

LOCAL 138 LEGAL FUND

SUMMARY PLAN DESCRIPTION

February 1, 2013

UNION TRUSTEES

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EMPLOYER TRUSTEES

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SUMMARY PLAN DESCRIPTION

LOCAL 138, 138A and 138B INTERNATIONAL UNION OF OPERATING ENGINEERS LEGAL FUND

The following explanation of the Local 138, 138A and 138B, International Union of Operating Engineers Legal Fund has been sent to you as a Fund participant to comply with the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (ERISA). It describes the basis upon which prepaid group legal services are provided to you as an employee covered by a collective bargaining agreement between Local 138, 138A and 138B, International Union of Operating Engineers, and the Long Island Contractors Association, Inc., the Building Contractors Association, Inc., and other contributing employers. The spouse of any such employee and legal dependents, as hereinafter defined, are also eligible for prepaid legal services under this Plan. Effective January 1, 1982, coverage was extended to retirees who reside within the State of New York. Effective July 1, 1994, eligibility of future retirees was to be based on their years of credited service at time of retirement as hereinafter defined. Stepchildren are not covered under the Plan.

Please read this booklet carefully - this new Plan of Legal Services has been amended to include a more appropriate plan of legal services that is geared towards the greatest number of legal services users. The revised Plan also results to a cost savings to members.

1. The Local 138, 138A and 138B, International Union of Operating Engineers Legal Fund, has adopted a prepaid group legal services plan for the exclusive use of covered employees, retirees, their spouses and dependents.

This Plan is subject to the provisions of ERISA

2. The address of the Plan is:

Local 138, 138A and 138B, International
Union of Operating Engineers Legal Fund

P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206

3. The Local 138, 138A and 138B, International Union of Operating Engineers Legal Fund, which established the Plan, was created as of July 1, 1977, pursuant to an Agreement and Declaration of Trust by and between:

Locals 138, 138A and 138B,
International Union of Operating Engineers
P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206; and the

Long Island Contractors Association
2805 Veterans Memorial Highway
Suite #2
Ronkonkoma, New York 11779

Building Contractors Association, Inc.
451 Park Avenue South, 4th Floor
New York, New York 10017

The Plan is funded and maintained through employer contributions. Employers make contributions which enable employees to participate in this Plan, as required by the applicable provisions of a collective bargaining agreement between the Union and the Associations or other specific contracting employers. You may obtain a copy of the agreement, upon request.

Employer contributions are received and held in trust by the Board of Trustees pending (a) payment for services to Klemanowicz, Holmquist & Vande Stouwe, LLP, 300 Old Country Road, Mineola, New York 11501, the law firm selected by the Trustees; and (b) payment of administrative expenses.

A complete list of the employers sponsoring this Plan may be obtained by participants and their beneficiaries upon written request of the Plan Administrator, and is available for examination by employees, retirees, their spouses and dependents.

Upon written request to the Plan Administrator, participants and beneficiaries shall be provided with information as to whether a particular employer is a sponsor of the plan, and if an employer is a sponsor, its address shall also be provided.

4. The IRS employer identification number (EIN) is 112428028. The Plan Number is 1611.

5. **Administration:** The Plan is administered by a Board of Trustees with an equal number of Labor and Management Trustees in accordance with a written Plan & Trust Agreement.

6. The name and address of the principal place of business of each Trustee is:

Union Trustees

William K. Duffy, Jr.
Locals 138, 138A and 138B,
International Union of Operating Engineers
P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206

John Duffy
Locals 138, 138A and 138B,
International Union of Operating Engineers
P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206

Philip Capobianco
Locals 138, 138A and 138B,
International Union of Operating Engineers
P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206

Scott Adrian
Locals 138, 138A and 138B,
International Union of Operating Engineers
P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206

Alternate Trustee

Kenneth Huber
Locals 138, 138A and 138B,
International Union of Operating Engineers
P.O. Box 206
137 Gazza Boulevard
Farmingdale, New York 11735-0206

Employer Trustees

Marc Herbst
Long Island Contractors Association
150 Motor Parkway #307
Hauppauge, NY 11788

James Haney, Jr.
Rason Asphalt, Inc.
P.O. Box 530
Old Bethpage, NY 11804

James J. Pratt, III
Pratt Brothers, Inc.
608 Union Avenue
Holtsville, NY 11742

John O'Hare
Building Contractors Association, Inc.
451 Park Avenue South, 4th Floor
New York, NY 10017

7. The Trustees whose names appear above are responsible for the investment of the Plan assets. They may appoint such persons or companies as they deem necessary to carry out their responsibilities.

