

consideration of this request, the Department has determined that it is appropriate to modify the proposed exemption in the manner requested by the Applicants and, accordingly, has revised section III(h) of the final exemption.

After full consideration and review of the entire record, including the written comment, the Department has determined to grant the exemption, as modified herein. The comment submitted by the Applicants to the Department has been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice published on October 6, 2010 (75 FR 61932).

**FOR FURTHER INFORMATION CONTACT:**

Christopher Motta of the Department, telephone (202) 693-8544. (This is not a toll-free number.)

**Pacific Capital Bancorp Amended and Restated Incentive and Investment and Salary Savings Plan (the Plan) Located in Santa Barbara, California**

[Prohibited Transaction Exemption No. 2011-20; Exemption Application No. D-11659]

**Exemption**

*Section I: Transactions*

Effective October 27, 2010, the restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) and 4975(c)(1)(E) of the Code,<sup>8</sup> shall not apply:

(1) To the acquisition of certain rights (the Rights) by the Plan in connection with an offering (the Offering) of shares of the common stock (the Stock) in Pacific Capital Bancorp (Bancorp) by Bancorp, a party in interest with respect to the Plan, and

(2) To the holding of the Rights received by the Plan during the subscription period of the Offering; provided that the conditions as set forth

in section II of this exemption were satisfied for the duration of the acquisition and holding.

*Section II: Conditions*

The relief provided in this exemption is conditioned upon adherence to the material facts and representations described, herein, and as set forth in the application file and upon compliance with the conditions, as set forth in this exemption.

(1) The receipt of the Rights by the Plan occurred in connection with the Offering and was made available by Bancorp on the same terms to all shareholders of the Stock of Bancorp;

(2) The acquisition of the Rights by the Plan resulted from an independent act of Bancorp, as a corporate entity, and all holders of the Rights, including the Plan, were treated in the same manner with respect to the acquisition of such Rights;

(3) Each shareholder of the Stock, including the Plan, received the same proportionate number of Rights based on the number of shares of Stock of Bancorp held by such shareholder;

(4) The Board of Directors of Bancorp decided that the Offering should be made available to all shareholders of the Stock, including the Plan, as record owner of the Stock held in the Plan on behalf of the accounts of the individual participants (the Invested Participants) all or a portion of whose accounts in the Plan are invested in the Stock, in accordance with provisions under such Plan for individually-directed investment of such accounts;

(5) The decision to exercise the Rights or to refrain from exercising the Rights was made by each of the Invested Participants in accordance with the provision under the Plan for individually-directed accounts; and

(6) No brokerage fees, commissions, subscription fees, or any other charges were paid by the Plan with respect to the Offering, and no brokerage fees, commissions, or other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

**DATES: Effective Date:** This exemption is effective, October 27, 2010, the date the Plan acquired the Rights.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on June 13, 2011, at 76 FR 34266.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angelena C. Le Blanc of the Department, telephone (202) 693-8540. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of September 2011.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**Proposed Exemptions From Certain Prohibited Transaction Restrictions**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security

<sup>8</sup> For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D-11676 The Kemper Corporation Pension Plan (the Plan); L-11618 Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund (the Plan); and L-11647 R+L Carriers Shared Services, LLC

**DATES:** All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

**ADDRESSES:** Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5700, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Attention: Application No. \_\_\_\_\_, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: [moffitt.betty@dol.gov](mailto:moffitt.betty@dol.gov), or by FAX to (202) 219-0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, N.W., Washington, DC 20210.

**Warning:** If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to

the comments or hearing requests received, as they are public records.

**SUPPLEMENTARY INFORMATION:**

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**The Kemper Corporation Pension Plan (the Plan) Located in Chicago, Illinois**

*Exemption Application Number D-11676*

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).<sup>1</sup> If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) and (D), and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason

<sup>1</sup>For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

of section 4975(c)(1)(A), (D) and (E) of the Code, shall not apply, effective September 1, 2011, to the one-time, in-kind contribution (the Contribution) of shares of the common stock of Intermedec, Inc. (the Stock) to the Kemper Corporation Pension Plan (the Plan)<sup>2</sup> by the Kemper Corporation (Kemper or the Applicant), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The Applicant makes cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Stock contributed to the Plan is sold;

(b) The Applicant contributes to the Plan such cash amounts as are needed for the Plan to attain an Adjusted Funding Target Attainment Percentage (AFTAP) of at least 80% as of January 1, 2012, as determined by the Plan's actuary (the Actuary), without taking into account any unsold Stock as of April 1, 2012;

(c) Solely for purposes of determining the Plan's minimum funding requirements, AFTAP and funding target attainment percentage, the Actuary will not count as a Plan asset any Stock that has not been liquidated as a contribution to the Plan;

(d) For purposes of determining Plan contribution amounts, the Stock shall be considered a contribution only at the time it is sold, with the contribution amount being the lesser of the proceeds from the sale of the Stock, or the value of the Stock on the date of the Contribution as determined by the Independent Fiduciary described below;

(e) The Stock represents no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(f) The Plan pays no commissions, costs or other expenses in connection with the contribution, holding or subsequent sale of the Stock and any such expenses paid by the Applicant are not treated as a contribution to the Plan;

(g) The terms of the Contribution between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties;

(h) Fiduciary Counselors Inc. (the Independent Fiduciary) represents the

<sup>2</sup>Prior to August 25, 2011, the Plan was known as the Unitrin, Inc. Pension Plan.

interests of the Plan, the participants and beneficiaries with respect to the Contribution;

(i) The Independent Fiduciary determines that the Contribution is in the interests of the Plan and of its participants and beneficiaries and is protective of the rights of participants and beneficiaries of the Plan; and

(j) The Independent Fiduciary monitors the transaction on a continuing basis and takes all appropriate actions to safeguard the interests of the Plan to ensure that the transaction remains in the interests of the Plan, and, if not, takes appropriate action available under the circumstances.

*Effective Date:* If granted, this proposed exemption will be effective as of September 1, 2011.

### Summary of Facts and Representations

1. The Kemper Corporation<sup>3</sup> (Kemper or the Applicant) is a diversified insurance holding company, with subsidiaries that principally provide life, automobile, homeowners and other insurance products for individuals. The Applicant reported total shareholders' equity of over \$2.1 billion as of June 30, 2011 and its debt is rated investment grade by S&P, Moody's and Fitch. The Applicant is the sponsor and a named fiduciary of the Kemper Corporation Pension Plan (the Plan).

2. The Plan is a defined benefit pension plan that is tax-qualified under section 401(a) of the Code. As of January 1, 2011, the Plan had approximately 9,800 participants and beneficiaries. The fair market value of invested Plan assets as of June 30, 2011 was \$360.9 million. The Plan's independent actuary, AON Hewitt (the Actuary) has determined that the Plan's Adjusted Funding Target Attainment Percentage (AFTAP) as of January 1, 2011 is 80%.

3. The Kemper Corporation Master Retirement Trust (Master Trust)<sup>4</sup> holds the assets of the Plan. The Plan's Investment Committee is the named fiduciary for Plan investments under the Master Trust. The Applicant serves as the Plan Administrator for the Plan. The Northern Trust Company serves as trustee of the Master Trust. The Investment Committee has the authority, under the terms of the Master Trust, to appoint one or more investment managers with respect to a portion or all of the Plan's assets.

4. The Applicant has requested exemptive relief from the Department

for the proposed one-time, in-kind contribution (the Contribution) of shares of the common stock of Intermecc, Inc. (the Stock) to the Kemper Corporation Pension Plan (the Plan). The Contribution represents an in-kind contribution to the Plan from the Applicant, a party in interest, that would, in the absence of the exemption proposed herein, violate section 406(a)(1)(A) and (D) and section 406(b)(1) and (b)(2) of the Act.

