February __, 2015

Via Certified Mail [or Via Email]
Return Receipt Requested

Jeanne M. Medeiros, Esq.
Maureen Egan
New England Pension Assistance Project
Gerontology Institute
University of Massachusetts Boston
100 Morrissey Blvd.
Boston, MA 02125-3393

Re: [redacted]

Dear Ms. Medeiros and Ms. Egan:

We currently act as outside benefits counsel to Valassis Communications, Inc. ("***Valassis***"), the plan sponsor of the Advo, Inc. Hourly Employee Pension Plan (the "***Plan***"). Valassis has asked us to respond to your correspondence dated December 11, 2014 (the "***Letter***") regarding the accrued benefits under the Plan for Ms. [redacted] (the "***Participant***"). In accordance with DOL Reg. § 2560.503-1(i) and the Plan's claim procedures, on behalf of the Plan, we are responding to your claim within 90 days of the date of your initial claim.

In your correspondence, you claim that the Participant's benefits should have commenced under the Plan when she turned age 65. As support for this claim, you cite Section 4.02(c) of the Advo, Inc. Hourly Employees' Pension Plan effective March 28, 2005 (the "***2005 Plan Document***"), Section 206(a) of the Employee Retirement Income Security Act of 1974, as amended ("***ERISA***"), and various court decisions. We have addressed each of your claims below.

In your correspondence, you stated that Section 4.02(c) "requires that an employee who continues working past age 65 '**shall** begin to receive benefit payments . . . as of that date (emphasis added).'" *See page 1 of the Letter.* However, Section 4.02(c) never uses age 65 as the date when payments are to commence. Section 4.02(c) relates to required minimum distributions under Section 401(a)(9) of the Internal Revenue Code of 1986, as amended (the "***Code***"). Code Section 401(a)(9) requires that minimum distributions commence by April 1 of the year following the year a participant turns age 70½, not age 65. *See Section 401(a)(9) of the Code and 26 C.F.R.* § 1.401(a)(9)-6. The language "as of that date" set forth in Section 4.02(c) means the "required benefit commencement date," which is referenced in the first part of Section 4.02(c), and defined in Section 4.02(a)(ii) "as the first day of April following the calendar year in which the later of termination of employment or age 70½ occurs." *See Section 4.02(a)(ii) of the 2005 Plan Document.*

While the Participant turned age 65 in 2008, she did not terminate employment until May 16, 2014. Once the Participant terminated employment, she was eligible to receive her vested accrued benefit under the Plan, and in fact, did begin receiving her monthly benefit on June 1, 2014, which is in compliance with the requirement of Section 4.02(c) that she begin receiving her accrued benefit no later than April 1, 2015.

The accrued benefit that the Participant began receiving equaled the benefit she had accrued under the Plan up until the date she began participating in the 401(k) Plan. As provided in the summary plan description ("***SPD***") for the Plan, when the Participant became a participant in the 401(k) plan, she stopped accruing further benefits under the Plan. *See page 3 of the SPD.* Any benefit the Participant accrued before the date she stopped actively participating in the Plan would be available at the same time and with the same options as if she had remained in the Plan. *See page 3 of the SPD.* The Participant became a participant in the 401(k) plan on July 1, 2001.

You also claim in your correspondence that "ERISA requires that vested pension benefits be paid no later than the 60th day after the end of the plan year in which the participant turns 65." *See page 2 of the Letter.* Actually, ERISA does not require that vested benefits be paid at such time. Specifically, Section 206(a) provides that:

> Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after ***the latest*** of the close of the plan year in which—
>
> (1) occurs the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,
>
> (2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or
>
> (3) the participant terminates his service with the employer.

ERISA § 206(a) [emphasis added]. As noted above, the Participant remained in active service until May 16, 2014. Accordingly, under ERISA § 206(a), the Plan was not required to begin paying a benefit to the Participant until the 60th day after May 16, 2014 (which would have been July 15, 2014). Since the Participant's benefit commenced on June 1, 2014, the Plan paid her benefit in compliance with ERISA § 206(a).

Finally, you note in your correspondence that "Under ERISA, no forfeiture can occur because of a late claim for benefits" and then you proceed to cite numerous cases that relate to a late application for benefits under pension plans. *See pages 2 and 3 of the Letter.* Unlike the cases you cite, there has not been a forfeiture of vested benefits, nor did the Participant submit a late application for benefits. The Participant was not entitled to receive benefits under the Plan until she terminated employment. The Plan does not provide for in-service payments.

On page 7 of the SPD, the section titled "When Benefit Payments Begin" explains when benefits are payable under the Plan by stating: "Unless you elect otherwise, payment of your benefit will generally begin no later than 60 days after the date on which you retire." *See page 7 of the SPD.* We have enclosed a copy of the SPD for your reference.

Further, the section of the SPD titled "Your Benefits at Termination of Employment" provides that benefits are not payable until employment terminates:

> On and after February 1, 2001, *if your employment terminates*, you are entitled to a monthly benefit under the plan equal to 100% of your accrued benefit. This benefit is payable on your normal retirement date.
>
> . . .
>
> Instead of receiving your vested benefit on your normal retirement date, you may elect to begin receiving your vested benefit on an early retirement date, if you had met the service requirements for an early retirement date *as of your termination of employment date*. The amount of the benefit would then be reduced as it is under the early retirement benefit provision.

See page 10 of the SPD [emphasis and underlining added]. The benefits under the Plan, as described in these sections of the SPD, are only available when a participant actually terminates employment.

