provisions and reflects fair market value. A process which merely uses the general partner's established value for all funds without additional analysis may not insure that the alternative investments are valued at fair market value.

We have reviewed the prospectuses, annual and quarterly reports and other information you have provided for a number of these investments and believe that lacks the proper policies and procedures to insure that all investments are valued at fair market value. For example, on the Asset Statement Schedule dated 2/28/07, the 's investments are valued at cost, equal to , based on the general partner's unaudited Capital Account Balance Statement for the period ending 12/31/06 and the accompanying audited financial statements. There is no indication, however, that the Retirement Committee reviewed whether cost was an appropriate measure of fair market value for this investment. In another example, the general partner for , L.P. made a determination of fair market value for the year ending September 30, 2007. This determination was unaudited. There is no indication that the Retirement Committee conducted any further analysis to ascertain whether this unaudited fair market value accurately reflected the true value of the asset.

Part 4 of ERISA sets forth the duties and responsibilities of plan fiduciaries and the activities from which the fiduciaries must refrain from engaging. Section 402(a)(1) provides every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

ERISA section 103(b) states: An annual report under this section shall include a financial statement containing the following information.

3(A): A statement of assets and liabilities of the Plan aggregated by categories valued at their current value.....

ERISA section 3(26) states: The term "current value" means fair market value where available and otherwise the fair market value as determined in good faith by a trustee or a named fiduciary (as defined in section 4012(a)(2) pursuant to the terms of the plan and in accordance with regulations of the Secretary.....

Not only has the Committee failed to establish a process to determine the most accurate fair market value of the investments under the heading "Other Assets", but the Plan has equated cost with fair market value for several of the assets in this category on the Asset Statement Schedule for the plan year ending February 28, 2007. Upon review of a sampling of the information provided for the various funds, it is clear that cost and fair market value are not always one and the same. At the very least, the Plan should amend this annual statement to reflect the actual cost and fair market value for each alternative investment.

It is also our opinion that the Retirement Committee's failure to have an established process by which the fair market value of alternative investments can be determined violates ERISA section 404(a)(1) which states that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries.

Section 404(a)(1)(B) provides that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

It is therefore our view, for the reasons cited above, that the Committee is in violation of ERISA and will remain so until it takes corrective action with regard to the issues described above and take steps to (1) implement a process by which to establish the fair market value of the Plan's alternate investments, (2) list the fair market value separately from cost on the Plan's statement of assets, and (3) review and, if necessary, re-file the Plan's 5500 for 2007 so that it accurately reflects the fair market value of these investments.

We have provided the foregoing statement of our views to help you evaluate your obligations as a fiduciary within the meaning of ERISA. Your failure to correct this matter may be referred to the Office of the Solicitor of Labor for possible legal action. In addition to any possible legal action by the Department, you should also be aware that the Secretary, pursuant to section 504(a) of ERISA, is authorized to furnish information to "any person...actually affected by any matter which is the subject" of an ERISA investigation. Further, even if the Secretary decides not to take any legal action in this matter, you would nonetheless remain subject to suit by other parties including plan fiduciaries and plan participants or their beneficiaries.

If you take proper corrective action, then the Department will not bring a lawsuit with regard to these issues. However, ERISA section 502(1) requires the Secretary of Labor to assess a civil penalty against a fiduciary who breaches a fiduciary responsibility under, or commits any other violation of ERISA or any other person who knowingly participates in such breach or violation. The penalty under section 502(1) is equal to 20 percent of the "applicable recovery amount," a term which means any amount recovered from a fiduciary or other person with respect to a breach or violation either pursuant to a settlement agreement with the Secretary or ordered by a court to be paid in a judicial proceeding instituted by the Secretary.[1]

Further, you should understand that the Department is speaking only for itself and only with regard to the issues discussed above; the Department has no authority to restrain any third party or any other governmental agency from taking any action it may deem appropriate.

[1] The Department may, in its sole discretion, waive or reduce the penalty if it determines in writing that the fiduciary or knowing participant in the breach acted reasonably and in good faith, or it is reasonable to expect that the fiduciary or knowing participant will not be able to restore all losses to the plan without severe financial hardship unless such waiver or reduction is granted. The Department may, in its sole discretion, agree to such a waiver or reduction in conjunction with entering into a settlement agreement. The procedure for applying for a waiver or reduction of the civil penalty is set forth in an interim regulation promulgated by the Department at 29 CFR 2570.80 to 2570.88. A petition for a waiver or reduction of the civil penalty should be directed to the Boston Regional Office.

We hope this letter will be helpful to you in the execution of your fiduciary duties, and that with respect to the specific matters discussed, you will promptly discuss with us how these violations may be corrected and the losses restored to the Plan. Please advise this Office in writing within ten (10) days of your receipt of this letter what action you propose to take with respect to the specific matters discussed.

If you have any questions, please contact Investigator

Sincerely,

James Benages
Regional Director