5. All required minimum contributions for the 2011 Plan Year have been made to the Plan, except for a contribution in the amount of \$5,093,876, which is due on September 15, 2012. Thus, the Contribution is not needed to satisfy a required minimum contribution by September 15, 2011.<sup>5</sup>

6. The Applicant represents that the Contribution improves the benefit security of participants because it is substantially in excess of the contribution required for the 2011 Plan year and is being made one year in advance of the date the final contribution for the 2011 Plan year is due. To provide added protection to the Plan and its participants, the Applicant has agreed to make cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. This commitment will remain in effect until all of the Stock contributed to the Plan has been sold.

7. Trinity Universal Insurance Company (Trinity), a wholly owned subsidiary of the Applicant, owns 7,661,607 shares of the Stock, with an approximate fair market value of \$56.47 million based upon the closing price of the Stock on August 31, 2011. The Applicant and its subsidiaries acquired the Stock on November 3, 1997 in connection with Western Atlas Inc.'s spin-off of Intermecc, Inc. (formerly

known as UNOVA Inc.) to the shareholders of Western Atlas. Intermecc, Inc. (Intermecc) is a publicly traded company listed on the New York Stock Exchange under the symbol "IN." The Applicant proposes to acquire the Stock owned by Trinity and contribute it to the Plan. The Stock would represent approximately 13.5% of invested Plan assets (based on their fair market value as of June 30, 2011), on a pro forma basis, after taking into account the Contribution (based on the closing price of the Stock on August 31, 2011).

8. The Investment Committee has appointed Fiduciary Counselors Inc. as the Independent Fiduciary to represent the Plan in connection with the proposed transaction. The Independent Fiduciary is an investment adviser, within the meaning of the Investment Advisers Act of 1940, which primarily acts as an independent fiduciary for employee benefit plans, such as the Plan. Fiduciary Counselors Inc. has represented that it is qualified to assume these responsibilities and is independent of the Applicant and its affiliates. The Independent Fiduciary is responsible for determining whether and on what terms the Stock should be contributed to the Plan; reviewing and approving the process for liquidating the Stock as quickly as is prudent, subject to the limitations hereafter described and its fiduciary obligations; and voting proxies and responding to tender offers with respect to the Stock. The Independent Fiduciary has determined that the contribution of the Stock to the Plan is in the interests of the Plan and its participants. The Independent Fiduciary represents that the Contribution will significantly improve the funding of the Plan, and that the Contribution is significantly in excess of required minimum funding.

9. The Independent Fiduciary represents that Intermecc is a global business that designs, develops, integrates sells and resells wired and wireless automated identification and data collection products and related services. As of July 3, 2011, Intermecc's assets were \$870 million and liabilities totaled \$414 million. Intermecc's debt-to-equity ratio is just 17%. Intermecc's operating profit from continuing operations since 2009 has been at the breakeven point, excluding additional restructuring and acquisition costs.

10. The Stock is a marketable security that trades on the New York Stock Exchange. There are, however, limitations on how quickly the Stock can be liquidated because of Rule 144 of the Securities and Exchange Commission (Rule 144). Rule 144 limits the amount of Stock that the Applicant

<sup>3</sup> Prior to August 25, 2011, Kemper was known as Unitrin, Inc.

<sup>4</sup> Prior to August 25, 2011, the Master Trust was known as the Unitrin, Inc. Master Retirement Trust.

<sup>5</sup> The Applicant is not required to make any cash contributions to the Plan for the 2011 Plan Year until September 15, 2012, because the Plan has satisfied the quarterly contribution requirements through offsetting such contributions against its credit balance. The minimum required contribution for the 2011 Plan Year is \$23,216,585, and the credit balances available to satisfy the minimum required contributions total \$18,627,878. The difference of \$4,588,707 is the amount of the required contribution due as of January 1, 2011, but, under section 303(j) of the Act, this amount is not required to be contributed to the Plan until September 15, 2012. However, if the amount is contributed after January 1, 2011, it must be increased by interest. Thus, the adjusted minimum required contribution as of September 15, 2012 is \$5,093,876.

and its affiliates may sell during any three-month period because the Applicant and its affiliates own more than 10% of Intermec's outstanding shares. The Applicant represents that after the Contribution, the Plan would be subject to Rule 144 because the Plan would own more than 10% of the outstanding stock of Intermec.<sup>6</sup> Assuming that the current facts and circumstances and Rule 144 requirements remain in effect, the Applicant estimates that Rule 144 will limit the shares of Stock that may be sold by the Plan until early May, 2012. The Applicant further estimates that based upon the volume of Stock that the Applicant has been able to sell over the last several months, the Stock would likely be completely liquidated by the Plan by July, 2012.

10. The Independent Fiduciary has retained a valuation firm, Murray, Devine & Co., Inc., headquartered in Philadelphia, Pennsylvania, to advise it on whether a liquidity discount should be applied to the market value of the Stock. The Applicant has agreed to use the value of the Stock as determined by the Independent Fiduciary for the purpose of determining the amount of the Contribution for funding purposes.

11. The Applicant represents that the Contribution is administratively feasible, in the interests of the Plan, its participants and beneficiaries and would be protective of the Plan and its participants and beneficiaries. The Applicant believes that the Contribution is administratively feasible because it is a one-time only Contribution that would require no further action by the Department. Moreover, the Plan will pay no fees, commissions or costs with respect to the Contribution or the sale of the Stock by the Plan.

The Applicant states that the Contribution is in the interests of the participants and beneficiaries because the Contribution will increase the benefit security of the participants by adding assets to the Plan that are substantially in excess of the contribution amount under the minimum funding requirements. The in-kind Contribution is the stock of a well-established public company traded on the New York Stock Exchange so the Plan has a market to sell the Stock.

The Applicant believes that the Contribution is protective of the Plan and its participants and beneficiaries because an Independent Fiduciary has been appointed to represent the Plan, its participants and beneficiaries. Any potential downside to the Contribution

is addressed and effectively eliminated by:

(a) The Applicant's commitment to make additional cash contributions to the Plan if the cumulative proceeds from the sale of the Stock at each contribution due date are less than the cumulative minimum amounts that would otherwise have been contributed to the Plan in cash, until all of the Stock is sold;

(b) The Applicant's commitment to contribute such cash amounts as are needed for the Plan's AFTAP to be at least 80% as of January 1, 2012, without taking into account any unsold Stock as of April 1, 2012;<sup>7</sup> and

(c) The Applicant's agreement to only count the Stock to the extent that it has been liquidated in determining the Plan's contributions, minimum funding requirements, the AFTAP and the funding target attainment percentage. This agreement means that the contribution of Stock serves as security for the obligation that the Applicant has to contribute cash to the Plan if the proceeds from sales of the Stock are not equal to what those cash contributions would have been.