The Participant began receiving her benefit within 60 days of her termination of employment. She was not entitled to receive any payments while she was employed. The Plan has determined that the Participant received the correct benefits under the terms of the Plan, and that these benefits were paid in accordance with the requirements of the Plan document and applicable law.

While we have used the 2005 Plan Document for purposes of addressing the arguments raised in your correspondence, the 2005 Plan Document was amended and restated in 2012. We have enclosed a copy of the amended and restated plan (the "***2012 Plan Document***") for your records. In addition, we have used the version of the SPD that the Participant has provided. The SPD also has been restated, and we have included a copy of the restated SPD for your records. Please note that the result would be the same under the 2012 Plan Document and the updated SPD.

Based on the foregoing, the Plan has denied the Participant's claim for benefits. We hope that the explanation set forth above has been helpful for you. It is the Participant's right under ERISA to receive a full and fair review of this denial via the appeal process. In order to receive such a review, either the Participant (or her authorized representative) must file an appeal within 60 days of receiving this letter. The Participant (or her authorized representative) must submit the appeal, in writing, to the plan administrator at the following address:

Valassis Communications, Inc.
Attn: Arlene B. Gaitan
15955 La Cantera Parkway
San Antonio, TX 78256

As required by ERISA, the Participant's appeal will be given a full and fair review, which means, in part, that the Participant will have the opportunity to submit written comments, documents, records, and other information relating to her claim. Additionally, the Participant shall be provided, upon her (or her authorized representative's) request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to her claim for benefits. The appeal will take into account all comments, documents, records, and other information that the Participant (or her authorized representative) submits relating to the claim, without regard to whether such information was submitted or considered in the earlier benefit determinations on the claim.

In your correspondence, you also requested that the Plan grant the Participant an extension of time to make her election to receive her benefit on termination of the Plan until this claim has been decided. The Plan has agreed to provide an extension to the Participant to make the election for a benefit on Plan termination for the 60 day period during which the Participant has a right to appeal this denial of her claim (or if shorter, until the date the Participant, or her authorized representative, files her appeal of her claim) and for a period of 10 business days following the date the Plan makes a decision regarding any such appeal.

If you have any questions regarding the foregoing, please feel free to contact me.

Sincerely,

Susan A. Wetzel
Direct Dial No. – 214.651.5389
Direct Fax No. – 214.200.0675
susan.wetzel@haynesboone.com

Enclosures

D-2336309.3

Jeanne Medeiros

Subject: FW: Appeal [redacted]

From: Emily G Brown
Sent: Friday, February 06, 2015 12:12 PM
To: 'susan.wetzel@haynesboone.com'
Cc: Jeanne Medeiros; Maureen Egan
Subject: Appeal [redacted]

Dear Attorney Wetzel:

As previously noted, we are in receipt of your letter dated February 4, 2015, notifying Ms. [redacted] that the plan denies her claim for benefits retroactive to her Normal Retirement Age.

Pursuant to ERISA and the regulations promulgated thereunder, Ms. [redacted] is entitled to copies of the relevant records upon which the plan relied. See 29 C.F.R. 2560.503-1(h)(2)(iii).

Please provide the Notice of Benefit Suspension provided to Ms. [redacted] pursuant to 29 C.F.R. 2530.203-3, along with proof of service of that notice.

As she will be unable to prepare her appeal until receipt of these documents, we hereby request that she be allowed 60 days after our receipt of same to file her complete written appeal.

Thank you for your prompt attention to this matter.

Sincerely,

Emily Brown, Esq.
Staff Attorney, Pension Action Center
Gerontology Institute
John W. McCormack Graduate School of Policy and Global Studies
University of Massachusetts Boston
100 Morrissey Blvd.
Boston, MA 02125

617-287-7309
Emilyg.brown@umb.edu

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P: 617.287.7307
F: 617.287.7080
www.umb.edu/pensionaction

February 26, 2015

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Susan A. Wetzel
Haynes and Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219

Re: [redacted]
Soc. Sec. No. XXX-XX-[redacted]

Dear Ms. Wetzel:

By email dated February 6, 2015, this office requested, on [redacted]'s behalf, any Notice of Benefit Suspension provided to Ms. [redacted] in compliance with Section 203(a)(3)(B)(i) and 29 C.F.R. 2530-203-3.

To date, we have received neither the Notice requested nor any proof of delivery of such notice.

If the plan did in fact send Ms. [redacted] such a Notice, please provide a copy, along with proof of service, to me by email at: EmilyGBrown@umb.edu or by fax to 617-287-7090.

If we do not receive such notice within one week of your receipt of this letter, we will assume that no such Notice was sent to Ms. [redacted] Thank you for your assistance in this matter.

Sincerely,

Emily G. Brown Esq.
Staff Attorney

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March 10, 2015

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Valassis Communications, Inc.
Attn: Arlene B. Gaitan
15955 La Cantera Parkway
San Antonio, TX 78256

Re: [redacted]; Soc. Sec. No. XXX-XX-[redacted]

Dear Ms. Gaitan:

As you may be aware, [redacted] has requested the assistance of the New England Pension Assistance Project with respect to the issue of payment of her retirement benefits retroactive to age 65 pursuant to the ADVO, Inc. Hourly Employee Pension Plan ("the plan"). Ms. [redacted] received a letter dated February 4, 2015, from Hayes and Boone, denying her claim for retroactive benefits. **This letter is an appeal of the plan's decision denying [redacted] the retroactive benefits which are due to her pursuant to the plan and ERISA.**

Factual Background:

[redacted] was an employee of ADVO Systems, Inc. for over 46 years. She began working for ADVO in July 1968 when she was 25 years old and remained working there through May 16, 2014, when she was 71. See ADVO, Inc. Hourly Employee Pension Plan Calculation of Retirement Benefit and Options, copy enclosed as Appeal Exhibit A.

