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Via Email gknehr@state.pa.us
 George Knehr, Chief
 Department of Labor & Industry
 Bureau of Workers Compensation
 1171 South Cameron Street, Room 103
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February 1, 2010

RECEIVED
 FEBRUARY 11 2010
 DEPARTMENT OF LABOR & INDUSTRY
 BUREAU OF WORKERS COMPENSATION

Subject: Proposed Revision to Government Securities Trust Agreement

Dear Mr. Knehr,

Your letter to Carl Masters has been referred to me for handling. Please direct future correspondence of this nature to this writer directly.

You have requested comments, reactions, and suggestions from self-insurers with respect to the proposed changes to the Agreement of Trust to Secure the Payment of Workers' Compensation by Self-Insurer (the "Agreement") that the Bureau is seeking to implement in 2010. United States Steel Corporation ("U. S. Steel") is pleased to provide input for your consideration and has taken this opportunity to fully review the provided draft Agreement against the current trust agreement in effect between U. S. Steel and its trustee.

The most significant substantive change appears to be the requirement, under Section 5, D that the trustee maintain a "standby claims service agreement" ("Standby Agreement") with a claims administrator selected by the self-insured. While U. S. Steel fully understands and supports the Bureau's efforts to provide for efficient coordination of the continuation of benefit obligations to injured workers in the event of a default, the requirement that a Standby Agreement be executed and maintained with a third party claims administrator imposes both an additional cost and an additional administrative burden (including the need for sharing claim related information with third party administrators in order to secure and maintain the Standby Agreement) on self-insured employers. These burdens seem particularly unnecessary in light of the fact that in the vast majority of instances the claim administration services will never be required and would provide limited, if any, overall benefit to the Bureau and injured workers. Additionally, in the current economic climate, it would seem imprudent for the Commonwealth to impose additional burdens on employers.

For these reasons, U. S. Steel respectfully asks the Bureau to reconsider imposing this requirement on self-insured employers with no history of default. As for the Standby Agreement itself, while generally straightforward, U. S. Steel suggests revising the definition of "Allocated Expenses" provided in Section 4 to read "actual reasonable out-of-pocket business related expenses incurred by the Claims Administrator."

The remaining significant revisions appear to be focused on the relationship between the self-insured employer and trustee and aim to, overall, limit the responsibilities and liability of the trustee under the Agreement. U. S. Steel finds the Bureau's suggestion of, and support for, these changes surprising and disappointing. The trustee's fiduciary responsibility for the funds used to secure a self-insured employer's workers compensation obligations is integral to ensuring that payment obligations of injured Pennsylvania workers are met. Negligence in a trustee's execution of its obligations would put both the self-insured employer and injured workers at risk.

As treasury and banking functions are outside of my area of responsibility, I have referred your request for comments to our treasury and legal departments and have been informed that these suggested changes are, disappointingly, in line with the types of provisions that financial institutions routinely provide in "standard forms" and that U. S. Steel routinely spends considerable time and effort negotiating in order to achieve more equitable terms in its banking relationships. Again, in light of the economic climate and recent financial crisis, it is perplexing that the Bureau, and the Commonwealth, would promulgate a standard form that provides for greater protections for, and requires less responsibility from, financial institutions. For these reasons, U. S. Steel respectfully submits the following suggested revisions for your consideration:

1. Section 3, B – the revisions add a sentence to the end of this paragraph that limits the trustee's liability to "bad faith" and "gross negligence." U. S. Steel suggests either removing the newly added sentence or substituting "negligence" as the standard of care.
2. Section 5, F – the revisions remove the reference to any duty of the trustee to discharge its duties with due care and adds language limiting responsibility and liability. U. S. Steel suggests the following revision:
"The Trustee undertakes to perform only such duties as are expressly set forth herein. The duties and responsibilities of the Trustee hereunder shall be determined solely by the express provisions of this Agreement. The Trustee shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstance then prevailing that a prudent person of discretion and intelligence acting in such matters would use in seeking reasonable income and preservation of capital. In the administration of this Agreement and the Trust Fund hereunder, the Trustee may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other skilled persons to be selected and retained by it. No bond or other security shall be required of the Trustee."