12. In summary, the Applicant represents that the Contribution will satisfy the statutory requirements for an exemption under section 408(a) of the Act because:

(a) The Applicant will make cash contributions to the Plan to the extent that the cumulative proceeds from the sale of the Stock at each contribution due date (determined under section 303(j) of the Act) are less than the cumulative cash contributions the Applicant would have been required to make to the Plan, in the absence of the Contribution. Such cash contributions shall be made until all of the Stock contributed to the Plan is sold;

(b) The Applicant will contribute to the Plan such cash amounts as are

<sup>7</sup> In determining the Plan's AFTAP, Kemper will only count Stock that has been liquidated as of April 1, 2012. This date is being used as a measurement for Stock sales because a determination must be made as of April 1, 2012 that the AFTAP is at least 80% to avoid the participants being subject to benefit restrictions. The Applicant represents that these benefit restrictions would affect a significant number of Plan participants. The Plan provides for elective lump sum distributions upon termination of employment for certain participants. The Applicant states that currently up to 650 participants would be entitled to a lump sum distribution upon termination of employment (excluding participants whose benefits have a value of \$5,000 or less and thus, would not be subject to benefit restrictions). In addition, certain participants have made employee contributions to the Plan which they are entitled to withdraw. If the benefit restrictions become applicable, the Plan's actuary estimates that approximately 92 participants would have the right to withdraw these contributions restricted.

needed for the Plan to attain an AFTAP of at least 80% as of January 1, 2012, as determined by the Actuary, without taking into account any unsold Stock as of April 1, 2012;

(c) For purposes of determining the Plan's minimum funding requirements, AFTAP and funding target attainment percentage, the Actuary will not count as a Plan asset any Stock that has not been liquidated as a contribution to the Plan;

(d) For purposes of determining Plan contribution amounts, the Stock shall be considered a contribution only at the time it is sold, with the contribution amount being the lesser of the proceeds from the sale of the Stock, or the value of the Stock on the date of the Contribution as determined by the Independent Fiduciary;

(e) The Stock will represent no more than 20% of the fair market value of the total assets of the Plan at the time it is contributed to the Plan;

(f) The Plan will pay no commissions, costs or other expenses in connection with the contribution, holding or subsequent sale of the Stock, and any such expenses paid by the Applicant will not be treated as a contribution to the Plan;

(g) The terms of the Contribution between the Plan and the Applicant will be no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated parties;

(h) An Independent Fiduciary will represent the interests of the Plan, the participants and beneficiaries with respect to the Contribution;

(i) The Independent Fiduciary will have determined that the Contribution is in the interests of the Plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan;

(j) The Independent Fiduciary intends to sell the Stock into the market as quickly as is prudent under the circumstances, subject to the limitations of SEC Rule 144 and the Independent Fiduciary's fiduciary responsibilities under ERISA; and

(k) The Independent Fiduciary will monitor the transaction on a continuing basis and take all appropriate actions to safeguard the interests of the Plan to ensure that the transaction remains in the interests of the Plan, and, if not, take any appropriate actions available under the circumstances.

#### Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons within 5 days of the publication of the notice of proposed exemption in the

<sup>6</sup> See 17 CFR 230.144(a)(1)(iii).

**Federal Register.** The notice will be given to interested persons by first class mail or by return receipt requested electronic mail. Such notice will contain a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 35 days of the publication of the notice of proposed exemption in the **Federal Register**.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 693-8546. (This is not a toll-free number.)

**Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund (the Plan or the Applicant) Located in Portland, Oregon**

[Application No. L-11618]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) and (D) of the Act, shall not apply to the sale by the Plan of certain unimproved real property known as "Tax Lot 300" and "Tax Lot 400" (together, the Tax Lots or the Property), to the Pacific Northwest Regional Council of Carpenters (the Union), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) At the time of the sale, the Plan receives the greater of either: (1) \$390,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property on the date of the sale;

(c) The Plan pays no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party;

(e) The Plan trustees appointed by the Union (the Union Trustees) recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed sale; and

(f) The Plan trustees appointed by the employer associations (the Employer Trustees), who have no interest in the proposed sale, (1) determine, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) review and approve the methodology used in the appraisal that is being relied upon; and (3) ensure that such methodology is applied by the qualified, independent appraiser in determining the fair market value of the Property on the date of the sale.

**Summary of Facts and Representations**

*The Parties*

1. The Plan is a multiemployer, Taft-Hartley trust fund. The Plan was established on December 28, 1965, and is now maintained, pursuant to a Plan Agreement between the Oregon-Columbia Chapter; the Associated General Contractors of America, Inc.; the Associated Wall and Ceiling Contractors of Oregon and Southwest Washington, Inc.; the Home Builders Association of Metropolitan Portland; the General & Concrete Contractors Association, Inc. (collectively, the Employers); and the Union. As of February 28, 2011, the Plan had total assets of \$12,465,988.34. As of May 31, 2011, the Plan had approximately 4,122 participants.

2. The Plan is administered by a twelve member Board of Trustees, six of whom are appointed by the Employers and six of whom are appointed by the Union. The Trustees have ultimate fiduciary, operational, and investment discretion over the Plan's assets. The Plan's current Union Trustees are Gerald Auvil (Chairman of the Board of Trustees), Boyd Martin, Hank Mroczkowski, Ronald Robbins, Doug Tweedy, and Ben Embree. The Plan's current Employer Trustees are Jim McKune, Yasmine Branden, Jeff Herd, Gayland Looney (Secretary-Treasurer), Lonnie Kronsteiner, and Doug McClain.

Pursuant to the voting rules under the Plan Agreement and to avoid any self-dealing or conflict of interest issues, the Union Trustees are required to recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed exemption transaction that is described herein.

3. The Plan is headquartered in Portland, Oregon. It was created to provide training and education to member apprentices and journeymen who are construction carpenters, acoustical applicators, boat builders, bridge carpenters, cabinet makers, divers, dock and wharf carpenters, floor layers, gypsum drywall and system

installers, insulation applicators, lathers, maintenance carpenters, millwright pile drivers, residential carpenters, scaffold erectors, and shipwright and tradeshow workers.

The Union is headquartered in Kent, Washington, and it was chartered on January 1, 1996. Its geographic jurisdiction covers the States of Washington, Oregon, Idaho, Montana, and Wyoming. According to the Applicant, the Union's mission and purpose, include but are not limited to, promoting and protecting the interests of its membership, encouraging the apprenticeship system and higher standards of skill, and securing adequate pay for its membership's work.

*The Property Acquisition*

4. On January 25, 2005, the Plan purchased the Property from an unrelated party, IBC Portland I, LLC of Evergreen, Colorado, in order to establish a training facility for its members. Prior to the acquisition, the Plan had been looking for a new training facility site and it had hired a commercial real estate consultant, Bruce J. Korter, CRE, Director, Real Estate for Washington Capital Management of Portland, Oregon, to assist the Board of Trustees with finding a suitable property. The Trustees had looked at many facilities and even considered purchasing a parcel of unimproved land on which to construct the training facility.

The original purchase price of \$4,200,000<sup>8</sup> included the subject Property, Tax Lot 500 and a building situated on Tax Lot 500. The building serves as the Plan's principal training facility (the Training Center).<sup>9</sup>

The Property is located at NE 158th Avenue and NE Mason Street, Portland, Oregon. It consists of two parcels, Tax Lot 300, which is approximately 0.71 acres or 30,909 square feet of land, and Tax Lot 400, which is approximately 0.92 acres or 40,030 square feet of land. Adjacent to the Property are Tax Lot 500 and the Training Center, which are located at 4424 NE 158th Avenue, Portland, Oregon. Tax Lot 500 consists of approximately 4.64 acres or 202,118 square feet of land. Currently, the

<sup>8</sup> As a result of negotiations, the seller later agreed to accept a \$100,000 reduction in the purchase price in exchange for several conditions of purchase, including paying for street improvements as they pertain to the property being purchased by the Plan. Thus, the modified purchase price was \$4,100,000. The final cost to the Plan was \$4,221,716.02, which included \$121,716.02 of additional charges, including \$94,351 for the 158th Ave. street improvements.