Ms. [redacted] attained Normal Retirement Age under the plan on July 13, 2008, when she turned 65. Despite having reached normal retirement age, she continued working at ADVO for almost six additional years.

Because Ms. [redacted] continued working past her normal retirement age, the plan should have sent her a Suspension of Benefits Notice, if it intended to permanently suspend her benefit until she stopped working for the plan sponsor. This Notice is required by Section 203(a)(3)(B) of ERISA, 29 C.F.R. § 2530-203-3(b)(4), and by Section 3.09 of the plan document (copy enclosed as Appeal Exhibit B-1 and B-2).

Despite repeated requests, the plan has failed to furnish Ms. [redacted] or her attorney with any evidence that a Notice of Benefit Suspension was sent to her. See copies of email and letter

requesting same, enclosed as Appeal Exhibits C and D. There is no evidence that [redacted] was informed that, by continuing to work past age 65, she was permanently forfeiting the benefit payable to her at her normal retirement age.

Argument:

Section 203(a) of ERISA states that an employee's right to her normal retirement benefit is non-forfeitable once she has reached Normal Retirement Age.

ERISA allows qualified plans to permit forfeitures of benefits in certain limited circumstances. Specifically, it provides that the right to accrued benefits derived from employer contributions shall not be treated as forfeitable solely because the plan provides that those benefits are suspended for a period where the participant remains employed by the employer sponsoring the plan. ERISA §203(a)(3(B)(i).

While a suspension of benefit during a period of continued employment past Normal Retirement Age is permitted, Labor Department regulations require that plan properly notify participants of the suspension. These regulations explain in detail the steps a plan must take in order to permanently withhold benefits from a participant. 29 C.F.R. § 2530-203-3.

The plan must provide the affected participant with a Suspension of Benefits Notice, which complies with 29 C.F.R. § 2530-203-3(b)(4). In pertinent part, this section states:

> No payment shall be withheld by a plan pursuant to this section unless the plan notifies the employee by personal delivery or first class mail during the first calendar month or payroll period in which the plan withholds payments that his benefits are suspended. Such notification shall contain a description of the specific reasons why benefit payments are being suspended, a general description of the plan provisions relating to the suspension of payments, a copy of such provisions....In addition, the suspension notification shall inform the employee of the plan's procedure for affording a review of the suspension of benefits

In the instant case, the plan appears to have completely failed in its obligation to send Ms. [redacted] the Notice required by 29 C.F.R. § 2530-203-3(b)(4). It has produced no evidence of compliance. Had the plan properly notified Ms. [redacted] of the suspension of benefits, it would be permitted to suspend the benefit while she remained employed, and would not be required to provide an actuarial adjustment for benefits not paid during the suspension period. Treas. Reg. §1.401(a)(9)-6 (A-9). (Exhibit E)

However, the plan did not provide Ms. [redacted] with such notice. Therefore, it must comply with Treas. Reg. 1.411(c)-(e)(1), which states that a benefit commencing after normal retirement age must be the actuarial equivalent of such benefit. This means that, while the payment of her benefits were temporarily suspended due to Ms. [redacted]'s continuing

employment, the plan must actuarially increase the benefit once payment begins in order for there to be no forfeiture.

This failure to provide sufficient notice means that the plan in this case is not allowed to permanently suspend Ms. [redacted]'s benefit from normal retirement age through actual termination of employment. She is entitled to payment of her benefits as a lump sum retroactive to Normal Retirement Age or to an actuarial adjustment to take account of her late benefit commencement date.

Conclusion:

The plan failed to provide [redacted] with a Suspension of Benefits Notice informing her that she would be permanently forfeiting her Normal Retirement Age benefit during the period of her post-retirement age employment. As a result, [redacted] is entitled to either a retroactive lump sum representing payments from age 65 to the present, or to an actuarial adjustment which accounts for her late benefit start date.

Sincerely,

Jeanne M. Medeiros

Jeanne M. Medeiros, Esq.
Managing Attorney

Maureen Egan

Maureen Egan
Pension Counselor

Enclosures:

Exhibit A – ADVO, Inc. Hourly Employee Pension Plan Calculation
Exhibit B-1 -- Section 203(a)(3)(B) of ERISA, 29 C.F.R. § 2530-203-3(b)(4)
Exhibit B-2 – ADVO Pension Plan Document, Section 3 – Accrued Benefit
Exhibit C – Copy of email sent by Attorney Brown to Attorney Wetzel 2/6/15
Exhibit D – Copy of certified letter sent to Attorney Wetzel on 2/26/15
Exhibit E -- Treasury Regulation. §1.401(a)(9)-6 (A-9)

cc: [redacted]

EXHIBIT A

ADVO, Inc. Hourly Employee Pension Plan
Calculation of Retirement Benefit and Options

OCT 14, 2014

Participant Information

Employee Name	[redacted]	Spouse Date of Birth	N/A
Social Security Number		Date of Termination	05/16/2014
Date of Birth	07/13/1943	Distribution Date	06/01/2014
Date of Hire	07/29/1968	Participant Age at Distribution Date	70 years, 10 months
Normal Retirement Date	08/01/2008	Spouse Age at Distribution Date	N/A