8. The Administrator of the Plan is:

Stephen Barnett
Locals 138, 138A and 138B,
International Union of Operating Engineers, Legal Fund
P.O. Box 206
137 Gazza Boulevard
Farmingdale, NY 11735-0206

9. The name and address of the agent for service of legal process is:

Archer, Byington, Glennon & Levine, LLP
One Huntington Quadrangle, Suite 4C10
P.O. Box 9064
Melville, NY 11747-9064

Also, service of legal process may be made upon the Trustees of the Local 138, 138A and 138B, International Union of Operating Engineers Legal Fund or upon the Plan Administrator.

10. **The Plan Year.** July 1 is the first day of the twelve (12) month Plan Year and June 30 is the last day, or the anniversary date. Plan records are maintained on this basis.

11. **The Law Firm.** The Trustees have contracted with the law firm of Klemanowicz, Holmquist & Vande Stouwe, LLP, 300 Old Country Road, Mineola, New York 11501, attorneys admitted to practice before the Courts of the State of New York, to provide the specified legal services under the Plan. Throughout this Summary Plan Description, the Klemanowicz law firm is referred to as "the Law Firm."

A revised Prepaid Group Legal Services Agreement between the Local 138, 138A and 138B, International Union of Operating Engineers Legal Fund and the Law Firm under which specified prepaid legal services are to be provided, was effective as of July 1, 2012. A copy of this Prepaid Group Legal Services Agreement is available upon written request to Administrator Stephen Barnett.

12. **Eligibility.** Those eligible to participate in the Plan (participants) are those individuals employed by an employer who has duly executed a collective bargaining agreement with Local 138, 138A and 138B of the International Union of Operating Engineers, providing for periodic payments to the Legal Fund, or any Employer who has agreed to be bound by such a collective bargaining agreement. Employees shall be eligible for benefits so long as they have 200 covered hours within a twelve month period preceding the request for benefit coverage. Also eligible to participate in the Plan are all full-time employees of the Union and various Funds of Local 138, 138A and 138B International Union of Operating Engineers, on whose behalf payments are made to the Legal Fund, and all retired members of Local 138 residing in the State of New York shall be eligible for benefits; however, effective July 1, 1994, eligibility

of future retirees shall be based on their years of credited service at the time of retirement as follows:

<u>Years of Benefits</u>	<u>Years of Credited Service</u> (Minimum of 1,000 covered hours per year)
2 years	5 years and 1 day
3 years	10 years and 1 day
4 years	15 years and 1 day
5 years	20 years and 1 day
No limitation	25 years and 1 day

The spouse of any employee eligible for prepaid group legal services is eligible to participate in the Plan. Dependents of any employee eligible for benefits under the Plan shall likewise be entitled to coverage. As used herein, the term “Dependent” shall mean any unemancipated minor child residing in a household of an employee; any child of said employee up to age of 23 years old, said child is a full-time college student at a college or university, and any child of said member who is physically handicapped to the extent that he/she cannot be gainfully employed and resides in the household of said member.

This Plan shall exclude those legal services that may result in Law Firm obtaining confidential information with respect to a member's spouse, e.g., family court matters including but not limited to, child support, custody and neglect and PINS matters. For example, the Plan would exclude a situation where the spouse of a member is seeking to enforce a support order for her children with a prior marriage.

Stepchildren would be excluded to the extent they are not a legal dependent. Retirees must be residents of the State of New York in order to receive legal benefits. Reside shall mean that the individual, or his dependents maintain an abode or place of dwelling in New York State.