<sup>9</sup> The Property, Tax Lot 500 and the Training Center are collectively referred to herein as the "Entire Property."

Property is vacant and does not produce any income. The Union owns no real estate that is within close proximity to the Entire Property.

The Plan financed the cost of the Training Center and Tax Lot 500 with a \$2,250,000, 20 year loan from AEGON USA Realty Advisors, Inc. (AEGON) of Cedar Rapids, Iowa, an unrelated party. The loan is secured by the Training Center and Tax Lot 500. It carries interest at the rate of 6.75% and requires monthly payments of \$16,564.13 that include both principal and interest, commencing March 2005. The Plan paid the remaining \$1,950,000 balance for the Training Center and Tax Lot 500 in cash.

#### *Plan's Intentions Regarding the Property*

5. According to the Applicant, the Plan had the seller divide the Entire Property into three separate tax lots prior to the purchase. This action was meant to facilitate the Plan's future sale of either or both Tax Lots 300 and 400, should a decision be made to dispose of these parcels, and not to have such property serve as security for the AEGON loan.

Also, according to the Applicant, the Plan's interest in the Entire Property prompted preliminary discussions about determining ways to finance the purchase. These discussions included the Union's purchase, from the seller, of one of the Tax Lots as a site for its new headquarters. In this regard, Mr. Korter, the real estate consultant, had suggested that the Plan apply for a loan for the Training Center, but not include the Property as security for such loan. Mr. Korter also suggested that the Union prepare a letter of intent to demonstrate its commitment to purchase one of the Tax Lots from the seller. However, no such letter of intent from the Union was ever forthcoming. (According to Jim McCune, an Employer Trustee, Mr. Korter believed the letter of intent was needed by the lender to approve the financing of the Entire Property.)

The Plan was able to sell the property at which its training facility was previously located for \$1 million. As a result, the Plan was able to obtaining financing without needing to have the Union or an unrelated party purchase Tax Lot 300 or Tax Lot 400 from the seller.

Furthermore, the Applicant states that following the election of Doug Tweedy as the Union's Executive Secretary-Treasurer and CEO in August 2004, there was a complete changeover of

Union personnel. The Applicant explains that there was nothing in the Plan's records relating to the acquisition of the Entire Property to indicate that the Union's new executive personnel had any interest in the Tax Lots for the Union's headquarters. In this regard, the Applicant explains that some time before May 2005, the Union's executive personnel began searching for property other than the Tax Lots as its headquarters. On May 21, 2005, the Union committed to purchase and renovating a building located at 1636 East Burnside Street, Portland, Oregon (the East Burnside Property) by approving the financing. The Applicant notes that the Union has maintained its offices at the East Burnside Property ever since.

Thus, according to the Applicant, the possibility of the Union building its headquarters on the Property was not a consideration after the August 2004 election of Mr. Tweedy, which was well before the Entire Property was acquired by the Plan on January 25, 2005.

#### *Plan's Use of the Property*

6. Since the time of acquisition, the Plan has used the Property for training purposes, including surveying and building layout. The Applicant states that one of the ideas being considered for the use of Tax Lot 300 and Tax Lot 400 is to provide parking spaces for apprentices and Training Center employees so that the present south side parking lot can be used to expand the Training Center.

#### *Plan's Acquisition and Holding Costs Regarding the Property*

7. Because the Entire Property was listed for sale as a single parcel of land, the Applicant explains that there was no separate breakdown of the purchase price for Tax Lot 300, Tax Lot 400, Tax Lot 500, and the Training Center. In an appraisal report dated August 13, 2004 that was prepared on the Property for possible use as collateral for a federally-related loan transaction (see Representation 5), Tax Lot 300 was appraised at \$154,660, as of July 19, 2004. In that same appraisal report, Tax Lot 400 was appraised at \$200,155 as of July 19, 2004.<sup>10</sup>

<sup>10</sup>In a separate appraisal report dated August 11, 2004, Mr. Hickok placed the fair market value of Tax Lot 500 and the Training Center at \$4,000,000, also as of July 19, 2004. As noted previously, the original purchase price included the Entire Property.

The appraisal was performed by Robert Hickok, MAI, MRICS, a qualified, independent appraiser affiliated with Integra Realty Resources, a real estate valuation and consulting firm located in Portland, Oregon. Mr. Hickok is also a Certified General Real Estate Appraiser and he is licensed in the States of Oregon and Washington. The Applicant represents that Mr. Hickok is a qualified, independent appraiser, and that less than 1% of his annual income is derived from the Applicant and its affiliates.

Thus, due to the absence of an actual purchase price for the Property, the Applicant has estimated this price to be \$147,760.06 for Tax Lot 300 and \$194,198.94 for Tax Lot 400, as of January 25, 2005 based on the allocation percentage the Tax Lot represented to the total appraised value of the Entire Property, as determined by Mr. Hickok in his July and August 2004 appraisals. The Applicant then applied each allocation percentage to the aggregate purchase price. Thus, the Plan's acquisition cost for the Property was \$341,959.<sup>11</sup>

8. At the time of the purchase transaction, the Plan also paid half of the improvement costs on NE 158th Avenue, where the Property is located. The improvements that were made to NE 158th Avenue included the construction of curbs, gutters, and sidewalks, storm and sanitary sewers, water mains, and street pavement. Additionally, fire hydrants and trees were relocated and traffic control signage, pavement striping and marking, and permanent barricades were installed. The Plan's share of the improvement costs was approximately \$94,351.

Following the purchase transaction, the Plan has incurred maintenance costs associated with the Property and it has paid drainage taxes to Multnomah County, Oregon. Thus, the Plan's aggregate acquisition and holding costs incurred with respect to the Property between 2005 and 2010 is \$363,486.51.

A summary of the Plan's acquisition and holding costs as they relate to the Property for the period 2005–2010 is shown in the table below:

<sup>11</sup>Based on the Applicant's calculations, the acquisition costs for Tax Lot 300 and 400 were \$147,760.06 (3.5% of the \$154,600 appraised value) and \$194,198.94 (4.6% of the \$200,155 appraised value), respectively. The acquisition cost for Tax Lot 500 and the Training Center was \$3,879,757.02 (91.9% of the \$4,000,000 appraised value).

## ACQUISITION AND HOLDING COSTS FOR TAX LOTS (TLs) 300 AND 400 FROM 2005–2010

Property expenses	2005	2006	2007	2008	2009	2010	TL 300 and TL 400 totals
TL 300 Acq. Cost* .....	\$147,760.06	.....	.....	.....	.....	.....	\$147,760.06
TL 300 Maint. Costs**	1,352.58	1,352.58	1,352.58	1,352.58	1,352.58	1,352.58	8,115.48
TL 300 Taxes*** .....	253.01	211.33	221.93	234.20	237.26	253.28	1,411.01
TL 300 Totals .....	\$149,365.65	1,563.91	1,574.51	1,586.78	1,589.84	1,605.86	157,286.55
TL 400 Acq. Cost 111*	\$194,198.94	.....	.....	.....	.....	.....	194,198.94
TL 400 Maint. Costs**	1,752.00	1,752.00	1,752.00	1,752.00	1,752.00	1,752.00	10,512.00
TL 400 Taxes*** .....	327.67	330.88	171.85	209.80	218.09	230.73	1,489.02
TL 400 Totals .....	\$196,278.61	2,082.88	1,923.85	1,961.80	1,970.09	1,982.73	206,199.96
TL 300 and TL 400 Totals ..	\$345,644.26	3,646.79	3,498.36	3,548.58	3,559.93	3,588.59	363,486.51

\* *Maintenance Costs.* The maintenance costs of \$695/month were divided and allocated based on square footage of land (excluding the Training Center).