Benefit Calculation

Accrued Monthly Benefit at Termination Date	$	430.30
Months Distribution Date precedes Normal Retirement		0
Early Retirement Factor		100.00%
Early Retirement Benefit Payable at Distribution Date	$	430.30
Late Retirement Adjustment Percentage		100.00%
Monthly Benefit Payable at Retirement Date	$	430.30

Benefit Options

Life Annuity	$	430.30
		100.20%
	$	431.16
50% Contingent Annuity	$	430.30
		N/A
		N/A
66 2/3% Contingent Annuity	$	430.30
		N/A
		N/A
100% Contingent Annuity	$	430.30
		N/A
		N/A

Non-Taxable Portion of Benefits

Total Employee Contributions without Interest	$	1,640.00
Applicable Months for Life Annuity		210
Monthly Non-Taxable Amount for Life Annuity	$	7.81
Applicable Months for Contingent Annuities		N/A
Monthly Non-Taxable Amount for Contingent Annuities		N/A

*Note that total employee contributions with interest as of 6/1/2014 is $7,827.90. You are guaranteed to receive at least this amount (adjusted for future interest) in total benefit payments from the pension plan.

...for defined contribution plan the plan provision required under this ...provide that such repayment must be made before the participant has any ...service commencing after the withdrawal.

...§1898(d)(1)(B):

...ERISA Sec. 203(e)(1) to read as above. This amendment is effective for ...beginning after 1984. Prior to amendment, paragraph (1) read as follows:

"(e) (1) If the present value of any accrued benefit exceeds $3,500, such ...shall be treated as nonforfeitable if the plan provides that the present value ...accrued could be immediately distributed without the consent of the participant.

...§1898(d)(2)(B):

...ERISA Sec. 203(e)(3) to read as above, effective for distributions made ...

...§§102 and 105:

...(b) amended ERISA Sec. 203(b)(1)(A) by striking out "22" and inserting ...

...effective date of the above amendment, see Act Sec. 303(a)(1) which is ...in the amendment notes to ERISA Sec. 202 at ¶ 102.

...(C) amended ERISA Sec. 203(b)(3)(C): (1) by striking out "any 1-year ...service" and inserting in lieu thereof "5 consecutive 1-year breaks in service", ...striking out "such break" each place it appeared and inserting in lieu thereof ...period".

...(d)(2) amended ERISA Sec. 203(b)(3)(D) by striking out the prior law ...ing it with new subparagraph (D). Prior to amendment, ERISA Sec. ...(D) read as follows:

"...purposes of paragraph (1), in the case of a participant who, under the plan, ...has any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

Act Sec. 102(e)(2) amended ERISA Sec. 203(b)(3) by adding at the end thereof new subparagraph (E) to read as above.

Act Sec. 105(a) added new ERISA Sec. 203(e) to read as above.

The above amendments generally are effective for plan years beginning after December 31, 1984.

However, Act Secs. 303(a)(3) and (b) provide:

(a)(3) Maternity or Paternity Leave.—The amendments made by sections 102(e) and 202(e) shall apply in the case of absences from work which begin on or after the first day of the first plan year to which the amendments made by this Act apply.

(b) Special Rule for Amendments Relating to Maternity or Paternity Absences.—If a plan is administered in a manner which would meet the amendments made by sections 102(e) and 202(e) (relating to certain maternity or paternity absences not treated as breaks in service), such plan need not be amended to meet such requirements until the earlier of—

(1) the date on which such plan is first otherwise amended after the date of the enactment of this Act, or

(2) the beginning of the first plan year beginning after December 31, 1986.

Also, see Act Sec. 302(b) for a special rule for collecting bargaining agreements at ¶ 14,250.09.

P.L. 96-364, §303:

Added new subsections 203(a)(3)(E) and 203(b)(1)(G), effective September 26, 1980.

Regulations

The following regulations were adopted on December 23, 1976, and were published in the Federal Register of December 28, 1976 (41 FR 56462). ...2530.203-3 was adopted on January 26, 1981, and was published in the Federal Register of January 27, 1981 (46 FR 8894). The regulation was due ...effect on May 27, 1981, but the effective date was delayed until final amendments to the regulation were adopted. The amendments were ...on December 1, 1981 (46 FR 59243), and, accordingly, the regulation is effective January 1, 1982.

[¶ 14,431]

...2530.203-1 Vesting; general.

(a) Section 203 of the Act and section 411(a) of the Code contain ...vesting standards relating to certain employee pension bene... In general, a pension plan subject to section 203 of the Act or ...411(a) of the Code must meet certain requirements relating to ...employee's nonforfeitable ("vested") right to his or her normal ...retirement benefit. One of these requirements specifies that an em...'s accrued benefit derived from employer contributions must be ...in accordance with certain schedules. The schedules (or alterna... ...minimum vesting standards) are generally based on the em...'s number of years of service with the employer or employers ...maintaining the plan. Section 2530.203-2 sets forth rules relating to the ...computation periods used to determine whether an employee has ...created a year of service for vesting purposes ("vesting computation ...period").

(b) For rules relating to service with the employer or employers ...maintaining the plan, *see* § 2530.210.

[¶ 14,432]

...2530.203-2 Vesting computation period. (a) *Designation of vest... computation periods.* Except as provided in paragraph (b) of this ...section, a plan may designate any 12-consecutive-month period as the ...vesting computation period. The period so designated must apply ...uniformly to all participants. This requirement may be satisfied even ...though the actual 12-consecutive-month periods are not the same for all ...employees (e.g., if the designated vesting computation period is the ...12-consecutive-month period beginning on an employee's employment ...commencement date and anniversaries of that date). The plan is pro...ited, however, from using any period that would result in artificial ...postponement of vesting credit, such as a period measured by anniver... ...of the date four months following the employment commence... ...date.