3. Section 9 – the revisions broaden the indemnification of the trustee while removing any exceptions, exclusions or good faith requirements. U. S. Steel suggests the following revision:

“The Securing Entity hereby agrees to indemnify and defend the Trustee and to hold it harmless against any loss, liability, claim, proceeding, suit, demand, penalty, reasonable out-of-pocket cost or expense arising out of or in connection with this Agreement and in carrying out its duties hereunder, including without limitation reasonable attorneys fees , and specifically excluding any and all normal and usual operating expenses incurred by Trustee in performing its obligations hereunder ("Losses"), except in those cases where the Losses arise from the negligence or willful misconduct of the Trustee. The Trustee hereby agrees to Indemnify and defend the Securing Entity and to hold it harmless against any Losses arising out of or in connection with the negligence or willful misconduct of the Trustee in carrying out its duties hereunder. Anything in this Agreement to the contrary notwithstanding, in no event shall the Trustee or Securing Entity be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to loss profits), even if the Trustee or Securing Entity has been advised of such loss or damage and regardless of the form of action. The provisions of this Section 9 shall survive the termination of this Agreement and the resignation or removal of the Trustee for any reason.”

4. Section 10, E – U. S. Steel suggests adding the following to the end of this paragraph: “Notwithstanding, in the event of the occurrence of any of the above transactions, Trustee shall provide Securing Entity with written notice thereof and nothing in this Section shall be construed to in any way limit Securing Entity’s right to remove the Trustee as provided for herein.”
5. Section 8 – the revisions add an additional provision at 8, B further limiting the liability of the trustee. U. S. Steel suggests that this provision be deleted in its entirety.
6. Section 1 – U. S. Steel suggests the following revisions to the definitions:

“Trust Operation Expenses” The costs related to the proper operation of the Trust Fund, including agreed upon fees or commissions of the Trustee; reasonable out-of-pocket expenses including: legal and fiduciary fees associated with the management and investment of the Trust Fund; fees for accounting and actuarial services; and fees charged by the Claims Administrator related to the maintenance of the Standby Claims Services Agreement.

"Claims Administrator" - change end of sentence to "selected by the Securing Entity and retained by the Trustee under the Standby Claims Service Agreement."

7. Section 2 – the revisions remove Section 2, F from the current agreement:

"The funds on deposit in the Trust shall be invested in such Authorized Investments as the Securing Entity may direct in writing. To the extent the Securing Entity does not provide such direction, or if a Default shall have occurred and be continuing, the funds on deposit in the Trust shall be invested by the Trustee in a money market mutual fund investing solely in obligations of the United States Government."

U. S. Steel requests that this provision be reinserted.

8. Section 11 – the revisions broaden the ability of the trustee to charge and collect fees while limiting the rights of the self-insured. U. S. Steel suggests the following revision:

"The Trustee shall receive fees or commissions for its services under this Agreement as agreed to from time to time between Trustee and Securing Entity. In the absence of an agreement as to Trustee fees, the Trustee shall receive compensation in accordance with its standard schedule of compensation in effect when its services are performed. As long as no Default exists, the Security Entity shall directly pay all Trust Operating Expenses. The Trustee shall notify the Bureau in the event the Securing Entity does not pay the Trustee for its fees and expenses within forty-five (45) days of invoice. Upon receipt of such notice, the Bureau may direct the payment of such fees and expenses directly from the Trust Fund. Notwithstanding, the Securing Entity shall have the right to dispute in good faith the fees and expenses charged by the Trustee and, in the event of such good faith dispute, the Bureau shall provide the Securing Entity with a reasonable time in which to resolve said dispute prior to the authorization of any direct payment from the Trust Fund. During a Default, at the direction of the Bureau, the Trustee may be paid directly from the Trust Fund for all Trust Operating Expenses."

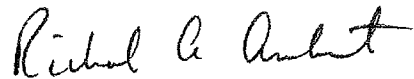
9. The revisions appear to have removed the definition of "Bureau" (which appeared in the "Background" section of the prior form). This should be reinserted for clarity.

Additionally, while the Bureau's request was limited to matters related to the Agreement, your letter indicates that these changes correlate to amendments

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to the self-insurance regulations that the Bureau plans to publish in 2010. If possible, U. S. Steel requests the opportunity to review those proposed amendments, as they may have additional ramifications to our program of self-insurance. If you would like to discuss these comments and suggestions, I invite you to contact me and I look forward to the opportunity to review the Bureau's final proposal.

Very truly yours:

A handwritten signature in cursive script, reading "Richard A. Armbrust".

Richard A. Armbrust
Director, Integrated Management Disability