March 11, 2005

**BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED**

Mark W. Fountain

Retirement Plan Administrator

Fountain Plating Company

492 Prospect Ave.

West Springfield, MA 01089-4585

Re: Donna M. F\_\_\_\_\_\_\_\_ Soc. Sec. No. XXX-XX-XXXX

104 \_\_\_\_\_\_ Street D.O.B.: 11/20/48

F\_\_\_\_\_\_\_, MA 01XXX

Dear Mr. Fountain:

We are in receipt of the February 22, 2005 letter from Deborah Smist of Pension & Benefits Associates, Inc. concerning Ms. F\_\_\_\_\_\_\_\_’s status with the Fountain Plating Company Retirement Plan. **This letter constitutes a claim for benefits due Ms. F\_\_\_\_\_\_\_\_ pursuant to the plan and federal law.**

It is our position that the plan’s application of the rules for calculating “elapsed time” is erroneous and contrary to the law. While we do not dispute the loss of pre-1989 service due to the application of “break in service” rules, we do dispute the plan’s interpretation of Ms. F\_\_\_\_\_\_\_\_’s “severance from service” date, as the plan’s interpretation is inconsistent with Treasury regulations on the subject. See 26 C.F.R. §1.410(a)- 7(a)(2)(ii) and 26 C.F.R. §1.410(a) -7(b)(2)(ii), copy enclosed.

**Statements of Fact**

Ms. F\_\_\_\_\_\_\_\_’s employment commenced, as Ms. Smist’s letter notes, on January 23, 1989. On May 25, 1993, she was injured and commenced a period of disability for which she received Workers Compensation. See copies of documents enclosed from MEIE documenting same.

**Argument**

Pursuant to the Treasury regulations concerning the “severance from service” date used in the “elapsed time” methodology, an employee’s credited service ends on the date an employee “quits, is discharged, retires or dies” if those are the circumstances under which the employee leaves employment. Where, however, the employee leaves based upon another event, such as illness or injury, the “severance from service” date “will occur one year after the employee was first absent on leave, and this one year of absence is required to be taken into account as service for the employer”. 26 C.F.R. §1.410(a)- 7(a)(2)(ii).

Case law is well-settled in the interpretation of the cited Treasury regulations, and supports Ms. F\_\_\_\_\_\_\_\_’s position. One of the most recent cases interpreting and applying the “severance from service” date under the “elapsed time” methodology is Johnson et al. v. Buckley et al., 356 F. 3d 1067 (9th Cir. 2004). In that case, the Court clearly distinguished between a loss of employment which is permanent as of its starting date, that is, a quit or discharge, and a loss of employment which commences due to a temporary event, such as illness or disability. The Court clearly stated that “ under the temporary absences of vacation, holiday, sickness, disability leave of absence and “layoff”, the employment relationship has not terminated. Employers are obligated to continue to credit service during those absences”. The employer is not allowed to mis-categorize the employee’s status to halt vesting credit.

**Conclusion**

It is clear, then, that based upon the well-settled interpretation of the previously-cited Treasury regulations, Ms. F\_\_\_\_\_\_\_\_’s “severance from service” date must be one year from the date of commencement of her disability. As her disability commenced on May 25, 1993, her severance from service date can lawfully only be fixed at May 25, 1994. The regulation prohibits the employer from using an earlier date.

Accordingly, when Ms. F\_\_\_\_\_\_\_\_ severed from service, she had accrued 5 years of vesting service and is therefore entitled to a deferred vested benefit payable according to the terms of the Plan. We hereby request that the plan calculate Ms. F\_\_\_\_\_\_\_\_’s benefit pursuant to the plan and inform her as to her benefit payment options.

Please feel free to call me at 617-287-7332 if you need any further information. Please direct your written response to me at New England Pension Assistance Project, Gerontology Institute, Univ. of Mass. Boston, 100 Morrissey Blvd, Boston, MA 02125. Thank you.

Sincerely,

Jeanne M. Medeiros, Esq.

Enclosures

cc: Donna F\_\_\_\_\_\_\_\_

 Deborah A. Smist, Pension & Benefits Associates, Inc.