13. How to Use This Plan.

a. By telephone, mail or in person at his office, contact the Law Firm who provides the actual prepaid group legal services,, Klemanowicz, Holmquist & Vande Stouwe, LLP, 300 Old Country Road, Mineola, New York 11501; telephone: 516-746-7660.

b. Tell the individual you speak to at the Law Firm that you are covered by the prepaid group legal services plan, that you desire legal services and give that individual your name. If it is your spouse or a dependent that needs legal services, also give their names.

c. The Law Firm will check your name against the list provided to him by the Administrator of the Legal Fund. You will be told if your particular legal problem is covered by the prepaid legal services plan.

d. With certain exceptions, as described below, you must use the Law Firm as your attorney if you are to obtain prepaid legal services.

e. If the Law Firm decides that you, your spouse or dependent are not eligible for prepaid legal services or you are advised that your legal problem is not one of those on the list of prepaid legal services which it has agreed to provide, you must be notified of this specific denial in writing. If you disagree with the decision, you may appeal the decision to the Trustees of the Legal Fund by contacting the Administrator of the Legal Fund, Mr. Stephen Barnett. Any appeal must be submitted to the Administrator within thirty (30) days after you receive notification. Extensions may be granted upon request. The decision of the Trustees, after a full and fair hearing of your claim, shall be final.

14. Legal Services Provided.

I. Coverage:

The following is a description of the legal services which an eligible employee, his/her spouse and dependents or retiree can be obtained from the Law Firm under

the terms of the Prepaid Group Legal Services Agreement between the Legal Fund and the Law Firm. If you are eligible, the following legal services are available to you, your spouse and your dependents at no cost to you, subject to certain conditions set forth herein:

- a. Bankruptcy**
Personal voluntary petition in bankruptcy and related services in the Bankruptcy Court including discharge.
- b. Consultations**
Unlimited consultations including review of documents, and legal advice with regard to any legal problem or inquiry. This may include legal action where the matter is covered under the Legal Fund's plan of benefits.
- c. Consumer Matters**
- d. Criminal Matters**
All criminal matters that are brought in New York State Courts, including violations, misdemeanors and felonies. This does not include traffic violations, unless the traffic violation charged is a criminal offense. This does not include criminal coverage in Federal Courts.
- e. Decedent Estates**
Non-contested administration or probate of estate of member of the group or spouse. (This would not include services for the administration or probate for a deceased non-member).
- f. Estates**
Representation of the uncontested beneficial interest of the member in any estate proceeding in New York State.
- g. Excess Coverage**
- h. Health Care Proxies**
- i. Landlord/Tenant**
Defense of eviction proceeding only.
- j. Living Wills**
- k. Matrimonial**
Supreme Court or Family Court including divorce, separation, annulment, support or custody proceedings (only a Member of the Group will be represented).

- l. No Fault**
No time limitation with respect to this benefit.
- m. Personal Inquiry Claims**
One-third (1/3) contingency fee.
- n. Powers of Attorney**
- o. Property Damage Claims**
No limitation with respect to this benefit.

- p. Real Estate**
Sale, purchase or lease of any real property for primary residence of member and spouse (business or investment property or vacation property excluded).
- q. Real Estate – Family Residential Transfer**
- r. Real Estate Refinance**
Mortgage for principal residence.
- s. Traffic Matters – Where loss of license is involved.**
Where loss of license is revoked.
- t. Wills**
Preparation for each member of a Will or reciprocal Wills between Husband and Wife.
- u. Uncontested Adoptions**

After having expended 40 or more billable hours on any specific case and matter, the firm shall provide the participant with the choice of continuing with the law firm at a discounted rate of one third less than the customary fee charged for such services by the Law Firm or retaining counsel at his or her expense after such 40 hours of legal services. This provision applies to any cases or matters which the participants commences with the Klemanowicz firm on or after said date.

II. Exclusions

The following matters, cases, actions, fees, disbursements are not covered or paid for by this prepaid legal services Plan:

1. **Fees and Charges:** Disbursements and fees incurred in connection with any of the prepaid legal actions or services just described. Examples of disbursements and fees include, but are not necessarily limited to, court filing fees, witness fees, title insurance, photographs, premiums on necessary bonds, medical examinations, costs of stenographic minutes, investigative costs, recording fees, out-of-pocket expenses, long distance

telephone calls and reproduction costs. The person receiving the prepaid legal service must pay any such fees or disbursements himself/herself.

2. Any matter, case or controversy between an employee, his/her spouse or dependents and the Local 138, 138A and 138B, International Union of Operating Engineers or the leadership of the Local(s).

3. Any matter, case or controversy between an employee and his/her employer.

4. Any matter, case or controversy between individuals (including spouses and dependents) who are eligible to receive prepaid legal services under the Plan.

a. That if it is between an employee and his/her spouse, only the Employee will be eligible for the necessary legal services, or

b. If it is between an employee and his/her dependent (other than his/her spouse) otherwise eligible for prepaid legal services under the Plan, only the employee will be provided with the necessary Prepaid legal services.

