

Amended Plan at hearings held by the Court after full written disclosure of the terms of the Plan is given to such Mutual Member by FML.

(d) Participation by all Mutual Members in the Fourth Amended Plan, if approved by the Court, is mandatory, although Mutual Members may disclaim the Investor Stock, cash, and/or Plan Credits which they would otherwise receive.

(e) The decision by a Mutual Member which is a Plan to receive or disclaim Investor Stock, cash, and/or Plan Credits allocated to such Mutual Member is made by one or more independent fiduciaries of such Plan, and not by FML or any affiliate of FML. Consequently, neither FML nor any of its affiliates will exercise discretion nor render "investment advice" within the meaning of 29 CFR 2510.3-21(c) with respect to an independent Plan fiduciary's decision to receive or disclaim Investor Stock, cash, and/or Plan Credits.

(f) Twenty percent (20%) of the net assets which are available for distribution to the Mutual Members is allocated among the Mutual Members based upon voting rights, and eighty percent (80%) of such net assets is allocated among the Mutual Members on the basis of the contribution of the Mutual Members' respective insurance or annuity contracts (the Contracts) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (i.e., the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(g) The amount and value of the Investor Stock, cash, and/or Plan Credits received by a Mutual Member reflect the aggregate consideration paid by the Stock Purchaser or Asset Purchaser, which is independent of FML.

(h) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans, except that Mutual Members which hold Non-Trusteed Tax-Qualified Retirement Funding Contracts receive Plan Credits in exchange for their membership interests, rather than cash and/or Investor Stock.

(i) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Investor Stock, cash, and/or Plan Credits.

(j) Mutual Members are not restricted from selling or otherwise transferring any Investor Stock which they receive. If Investor Stock comprises part of the consideration paid by the Stock Purchaser, the Stock Purchaser is required to establish a commission-free purchase or sales program which will allow Mutual Members who receive a small number of shares of Investor Stock to "round up" such shares or sell such shares free of sales commissions.

(k) The Fourth Amended Plan does not adversely affect the rights of a contractholder of the company (the Contractholder) which is a Mutual Member. In this regard,

(1) If Post-Conversion FML is acquired by the Stock Purchaser, the obligations of FML to a Contractholder are retained by Post-Conversion FML; and

(2) If FML's assets are purchased by the Asset Purchaser, FML's obligations to a Contractholder are discharged and terminated upon their endorsement and assumption by the Asset Purchaser, thereby making the Asset Purchaser liable for the obligations under the Contract.

### SECTION III. DEFINITIONS

For purposes of this proposed exemption:

(a) An "affiliate" of FML, Post-Conversion FML, the Stock Purchaser, or the Asset Purchaser includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such entity. (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.); or

(2) Any officer, director or partner in such person.

(b) The term "Asset Purchaser" means the person (e.g., individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase FML's assets under an assumption reinsurance agreement.

(c) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist before FML is converted from a mutual life insurance company into a stock life insurance company.

(d) The term "Investor Stock" means the common stock of the Stock Purchaser that will be allocated to Mutual Members if Post-Conversion FML is acquired by the Stock Purchaser in exchange for consideration that includes common stock of the Stock Purchaser.

(e) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Fourth Amended Plan.

(f) The term "Non-Trusteed Tax-Qualified Retirement Funding Contracts" means FML insurance contracts which are held in connection with retirement plans or arrangements described in section 403(a) or 408 of the Internal Revenue Code or non-trusteed retirement plans described in Section 401(a) of the Internal Revenue Code.

(g) The term "Plan" means an employee benefit plan.

(h) The term "Plan Credit" means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Fourth Amended Plan, Plan Credits are to be allocated to Mutual Members who hold Non-Trusteed Tax-Qualified Retirement Funding Contracts, in lieu of Investor Stock and/or cash.

(i) The term "Post-Conversion FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML, as defined in paragraph (a) of this Section III, as they exist after FML is converted from a mutual life insurance company into a stock life insurance company.

(j) The term "Stock Purchaser" means the person (e.g., individual, corporation,

partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to purchase the stock of Post-Conversion FML, or to acquire Post-Conversion FML by merger, under a stock purchase agreement or merger agreement.

This exemption is available to a Mutual Member of FML that is a Plan if the terms and conditions of the exemption are satisfied with respect to such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant PTE 2000-34, refer to the proposed exemption and the grant notice which are cited above.

Signed at Washington, DC, this 16th day of March, 2007.

**Ivan L. Strasfeld,**

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

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA-W-60,753]

#### **Cerf Brothers Bag Co., Inc., Earth City, MO; Notice of Affirmative Determination Regarding Application for Reconsideration**

By application dated January 13, 2007, a state representative requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was issued on February 16, 2007 and published in the **Federal Register** on February 27, 2007 (72 FR 8795).

The negative determination was based on the Department's findings that that the petitioning workers of this firm or subdivision do not produce an article within the meaning of Section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

#### **Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify

reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th of March, 2007.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) number and alternative trade adjustment assistance (ATAA) by (TA-W) number issued during the period of March 5 through March 9, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or

subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA-W-61,037; *Flint Group North America Corporation, Flint Group Pigments Division, Holland, MI: February 27, 2006.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA-W-60,899; *CCL Label St. Louis, Case Report Forms Dept., Aerotek, St. Charles, MO: January 30, 2006.*

TA-W-60,928; *Florence Design Group, Florence, AL: February 6, 2006.*

TA-W-60,853; *Artistree, Graham and Associates, Kernersville, NC: January 29, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

#### Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-60,772; *Harve Bernard Ltd, Bernard and Morton Co., Inc., Clifton, NJ: January 12, 2006.*