(b) *Plans with 3-year 100 percent vesting.* For rules regarding ...when a participant has a nonforfeitable right to his accrued benefit, see ...section 202(a)(1)(B)(i) of the Act and 410(a)(1)(B)(i) of the Code and ...regulations issued thereunder.

(c) *Amendments to change the vesting computation period.* (1) A ...plan may be amended to change the vesting computation period to a ...different 12-consecutive-month period provided that as a result of such ...amendment no employee's vested percentage of the accrued benefit derived from employer contributions is less on any date after such change than such vested percentage would be in the absence of such change. A plan amendment changing the vesting computation period shall be deemed to comply with the requirements of this subparagraph if the first vesting computation period established under such amendment begins before the last day of the preceding vesting computation period and an employee who is credited with 1,000 hours of service in both the vesting computation period under the plan before the amendment and the first vesting computation period under the plan as amended is credited with 2 years of service for those vesting computation periods. For example, a plan which has been using a calendar year vesting computation period is amended to provide for a July 1—June 30 vesting computation period starting in 1977. Employees who complete more than 1,000 hours of service in both of the 12-month periods extending from January 1, 1977 to December 31, 1977 and from July 1, 1977 to June 30, 1978 are advanced two years on the plan's vesting schedule. The plan is deemed to meet the requirements of this subparagraph.

(2) For additional requirements pertaining to changes in the vesting schedule, see section 203(c)(1) of the Act and section 411(a)(10) of the Code and the regulations issued thereunder.

(d) *Service preceding a break in service.* For purposes of applying section 203(b)(3)(D) of the Act and section 411(a)(6)(D) of the Code (relating to counting years of service before a break in service for vesting purposes), the computation periods used by the plan in computing years of service before such break must be the vesting computation periods. (For application of the break in service rules, see section 203(b)(3)(D) and section 411 (a)(6)(D) of the Code and regulations issued thereunder.)

[¶ 14,433]

§ 2530.203-3 Suspension of pension benefits upon reemployment of retirees. (a) *General.* Section 203(a)(3)(B) of the Act provides that the right to the employer-derived portion of an accrued pension benefit shall not be treated as forfeitable solely because an employee pension benefit plan provides that the payment of benefits is suspended during certain periods of reemployment which occur subsequent to the commencement of payment of such benefits. This section sets forth the circumstances and conditions under which such benefit payments may be suspended. A plan may provide for the suspension of pension benefits which commence prior to the attainment of normal retirement age, or for the suspension of that portion of pension benefits which exceeds the normal retirement benefit, or both, for any reem-

ployment and without regard to provisions of section 203(a)(3)(B) and this regulation to the extent (but only to the extent) that suspension of such benefits does not affect a retiree's entitlement to normal retirement benefits payable after attainment of normal retirement age, or the actuarial equivalent thereof.

(b) *Suspension rules.* (1) *General rule.* A plan may provide for the permanent withholding of an amount which does not exceed the suspendible amount of an employee's accrued benefit for each calendar month, or for each four or five week payroll period ending in a calendar month, during which an employee is employed in "section 203(a)(3)(B) service" as described in § 2530.203-3(c).

[Amended by F.R. Doc. 81-34837 on December 1, 1981 (46 FR 59243)]

(2) *Resumption of payments.* If benefit payments have been suspended pursuant to paragraph (b)(1) of this section, payments shall resume no later than the first day of the third calendar month after the calendar month in which the employee ceases to be employed in section 203(a)(3)(B) service: *Provided,* That the employee has complied with any reasonable procedure adopted by the plan for notifying the plan that he has ceased such employment. The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments, less any amounts which are subject to offset.

(3) *Offset rules.* A plan which provides for the permanent withholding of benefits may deduct from benefit payments to be made by the plan payments previously made by the plan during those calendar months or pay periods in which the employee was employed in section 203(a)(3)(B) service, *Provided,* That such deduction or offset does not exceed in any one month 25 percent of that month's total benefit payment which would have been due but for the offset (excluding the initial payment described in paragraph (b)(2) of this section, which may be subject to offset without limitation).

[Amended by F.R. Doc. 81-34837 on December 1, 1981 (46 FR 59243)]

(4) *Notification.* No payment shall be withheld by a plan pursuant to this section unless the plan notifies the employee by personal delivery or first class mail during the first calendar month or payroll period in which the plan withholds payments that his benefits are suspended. Such notification shall contain a description of the specific reasons why benefit payments are being suspended, a general description of the plan provisions relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable Department of Labor regulations may be found in § 2530.203-3 of the Code of Federal Regulations. In addition, the suspension notification shall inform the employee of the plan's procedure for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations. In the case of a plan which requires the filing of a benefit resumption notice as a condition precedent to the resumption of benefits, the suspension notification shall also describe the procedure for filing such notice and include the forms (if any) which must be filed. Furthermore, if a plan intends to offset any suspendible amounts actually paid during the periods of employment in section 203(a)(3)(B) service, the notification shall identify specifically the periods of employment, the suspendible amounts which are subject to offset, and the manner in which the plan intends to offset such suspendible amounts. Where the plan's summary plan description (SPD) contains information which is substantially the same as information required by this subparagraph (4), the suspension notification may refer the employee to relevant pages of the SPD for information as to a particular item, provided the employee is informed how to obtain a copy of the SPD, or relevant pages thereof, and provided requests for referenced information are honored within a reasonable period of time, not to exceed 30 days.