\*\* *Taxes.* The 2005 through 2010 Multnomah County Property Tax assessments for Tax Lot 300 and Tax Lot 400 were used to calculate property taxes.

\*\*\* *Insurance Costs.* No insurance cost was allocated to Tax Lots 300 and 400 because, as explained by the Plan's insurance agent of record, Joseph P. Herrle, general liability insurance coverage extends automatically to any property that adjoins the Plan's business location (i.e., the Training Center Building) at no additional premium charge.

#### Request for Exemptive Relief

9. The Applicant requests an individual exemption from the Department in order to sell the Property to the Union. The Union's objective in buying the Property is to construct its Oregon and Southwest Washington headquarters building. The Applicant represents that the sale of the Property is in the best interest of the Plan and its participants because: (a) The Plan has no apparent or immediate need or use for the Property; and (b) the Plan does not derive any income from the Property. The sale of the Property will allow the Plan to convert the Property to cash and will permit the Plan to then invest the cash in a vehicle more appropriate to the Plan's investment needs and to meet its commitments that require liquidity. If the Union constructs its headquarters on the Property it would be a convenience to the participants receiving training and education as they are represented by the Union.

#### Efforts to Sell the Property to Unrelated Parties

10. The Applicant represents that it has not made efforts to sell the Property to unrelated third parties for the following reasons<sup>12</sup>:

<sup>12</sup> In the exemption application, the Applicant initially represented that the Trustees had not made any efforts to sell the Property to unrelated parties because at the time of the Plan's acquisition of the Entire Property, "the Trustees foresaw that the Property would be a good location to build the Union headquarters because of its proximity to the Training Center." As noted above, the Applicant provided further information to the Department to support the Trustees' actual intentions regarding the Property. Notwithstanding the supporting

- *Limited Use of the Property to Potential Purchasers.* According to the Applicant, Tax Lot 300 and Tax Lot 400 are zoned "IG2, General Industrial 2," which permits various industrial uses. Because the Tax Lots are both less than one acre in size, which is not customary for industrial neighborhoods, only atypical small industrial buildings could potentially be built on the Property. The Applicant explains that there is currently limited demand for additional industrial development. The Applicant also explains that Mr. Hickok, the independent appraiser, determined that industrial use of the Property was not considered financially feasible because a newly-developed use would not have a value commensurate with its cost. Since the Property is not appropriate for most industrial uses, the Applicant states that this limits the number of potential buyers and would likely result in a lower sale price for an industrial use other than the Union's office building use. Further, the Applicant indicates that there are currently four larger industrial buildings that remain unsold to the east of the Training Center and undeveloped land to the south of the Training Center.

documentation, the Department is still concerned that the Applicant's statement raises issues under the general standards of fiduciary conduct of section 404 of the Act and the prohibited transaction provisions of 406 of the Act with respect to the Plan's acquisition and holding of the Property. Accordingly, the Department is not passing on the prudence of the Plan's investment in the Property, nor is it providing exemptive relief herein from section 406 of the Act for any prohibited transactions that may have occurred during the Plan's acquisition and holding of such Property.

- *Inability of an Unrelated Purchaser to Receive Municipal Construction Approval or Have a Use Ancillary to the Training Center.* According to the Applicant, an unrelated purchaser would not likely receive approval from the City of Portland to construct an office building on the Property. However, the Applicant believes that the Union would receive such approval because it represents the Plan participants being trained in the Training Center. In addition, the Applicant states that it is not expected that an unrelated purchaser's use of the Property would be ancillary to the Training Center as the Union's potential use.

- *Cash Flow Problems Experienced by the Plan.* The Applicant states that the Plan had a reduced cash flow in 2008 and 2009 due to the recession. As a result, there had been fewer jobs for carpenters and fewer contributions to the Plan. The Applicant explains that the need for apprentice and journeymen training has increased as labor agreements have increased their training requirements. The Applicant further explains that the Trustees recognized that Union headquarters building would be a complimentary and nonintrusive use to the Training Center and a convenience to the Plan participants receiving training, as they are represented by the Union. After Mr. Hickok completed his 2009 appraisal of Property, the Applicant indicates that the Union commenced the process involved to purchase the Property from the Plan, following approval by the Employer Trustees of filing an

exemption application with the Department.

- *Use of the Property that Does Not Impair the Training Center or the Safety of the Apprentices.* Due to the proximity of the Property to the Training Center, the Applicant states that the Trustees must ensure that the Property is used in a manner that will not hinder the use, and the view of the Training Center from NE 158th Avenue. Additionally, the Applicant notes that because the apprentices are mainly young adults, the Trustees desire that the Property be used in a manner that does not compromise the safety of the apprentices or create liability issues for the Plan and the Training Center.

#### *Recent Appraisals of the Property*

11. The Property was appraised by Mr. Hickok who, as noted in Representation 7, had initially valued the Property in 2004. Using the Sales Comparison Approach to valuation, Mr. Hickok placed the fair market value of Tax Lot 300 at \$170,000 as of October 20, 2009 in an appraisal report dated November 12, 2009. In that same appraisal report, Mr. Hickok placed the fair market value of Tax Lot 400 at \$220,000, for a combined total appraised value of \$390,000 for the Property. Mr. Hickok explains that the Sales Comparison Approach to valuation was the only approach available for the valuation of the Property. The Cost Approach was not available because there are no improvements that contribute to the value of the Property. Mr. Hickok concluded that the Income Approach was not available because the Property is not likely to generate rental income in its current state.

12. The Department requested a 1–2 page addendum to the 2009 appraisal asking Mr. Hickok whether there had been a change in the fair market value of the Property since the date of the 2009 appraisal. On April 18, 2011, the Applicant's representative submitted a summary appraisal report, effective March 22, 2011. Using the Sales Comparison Approach to valuation in the updated appraisal, Mr. Hickok again placed the fair market value of Tax Lot 300 at \$170,000, and Tax Lot 400 at \$220,000. Thus, the Property had a combined total appraised value of \$390,000 as of March 22, 2011.

#### *Conditions of the Proposed Sale*

13. The Plan will pay no real estate commissions or other expenses associated with the sale. The Union will pay the Plan in cash, the greater of either: (a) \$390,000 or (b) the fair market value of the Property, as established by

a qualified, independent appraiser on the date of the transaction, as reflected in an updated appraisal of such Property.

14. The Employer Trustees have determined, among other things, that it is in the best interest of the Plan to proceed with the sale of the Property. In addition, the Trustees have reviewed and approved the methodology used in the appraisal that is being relied upon, and they will ensure that such methodology is applied by the qualified independent appraiser in determining the fair market value of the Property on the date of the sale.

#### *Summary*

15. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) At the time of the sale, the Plan will receive the greater of either: (1) \$390,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property on the date of the sale;

(c) The Plan will pay no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party;

(e) The Union Trustees will recuse themselves from discussions and voting with respect to the Plan's decision to enter into the proposed sale; and

(f) The Employer Trustees, who have no interest in the proposed sale will (1) determine, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) review and approve the methodology used in the appraisal that is being relied upon; and (3) ensure that such methodology is applied by the qualified, independent appraiser in determining the fair market value of the Property on the date of the sale.

#### **Notice to Interested Persons**

Notice of the proposed exemption will be provided to the Employers and the Union within 15 days of the publication of the notice of proposed exemption in the **Federal Register**. The Plan will provide notice to interested persons by first-class mail. Such notice will contain a copy of the proposed exemption, as published in the **Federal Register**, and a supplemental statement as required pursuant to 29 CFR 2570.43(b)(2). The supplemental

statement will inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemptions. Written comments and hearing requests are due within 45 days of the publication of the proposed exemption in the **Federal Register**.