5. Any matter or case pending with any attorney as of the effective date of the Plan, or as of the date an employee becomes eligible for legal services under the Plan.

6. Any matter, case or controversy in which the employee, his/her spouse or dependents is provided with an attorney under a contractual obligation, for example, an attorney provided by or paid for under an insurance policy.

7. Appeals from initial decisions.

8. Any matter involving individual or defendant who would not be eligible for the legal services benefits.

9. Those legal services whose subject matter and/or adjudication are outside the State of New York.

10. Those legal services that may result in the law firm obtaining confidential information with respect to a an employee's spouse, for example, Family Court matters, including but not limited to, child support, custody neglect and PINS matters.

Under certain circumstances, an issue may arise which occurs outside of the State of New York and which may be allowable as an additional benefit under the legal services plan. When such incidents arise, the Fund Administrator may be authorized, upon consultation with the Co-Chairman and Fund Counsel to establish a reasonable and customary fee based on input from the Klemanowicz firm. Such matters may be addressed on a case to case basis. They are very limited in nature and are primarily with respect to out of state traffic incidents.

III. Other Attorneys

You are not required to use the Law Firm for any of the services provided under the Plan, but if you choose to retain or consult with an attorney other than the Law Firm, that attorney will not be reimbursed or paid for by the Legal Fund. However, you, your spouse or dependents may retain an attorney other than the Law Firm if you notify the Administrator of the Plan, in writing, setting forth the reasons why representation by the Law Firm would be unethical, improper or inadequate under the circumstances involved and if the Trustees of the Legal Fund, in their sole discretion, approve your request to be represented by an attorney other than the Law Firm. If the Trustees determine that you are entitled to be represented by someone other than the Law Firm, they shall also determine the amount which shall be paid on your behalf to the other attorney.

IV. Continuing Representation

When the Agreement between the Legal Fund and the Law Firm ends, any matter, case or controversy for which litigation or representation on behalf of any employee,

his/her spouse or dependents was begun by the Law Firm under the Plan before date of termination of the Agreement shall be completed by the Law Firm as if the Agreement were still in effect.

V. Attorney-Client Relationship

The individual employees, their spouses and dependents, not the Legal Fund or the Trustees thereof, are the clients of the Law Firm. Nothing in the Agreement between the Legal Fund and the Law Firm or in the Plan requires or permits the violation of interference with this attorney-client relationship or the confidence and secrets of a client.

15. Upon termination of this Agreement, all obligations and liabilities of the parties shall cease except for monies due the Law Firm for legal services rendered pursuant to this Agreement. At the option of the Legal Fund, all litigation or representation of Clients pending prior to termination shall be completed by the Law Firm for an hourly fee to be agreed upon between the Law Firm and the Legal Fund and consistent with the payments the Law Firm received under the terms of this Agreement.

The Law Firm acknowledges and agrees that if the Legal Fund does not have sufficient monies to pay for the legal services after termination, then, in that event, the Law Firm will be obligated to complete these matters and shall accept as payment whatever funds are available in the Legal Fund.

16. As a participant in the Locals 138, 138A and 138B Legal Fund Prepaid Legal Services Program you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all Plan participants shall be entitled to:

"Examine, without charge, at the Plan Administrator's office, and at other specified location, such as worksites and union halls, all plan documents, collective bargaining agreements and copies of all documents filed by the Plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.

Obtain copies of all Plan documents and other Plan information upon written request to the Plan Administrator. The Administrator may make a reasonable charge for the copies.

Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report."

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a legal benefit or exercising your rights under ERISA. If your claim for a benefit is denied in whole or in part, you must receive a written explanation of the reason for the denial. You have the right to have the Plan review and reconsider your claim. You will have at least 60 days following receipt of a notification of your denial within which to appeal your claim. At that time, you will be given the opportunity to submit written comments, documents, and other information that may help support your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to \$110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that Plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the

court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your Plan, you could contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest area office of the Employee Benefits Security Administration, U.S. Department of Labor listed in your telephone directory, or the Division of

Technical Assistance and Inquiries, Employee Benefits Security Administration (EBSA), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the E.B.S.A.

Board of Trustees
Local 138, 138A and 138B,
International Union of Operating Engineers, Legal Fund