[Amended by F.R. Doc. 81-34837 on December 1, 1981 (46 FR 59243)]

(5) *Verification.* A plan may provide that an employee must notify the plan of any employment. A plan may request from an employee access to reasonable information for the purpose of verifying such employment. Furthermore, a plan may provide that an employee must, at such time and with such frequency as may be reasonable, as a condition to receiving future benefit payments, either certify that he is unemployed or provide factual information sufficient to establish that any employment does not constitute section 203(a)(3)(B) service, as specifically requested by the plan administrator. Once an employee has furnished the required certification or information, the plan must forward, at the next regularly scheduled time for payment of benefits, all payments which had been withheld pursuant to this subparagraph (5), except to the extent that payments may be withheld and offset pursuant to other provisions of this regulation.

(6) *Status determination.* If a plan provides for benefit suspension, the plan shall adopt a procedure, and so inform employees, whereunder an employee may request, and the plan administrator within a reasonable amount of time will render, a determination of whether specific contemplated employment will be section 203(a)(3)(B) service for purposes of plan provisions concerning suspension of benefits. Requests for status determinations may be considered in accordance with the claims procedure adopted by the plan pursuant to section 503 of the Act and applicable regulations.

(7) *Presumptions.* (i) A plan which has adopted verification requirements described in paragraph (b)(5) of this section, and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service and the retiree has not complied with the plan's reporting requirements with regard to that employment, the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree had worked a period of hours equal to the plan's minimum number of hours for that month. In addition, for plans covering persons employed in the building trades which have verification requirements described in paragraph (b)(5) of this section and which complies with the notice requirements set forth in paragraph (b)(7)(ii) of this section may provide that whenever the plan fiduciaries become aware that a retiree is employed in section 203(a)(3)(B) service at a construction site and the retiree has not complied with the plan's reporting requirements with regard to that employment, then the plan fiduciaries may, unless it is unreasonable under the circumstances to do so, act on the basis of a rebuttable presumption that the retiree engaged in such employment for the same employer in work at that site for so long before the work in question that same employer performed that work at that construction site.

(ii) A plan which provides for a presumption described in paragraph (b)(7)(i) of this section may employ such presumption only if the following requirements are met. The plan must describe the employment verification requirements and the nature and effect of such presumption in the plan's summary plan description and any other communication to plan participants which relates to such verification requirements (for example, employment reporting requirements and forms), and retirees must be furnished such disclosure at least once every 12 months.

(c) *Section 202(a)(3)(B) Service.* (1) *Plans other than multiemployer plans.* In the case of a plan other than a multiemployer plan as defined in section 3(37) of the Act, the employment of an employee subsequent to the time the payment of benefits commenced would have commenced if the employee had not remained in or returned to employment, results in section 203(a)(3)(B) service during a calendar month, or during a four or five week payroll period ending in such month, if the employee, in such month or payroll period,

Completes 40 or more hours of service (as defined in § 2530.200b-2(a)(1) and (2)) for an employer which maintains the plan, including employers described in § 2530.210(d) and (e), as to which it is provided that the payment of benefits commenced or would have commenced if the employee had not remained in or returned to employment, and

Receives from such employer payment for any such hours of service performed on each of 8 or more days (or separate work shifts) in such month or payroll period, *Provided,* That the plan has not for this purpose determined or used the actual number of hours of service which would be required to be credited to the employee under § 2530.200b-(2)(a).

Years of service:	*The nonforfeitable percentage is:*
2	20
3	40
4	60
5	80
6 or more	100

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 205).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the pla when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respe the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments ma given retroactive application as provided in section 302(d)(2).

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides tha the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mand contributions (as defined in the last sentence of section 204(c)(2)(C)) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 204(c)(2)(C) (subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecu 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before the date of the enactment of this Act, a righ such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mand contributions, made by such participant before the date of the enactment of this Act if such amount forfeited is proportional to such amo withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after the date of the enactment of this Act Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) CROSS REFERENCE. For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, section 206(c).

(E)(i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable so because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contrib under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated forfeitable solely because—

(I) the plan is amended to reduce benefits under section 4244A or 4281, or

(II) benefit payments under the plan may be suspended under section 4245 or 4281.

(F) A matching contribution (within the meaning of section 401(m) of the Internal Revenue Code of 1986) shall not be treated as forfeitable mer because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under sect 401(k)(8)(B) of such Code, an excess deferral under section 402(g)(2)(A) of such Code, an erroneous automatic contribution under section 414(w) such Code, or an excess aggregate contribution under section 401(m)(6)(B) of such Code.

Act Sec. 203.(b)(1) COMPUTATION OF PERIOD OF SERVICE.—In computing the period of service under the plan for purposes of determining the nonforfeita percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, exc that the following may be disregarded:

(A) years of service before age 18,

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regar breaks in service, as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of such employer from the plan (within the meaning of section 4203); or

(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in sect 4205(b)(2)(A)(i) in connection with the decertification of the collective bargaining representative; and

(ii) with any employer under the plan after the termination date of the plan under section 4048.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or oth 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant completed 1,000 hours of service.

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 202(a)(3)(C).