*For Further Information Contact:* Ms. Jan D. Broady of the Department at (202) 693–8556. (This is not a toll-free number).

**R+L Carriers Shared Services, LLC,  
Located in Wilmington, Ohio**

[Application No. L–11647]

#### **Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and (b) of the Act shall not apply to the reinsurance of risks, and receipt of premiums related therefrom, by Royal Assurance, Inc. (Royal Assurance), in connection with insurance contracts sold by Unum Life Insurance Company of America (Unum), or any successor insurance company to Unum which is unrelated, to the R+L Carriers Shared Services, LLC to provide group life, short-term disability (STD), long-term disability (LTD), and Accidental Death and Dismemberment (AD&D) insurance benefits to employees of the R+L Companies<sup>13</sup> under an employee welfare benefit plan (the Plan)<sup>14</sup> sponsored by the R+L Carriers

<sup>13</sup> The individual related employers comprising the R+L Companies are: (1) R+L Carriers Shared Services, LLC; (2) Strategic Management, LLC; (3) Paramount Transportation Logistics Services, LLC; (4) R+L Carriers Payroll, LLC; (5) Paramount Labor Leasing Southern, LLC; (6) Paramount Labor Leasing Eastern, LLC; (7) Paramount Labor Leasing Southern, LLC; (8) Golden Ocala Management, Inc.; (9) Royal Resorts, LLC; (10) ABCO Transportation, Inc.; (11) Spirit Express Trucking, Inc.; (12) Royal Shell Property Management, Inc.; (13) Quality Quest Linen Service, Inc.; (14) Royal Shell Vacations, Inc.; (15) AFC LS, LLC; and (16) AFC Worldwide Express, Inc. The foregoing employers, along with the captive insurer, Royal Assurance, constitute the applicants requesting an individual exemption for the proposed transaction described herein.

<sup>14</sup> The applicants represent that Mr. Ralph "Larry" Roberts, Sr., the founder of the R+L Companies, is the owner (either directly, or indirectly through the combined voting interests of his spouse and his children) of 50 percent or more of the combined voting power of all classes of stock entitled to vote of each of the employers constituting the R+L Companies whose employees are covered under the Plan. Therefore, according to the applicants, Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act. The applicants further represent



Shared Services, LLC, provided the following conditions are met:

(a) Royal Assurance—

(1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with R+L Carriers Shared Services LLC that is described in section 3(14)(E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in at least one State as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Director of the Department of Insurance of its domiciliary state which has neither been revoked nor suspended;

(4)(A) Has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or (B) Has undergone a financial examination (within the meaning of the law of its domiciliary State, Arizona) by the Director of the Arizona Department of Insurance within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred; and

(5) Is licensed to conduct reinsurance transactions by a State whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid by the Plan with respect to the direct sale of such contracts or the reinsurance thereof;

(d) In the initial year of any contract involving Royal Assurance, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits;

(e) In subsequent years, the formula used to calculate premiums by Unum or any successor insurer will be similar to formulae used by other insurers providing comparable coverage under

that Mr. Roberts is the owner, either directly or indirectly, of 50 percent or more of the combined voting power of all classes of stock entitled to vote of the captive, Royal Assurance; accordingly, the applicants represent that Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act. In this regard, the Department is providing no opinion herein as to whether Mr. Roberts is a party in interest with respect to the Plan for purposes of section 3(14)(E) of the Act; similarly, the Department is providing no opinion herein as to whether Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act.

similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer and its competitors with the same or a better rating providing the same coverage under comparable programs;

(f) The Plan only contracts with insurers with a financial strength rating of "A" or better from A. M. Best Company (A. M. Best). The reinsurance arrangement between the insurer and Royal Assurance will be indemnity insurance only, i.e., the insurer will not be relieved of liability to the Plan should Royal Assurance be unable or unwilling to cover any liability arising from the reinsurance arrangement;

(g) The Plan retains an independent fiduciary to analyze the transaction and render an opinion that the requirements of sections (a) through (f) have been satisfied. For purposes of the proposed exemption, the independent fiduciary is a person who:

(1) Is not directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with an applicant (this relationship hereinafter referred to as an affiliate);

(2) Is not an officer, director, employee of, or partner in, Royal Assurance or any other applicant (or an affiliate of either);

(3) Is not a corporation or partnership in which Royal Assurance or any other applicant has an ownership interest or is a partner;

(4) Does not have an ownership interest in Royal Assurance, or any of the other applicants, or their Affiliates;

(5) Is not a fiduciary with respect to the Plan prior to the appointment; and

(6) Has acknowledged in writing acceptance of fiduciary responsibility and has agreed not to participate in any decision with respect to any transaction in which the independent Fiduciary has an interest that might affect its best judgment as a fiduciary.

For purposes of this definition of an "independent fiduciary," no organization or individual may serve as an independent fiduciary for any fiscal year if the gross income received by such organization or individual (or partnership or corporation of which such individual is an officer, director, or 10 percent or more partner or shareholder) from Royal Assurance, any other applicant, or their affiliates (including amounts received for services as independent fiduciary under any prohibited transaction exception granted by the Department) for that fiscal year exceeds one percent of that organization or individual's annual

gross income from all sources for the prior fiscal year.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow funds from Royal Assurance, any other applicant, or their affiliates during the period that such organization or individual serves as independent fiduciary, and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiates any such transaction during the period that such organization or individual serves as independent fiduciary.

### Summary of Facts and Representations

1. The R+L Companies comprise a group of enterprises, primarily focused on the trucking and transportation services industries, that are under common ownership. The R+L Companies are a major nationwide interstate motor carrier network providing "less-than-truckload" transportation services, i.e., partial-load shipments to one or more destinations, or full trailer-load shipments directed to multiple destinations. Today, the R+L Companies have approximately 9,000 employees with operations extending to all 50 states, Canada, Puerto Rico and the Dominican Republic.

2. Royal Assurance is a captive insurance company that was established for the purpose of insuring or reinsuring certain risks associated with the business operations of the R+L Companies, and that shares common ownership with the R+L Companies. The applicants represent that Royal Assurance has insured the R+L Companies' property and casualty risks, and also reinsured the employee benefit plans of the R+L Companies. The applicants further state that Royal Assurance was incorporated in Arizona on August 13, 2008. On December 3, 2008, the Director of the Arizona Department of Insurance granted Royal Assurance a Certificate of Authority to transact the business of a captive insurance company in the State of Arizona. The Certificate of Authority grants Royal Assurance the authority to transact the following kinds of insurance business within the State of Arizona: Casualty, Workers' Compensation, Property, Life Reinsurance, and Disability Reinsurance.

3. The independent certified public accounting firm of Saslow Lufkin &

Buggy, LLP has served as Royal Assurance's auditor since its incorporation. Saslow Lufkin & Buggy, LLP currently examines Royal Assurance's reserves on an annual basis in connection with the employee benefit business to be reinsured by Royal Assurance to ensure that appropriate reserve levels are maintained. The applicants represent that, as of December 31, 2009 (the most recent date for which audited financial statements from Saslow Lufkin & Buggy, LLP are available), Royal Assurance disclosed approximately \$335,719 in gross annual premiums and \$1,349,327 in total assets (audited financial statements for Royal Assurance for calendar year 2010, according to the applicants, are not yet available).