In applying the meaningful benefit requirement under subsection (b)(3)(vi) above where the Plan provides a new optional form of benefit with respect to a Participant's Frozen Projected benefit, the Plan will provide meaningful benefits if the Participant's Projected Benefit minus the Participant's Frozen Projected Benefit equals at least .5% times the Participant's Years of Credited Service after the Fresh-Start Date, up to and including the year the Participant attains Normal Retirement Age (or current age, if later)

3.09 Suspension of benefits upon Rehired Employee. If an Employee is reemployed subsequent to commencement of benefit payments under the Plan, the Plan Administrator may suspend such benefit payments for each calendar month during which the Employee completes at least 40 Hours of Service with the Employer (as defined in DOL Reg. §2530.203-3(c)). Consequently, the amount of benefits which are paid later than Normal Retirement Age will be computed as if the employee had been receiving benefits since normal retirement age. If the Plan Administrator elects to apply the suspension of benefit provisions under this Section 3.09, such provisions will apply equally to all rehired Employees.

(a) Resumption of payments. If benefit payments have been suspended under this Section 3.09, payments shall resume no later than the first day of the third calendar month after the calendar month in which the Employee ceases to be employed (as defined in DOL Reg. §2530.203-3(c)). The initial payment upon resumption shall include the payment scheduled to occur in the calendar month when payments resume and any amounts withheld during the period between the cessation of employment and the resumption of payments.

(b) Notification. No payment shall be withheld by the Plan pursuant to this Section 3.09 unless the Plan notifies the Employee by personal delivery or first class mail during the first calendar month or payroll period in which the Plan withholds payments that benefits are suspended. Such notifications shall contain a description of the specific reasons why benefit payments are being suspended, a description of the Plan provision relating to the suspension of payments, a copy of such provisions, and a statement to the effect that applicable rules regarding suspension of benefits may be found in DOL Reg. §2530.203-3. In addition, the notice shall inform the Employee of the Plan's procedures for affording a review of the suspension of benefits. Requests for such reviews may be considered in accordance with the claims procedure adopted by the Plan pursuant to ERISA §503 and applicable regulations.

(c) Amount suspended.

(1) Life annuity. In the case of benefits payable periodically on a monthly basis for as long as a life (or lives) continues, such as a Straight Life Annuity or a Qualified Joint and Survivor Annuity, an amount equal to the portion of a monthly benefit payment derived from Employer Contributions.

(2) Other benefit forms. In the case of a benefit payable in a form other than the form described in subsection (c) above, an amount of the Employer-provided portion of benefit payments for a calendar month in which the Employee is employed (as defined in DOL Reg. §2530.203-3(c), equal to the lesser of:

(i) The amount of benefits which would have been payable to the Employee if the Employee had been receiving monthly benefits under the Plan since actual retirement based on a Straight Life Annuity commencing at actual retirement age; or

(ii) The actual amount paid or scheduled to be paid to the Employee for such month. Payments which are scheduled to be paid less frequently than monthly may be converted to monthly payments for purposes of the above sentence.

(d) Not applicable to Top Heavy minimum benefits. This Section 3.09 does not apply to the minimum benefit to which the Participant is entitled under the Top Heavy rules of Section 4.

3.10 Employee Contributions. Unless elected otherwise under AA §6-7 of the Nonintegrated Adoption Agreement, Employee contributions are not permitted under the Plan after the date the Plan is restated for the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), as indicated under the Employer Signature Page of the Adoption Agreement.

(a) Separate Account for voluntary Employee contributions. A separate account may be maintained for any voluntary Employee contributions made under the Plan or a prior plan. The assets of the Plan will be valued annually at fair market value. Earnings and losses of the Plan attributable to voluntary Employee contributions will be allocated to each Participant's voluntary Employee contribution Account in the ratio that such Account bears to all such Accounts. Voluntary Employee contributions (as adjusted for investment experience) shall be 100% vested at all times.

(b) Mandatory Employee contributions. If mandatory Employee contributions are (or were) required under the Plan or a prior Plan in order to participate, the Employer-provided Accrued Benefit in all years shall equal the excess, if any, of the Accrued Benefit over the Employee-provided Accrued Benefit. A Participant shall be 100% vested in his/her

Jeanne Medeiros EXHIBIT C

Subject: [redacted]

From: Emily G Brown
Sent: Friday, February 06, 2015 12:12 PM
To: 'susan.wetzel@haynesboone.com'
Cc: Jeanne Medeiros; Maureen Egan
Subject: [redacted]

Dear Attorney Wetzel:

As previously noted, we are in receipt of your letter dated February 4, 2015, notifying Ms[redacted] that the plan denies her claim for benefits retroactive to her Normal Retirement Age.

Pursuant to ERISA and the regulations promulgated thereunder, Ms[redacted] is entitled to copies of the relevant records upon which the plan relied. See 29 C.F.R. 2560.503-1(h)(2)(iii).

Please provide the Notice of Benefit Suspension provided to Ms.[redacted] pursuant to 29 C.F.R. 2530.203-3, along with proof of service of that notice.

As she will be unable to prepare her appeal until receipt of these documents, we hereby request that she be allowed 60 days after our receipt of same to file her complete written appeal.

Thank you for your prompt attention to this matter.

Sincerely,

Emily Brown, Esq.
Staff Attorney, Pension Action Center
Gerontology Institute
John W. McCormack Graduate School of Policy and Global Studies
University of Massachusetts Boston
100 Morrissey Blvd.
Boston, MA 02125

617-287-7309
Emilyg.brown@umb.edu

Follow @PensionAction

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February 26, 2015

BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Susan A. Wetzel
Haynes and Boone, LLP
2323 Victory Avenue
Suite 700
Dallas, TX 75219

Re: [redacted],
Soc. Sec. No. XXX-XX[redacted]

Dear Ms. Wetzel:

By email dated February 6, 2015, this office requested, on [redacted]'s behalf, any Notice of Benefit Suspension provided to Ms. [redacted] in compliance with Section 203(a)(3)(B)(i) and 29 C.F.R. 2530-203-3.