4. The R+L Carriers Shared Services, LLC Plan (the Plan) is maintained for employees of the R+L Companies. The Plan provides both basic and supplemental life and disability coverage. The Plan has historically insured with the Unum Life Insurance Company of America ("Unum"). However, pursuant to the transaction for which an exemption is being sought, Royal Assurance would now be utilized for the reinsurance of benefits and would make substantial improvements to the Plan in anticipation of that transaction.

5. Specifically, the new benefits (at no additional cost or obligation to the participants) are as follows:

(a) Accidental Death and Dismemberment Benefit—Upon grant of the exemption, the Plan would provide a completely new \$10,000 AD&D benefit, in addition to the basic benefits that are currently available under the existing life insurance and disability coverages. The AD&D enhancement would pay the full \$10,000 amount in the event of accidental death, in addition to the basic life insurance benefit and any additional life insurance benefit options selected by the participant. The new AD&D benefit would pay an enhanced benefit in accordance with a predetermined schedule for automobile-related deaths occurring while seatbelts and/or air bags are in use. Moreover, the new AD&D benefit would include a schedule of education benefits for qualified children in the event a Plan participant dies as a result of an accidental injury. Such benefits are in addition to any life insurance benefit that may be available. The new AD&D enhancement would also operate alongside any benefits that would otherwise be available under the Plan's existing LTD and/or STD coverages. Specifically, the AD&D enhancement would pay the full

\$10,000 amount in the event of grievous injury involving loss of both hands, both feet, or both eyes. The full \$10,000 amount would also be payable in the event of the loss of two different appendages or organs, e.g., loss of a hand and a foot. One-half of the new benefit would be paid if a single organ or appendage were lost. These enhanced benefits would be available in addition to any available benefits under the LTD or STD coverages;

(b) Short-Term Disability Benefit—Under this benefit enhancement, the current \$150 maximum weekly benefit amount (under "Option A" of the STD program) would be increased to \$175. Neither the amount of STD benefits, nor eligibility for such benefits, will be restricted or reduced as a result of this new enhancement;

(c) Long-Term Disability Accelerated Death Benefit—The LTD benefit under the Plan will be enhanced by providing a new, previously unavailable, accelerated survivorship benefit to the beneficiaries of LTD-eligible employees. Under this benefit improvement, when an employee on LTD has a life expectancy of 6 months or less, the employee's beneficiaries will be eligible to receive a benefit payment equal to the LTD program's death benefit, i.e., 3 months of LTD benefit payments;

(d) LTD Child Care Expense Benefit—Employees eligible for LTD benefits would be entitled to additional child care benefits under the LTD program. The enhanced expense allowance would be increased from the current level of \$250 per month to \$350 per month;

(e) LTD Dependent/Elder Care Benefit—The enhanced LTD program would include additional benefits to cover the personal care costs of non-child dependents (e.g., elderly parents) during the period of the employee's disability. The enhanced expense allowance would be increased from the current level of \$250 per month to \$350 per month; and

(f) LTD Worksite Modification Benefit—The enhanced LTD program would include a provision for an increase in the worksite modification benefit to \$1,500 from the current \$1,000 amount. The worksite modification benefit will defray the cost of workplace modifications that can enable a disabled employee to remain at work or return to work.

6. The Plan's life and disability benefits are now insured by Unum, which currently has an "A" rating from A. M. Best. The applicants represent that if the Plan chooses another insurer in the future, that insurer will have a financial strength rating of "A" or better from A. M. Best. The applicants

anticipate that, upon the granting of the exemption proposed herein, Unum will enter into reinsurance agreements with Royal Assurance.

Unum will continue to insure the Plan, with the enhanced new benefits. However, Unum will reinsure up to 100% of the risk with Royal Assurance. The percentage of the risk to be insured will be specified in the reinsurance agreements between Unum and Royal Assurance. The reinsurance agreements between Unum and Royal Assurance will be indemnity reinsurance only, so that Unum will not be relieved of its liability to the Plan should Royal Assurance be unwilling or unable to cover any liability arising from the reinsurance arrangement.

The Plan will pay no more than adequate consideration for the insurance contracts with Unum or any successor insurer. The formula used to calculate premiums by Unum or any successor insurer<sup>15</sup> will be similar to formulae used by other insurers providing life insurance coverage under similar programs. Furthermore, the premium charge calculated in accordance with the formula will be reasonable and will be comparable to the premium charged by the insurer providing coverage under the Plan and its competitors with the same or a better rating providing the same coverage under comparable programs.

7. In connection with this exemption request, Milliman, Inc. (Milliman) has been engaged as the independent fiduciary (Independent Fiduciary) on behalf of the Plan. Milliman is an international firm of consultants and actuaries with expertise in all facets of employee benefits, including insurance. William J. Thompson, FSA, MAAA (Mr. Thompson), a Principal and Consulting Actuary employed by Milliman, has represented Milliman for purposes of making the Independent Fiduciary representations. Milliman's consultants are frequently retained to advise corporations on the insurance arrangements underlying their benefit programs and have considerable expertise in the area of reinsurance and captive insurers.

8. For purposes of demonstrating independence, the Independent Fiduciary has represented that:

(a) It is not an Affiliate of Unum, Royal Assurance, or any of the other applicants;

(b) Neither the Independent Fiduciary nor Mr. Thompson is an officer,

<sup>15</sup> The applicants state that any successor insurer would be a legal reserve life insurance company with assets of such a size as to afford similar protection and responsibility.

director, employee of, or partner in Unum, Royal Assurance, or any of the other applicants;

(c) The Independent Fiduciary is not a corporation in which Unum, Royal Assurance, or any of the other applicants, has an ownership interest or is a partner;

(d) The Independent Fiduciary does not have an ownership interest in Royal Assurance, any of the other applicants, or Unum, or in any Affiliate of those firms;

(e) The Independent Fiduciary was not a fiduciary with respect to the Plan prior to its appointment for this transaction;

(f) The Independent Fiduciary has acknowledged in writing its acceptance of fiduciary obligations and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect their fiduciary duty;

(g) The gross income received by the Independent Fiduciary and Mr. Thompson (both separately and combined) from Royal Assurance, the other applicants, Unum, or their Affiliates (including amounts received for services as Independent Fiduciary for representing the interests of the Plan with respect to the exemption transaction, for monitoring compliance with the terms and conditions of any administrative exemption granted by the Department, and for taking whatever actions may be necessary and appropriate to safeguard the interests of the Plan and its participants and beneficiaries), does not exceed one percent of the gross annual income of the Independent Fiduciary from all sources for the prior fiscal year; and

(h) The Independent Fiduciary did not acquire any property from, sell property to, or borrow funds from, Royal Assurance, any of the other applicants, Unum, or their Affiliates.

9. The Independent Fiduciary represents that Royal Assurance is licensed in the State of Arizona since December 3, 2008 to reinsure life and disability insurance business. The Independent Fiduciary confirmed that Royal Assurance has undergone an examination by Saslow Lufkin & Buggy, LLP, an independent certified public accountant, for its 2008 taxable year. The Independent Fiduciary reviewed their audited financial report and is satisfied that there are no issues to be resolved. In addition, the Independent Fiduciary had an opportunity to review the unaudited financial statements of Royal Assurance for the 2009 taxable year, and found no evidence to contradict the view that the unaudited statements present fairly, in all material

respects, the financial position of Royal Assurance as of December 31, 2009. The Independent Fiduciary further represents that future reserves will be reviewed by a qualified independent actuary approved by the State of Arizona.

10. The Independent Fiduciary has concluded that, as a result of the reinsurance agreement described in representation 6, above, the Plan's risks will be 100% covered by Unum, a carrier with a current rating of "A" by A. M. Best, even if Royal Assurance were unable or unwilling to cover the Plans' liabilities it is assuming as a result of the reinsurance agreement. The Independent Fiduciary represents that it has reviewed the terms of the proposed reinsurance agreement between Unum and Royal Assurance, and has concurred that the agreement provides that Royal Assurance's risk would revert back to Unum at no further cost to the Plan should Royal Assurance be unable or unwilling to pay the benefits.

11. The Independent Fiduciary has represented that it reviewed the Plan's benefits before the reinsurance transaction and the benefits to be implemented following the reinsurance transaction. After conducting this review, the Independent Fiduciary concluded that there would be an immediate benefit, in the form of the various benefit enhancements set forth above in Representation 5, to the Plan's participants from the reinsurance transaction. In reaching its conclusion, the Independent Fiduciary notes, inter alia, that the R+L Companies have represented that the benefit enhancements described in Representation 5 would be provided at no additional cost or obligation to employees covered by the Plan, and would cover all employees affected by the proposed transaction.

12. The Independent Fiduciary has made the following representations concerning the determination of the initial premium to the Plan under the proposed arrangement. It concluded that the Plan is paying no more than adequate consideration for the Unum life and disability insurance contracts. In reaching this conclusion, the Independent Fiduciary noted that the current rates have been in place since 1998 for the disability program, and 2003 for the life program. As such, the Plan has accepted these rate levels as reasonable for several years, and the rates will not be increased upon implementation of the reinsurance transaction even though the benefits will be enhanced. The Independent Fiduciary reviewed documentation of historical claims and premium

experience, as well as the current rate table. The Independent Fiduciary has stated that the retention being charged by the fronting carriers produces anticipated loss ratios for the life and disability business that are within typical marketplace levels for larger groups. The Independent Fiduciary also noted that, if full credibility was given to the life and disability experience of the R+L Companies, and using the carrier's anticipated loss ratios, the premium rates in recent years would be lower than the rates being charged. However, the Independent Fiduciary stated that, in its opinion, there is enough volatility in the life and LTD experience that the credibility being assigned to the business as a whole is reasonable.

13. The current Independent Fiduciary, Milliman, will represent the interests of the Plan as the independent fiduciary at all times,<sup>16</sup> will monitor compliance by the parties with the terms and conditions of the proposed reinsurance transaction, and will take whatever action is necessary and appropriate to safeguard the interests of the Plan and of its participants and beneficiaries.

14. The applicants represent that the proposed reinsurance transaction will meet the following conditions of PTE 79-41 covering direct insurance transactions:

(a) The applicants represent that Mr. Roberts is the owner, either directly or indirectly, of 50 percent or more of the combined voting power of all classes of stock entitled to vote of the captive, Royal Assurance; accordingly, the applicants represent that Royal Assurance is a party in interest with respect to the Plan for purposes of section 3(14)(G) of the Act;

(b) Royal Assurance is licensed to conduct reinsurance transactions by the State of Arizona. The law under which Royal Assurance is licensed requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(c) Royal Assurance has undergone an examination by the independent certified public accountant firm of Saslow Lufkin & Buggy, LLP for its last completed taxable year;

<sup>16</sup> In this regard, the applicants make the following representation regarding a successor independent fiduciary. Specifically, should it become necessary in the future to appoint a successor independent fiduciary to replace Milliman and Mr. Thompson, the Applicants will notify the Department sixty (60) days in advance of the appointment of the successor fiduciary. Any such successor will have the responsibilities, experience and independence similar to those of Milliman and Mr. Thompson.

(d) Royal Assurance has received a Certificate of Authority from its domiciliary state (Arizona), which has neither been revoked nor suspended;

(e) The Plan will pay no more than adequate consideration for the insurance. In addition, in the initial year of the proposed reinsurance transaction, there will be an immediate and objectively determined benefit to the Plan's participants and beneficiaries in the form of increased benefits; and

(f) No commissions will be paid by the Plan with respect to the reinsurance arrangement with Royal Assurance, as described herein.

In addition, the Plan's interests will be represented by a qualified, Independent Fiduciary (i.e., Milliman or its successor), who has initially determined that the proposed reinsurance transactions will be in the interest of, and protective of, the Plan and its participants and beneficiaries. The Independent Fiduciary will also confirm on an annual basis that the Plan is paying a rate comparable to that which would be charged by a comparably-rated insurer for a program of the approximate size of the Plan with comparable claims experience.

15. In summary, the applicants represent that the proposed reinsurance transactions will meet the criteria of section 408(a) of the Act because:

(a) The Plan's participants and beneficiaries are afforded insurance protection by Unum, a carrier with a current rating of "A" from A. M. Best, at competitive market rates arrived at through arm's length negotiations;

(b) Unum will enter into a reinsurance agreement with Royal Assurance, a sound, viable insurance company which has been in business since 2008;

(c) The protections described in Representation 14, above, provided to the Plan and its participants and beneficiaries under the proposed reinsurance transactions are based on those required for direct insurance by a "captive" insurer, under the conditions of PTE 79-41 (notwithstanding certain other requirements related to, among other things, the amount of gross premiums or annuity considerations received from customers who are not related to, or affiliated with the insurer);<sup>17</sup>

<sup>17</sup> The proposal of this exemption should not be interpreted as an endorsement by the Department of the transactions described herein. The Department notes that the fiduciary responsibility provisions of Part 4 of Title I of the Act apply to the fiduciary's decision to engage in the reinsurance arrangement. Specifically, section 404(a)(1) of the Act requires, among other things, that a plan fiduciary act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to

(d) The Independent Fiduciary has reviewed the proposed reinsurance transaction and has determined that the transaction is appropriate for, and in the interests of, the Plan and that there will be an immediate benefit to the Plan's participants as a result thereof by reason of an improvement in benefits under the terms of the Plan; and

(e) The Independent Fiduciary will monitor compliance by the parties with the terms and conditions of the exemption, and will take whatever action is necessary and appropriate to safeguard the interests of the Plans and of their participants and beneficiaries.

**Notice To Interested Persons:** A copy of this Notice of Proposed Exemption (the Notice) shall be provided to all interested persons via first-class mail within thirty (30) days of the date of publication of the Notice in the **Federal Register**. Comments and requests for a hearing are due no later than sixty (60) days after publication of the Notice in the **Federal Register**.

**For Further Information Contact:** Mr. Gary Lefkowitz of the Department at (202) 693-8546. This is not a toll-free number.

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does

participants and beneficiaries when making investment decisions on behalf of the plan. In this regard, the Department is not providing any opinion as to whether a particular insurance or investment product, strategy or arrangement would be considered prudent or in the best interests of a plan, as required by section 404 of the Act. The determination of the prudence of a particular product or arrangement must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular product or arrangement involved, including the plan's potential exposure to losses and the role a particular insurance or investment product plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties and responsibilities (see 29 CFR 2550.404a-1).

it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of August 2011.

**Ivan Strasfeld,**

*Director of Exemption Determinations,  
Employee Benefits Security Administration,  
U.S. Department of Labor.*

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### Withdrawal of Proposed Exemption From Certain Prohibited Transaction Restrictions

In the **Federal Register** dated May 5, 2011 (76 FR 25719), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice concerned an application, D-11639, filed on behalf of Wolverine Bronze Company Profit Sharing Plan and Trust (the Plan) and BDR Oil, LLC located in Roseville, Michigan, involving the proposed sale, for cash at fair market value, of a note receivable and royalty interests