To date, we have received neither the Notice requested nor any proof of delivery of such notice.

If the plan did in fact send Ms. [redacted] such a Notice, please provide a copy, along with proof of service, to me by email at: EmilyGBrown@umb.edu or by fax to 617-287-7090.

If we do not receive such notice within one week of your receipt of this letter, we will assume that no such Notice was sent to Ms. [redacted] Thank you for your assistance in this matter.

Sincerely,

EGB

Emily G. Brown Esq.
Staff Attorney

EXHIBIT C

of determining the required minimum distribution for that distribution calendar year. When an additional portion of the employee's benefit becomes vested, such portion will be treated as an additional accrual. See A–5 of this section for the rules for distributing benefits which accrue under a defined benefit plan after the employee's first distribution calendar year.

Q–7. If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, for what period must the employee's accrued benefit under a defined benefit plan be actuarially increased?

A–7. (a) Actuarial increase starting date. If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, in order to satisfy section 401(a)(9)(C)(iii), the employee's accrued benefit under a defined benefit plan must be actuarially increased to take into account any period after age 70½ in which the employee was not receiving any benefits under the plan. The actuarial increase required to satisfy section 401(a)(9)(C)(iii) must be provided for the period starting on the April 1 following the calendar year in which the employee attains age 70½, or January 1, 1997, if later.

(b) Actuarial increase ending date. The period for which the actuarial increase must be provided ends on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9).

(c) Nonapplication to plan providing same required beginning date for all employees. If, as permitted under A–2(e) of §1.401(a)(9)–2, a plan provides that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year in which the employee attains age 70½ (regardless of whether the employee is a 5-percent owner) and the plan makes distributions in an amount sufficient to satisfy section 401(a)(9) using that required beginning date, no actuarial increase is required under section 401(a)(9)(C)(iii).

(d) Nonapplication to governmental and church plans. The actuarial increase required under this A–7 does not apply to a governmental plan (within the meaning of section 414(d)) or a church plan. For purposes of this paragraph, the term church plan means a plan maintained by a church for church employees, and the term church means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

Q–8. What amount of actuarial increase is required under section 401(a)(9)(C)(iii)?

A–8. In order to satisfy section 401(a)(9)(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for actuarial increases (described in A–7 of this section) must be no less than: the actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence under paragraph (a) of A–7 of this section if benefits had commenced on that date, plus the actuarial equivalent of any additional benefits accrued after that date, reduced by the actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date. Actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying section 411.

Q–9. How does the actuarial increase required under section 401(a)(9)(C)(iii) relate to the actuarial increase required under section 411?

A–9. In order for any of an employee's accrued benefit to be nonforfeitable as required under section 411, a defined benefit plan must make an actuarial adjustment to an accrued benefit, the payment of which is deferred past normal retirement age. The only exception to this rule is that generally no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829). The actuarial increase required under section 401(a)(9)(C)(iii) for the period described in A–7 of this section is generally the same as, and not in addition to, the actuarial increase required for the same period under section 411 to reflect any delay in the payment of retirement

haynesboone

March 4, 2015

MAR 13 2015

Via Certified Mail / Return Receipt Requested
Via E-mail: EmilyGBrown@umb.edu

Emily G. Brown, Esq.
New England Pension Assistance Project
Gerontology Institute
University of Massachusetts Boston
100 Morrissey Blvd.
Boston, MA 02125-3393

Re: [redacted]

Dear Ms. Brown:

Valassis Communications, Inc. ("***Valassis***"), the plan sponsor of the Advo, Inc. Hourly Employee Pension Plan (the "***Plan***"), has asked us to respond to your correspondence dated February 26, 2015 ("***Letter***") requesting a copy of the Notice of Benefit Suspension provided to Ms. [redacted] in compliance with Section 203(a)(3)(B)(i)and 29 C.F.R. 2530-203-3.

While Valassis believes that the Notice of Benefit Suspension was previously provided to all Plan participants who continued employment past age 65, it has been unable to locate a copy of the notice that was delivered to Ms. [redacted] in 2008. Because Valassis has not been able to locate a copy of the notice that was provided to Ms. [redacted] it has decided to actuarially adjust Ms. [redacted]'s benefit under the Plan to reflect the payments she would have received had she terminated employment at age 65 and started to receive her benefits. Ms. [redacted]'s monthly benefit, actuarially adjusted to her actual retirement date of June 1, 2014, is $771.06. As of January 1, 2015, Ms. [redacted]'s lump sum benefit would now be $100,335.66. In addition, Valassis would give Ms. [redacted] an additional credit of $2,379.30, which reflects the difference between the payments she has received and the amount she would have received based on the adjusted monthly benefit from June 1, 2014 through December 31, 2014. These amounts have been calculated as of January 1, 2015 for comparison purposes to the Plan Termination election forms Ms. [redacted] received previously. Actual payment amounts will be recalculated as of the first of the month benefits are distributed. An updated statement of benefits will be sent to Ms. [redacted] directly by the plan administrator for the Plan.

We hope that the explanation set forth above has been helpful for you. Based on the adjustments described above, the Plan deems Ms. [redacted]'s claim resolved. If you have any questions regarding the foregoing, please feel free to contact me.

Sincerely,

Susan A. Wetzel
Direct Dial No. – 214.651.5389
Direct Fax No. – 214.200.0675
susan.wetzel@haynesboone.com

15051567.1

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