

# CANTON ELECTRICAL WELFARE FUND

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## SUMMARY OF MATERIAL MODIFICATION FOR THE SUMMARY PLAN DESCRIPTION OF THE CANTON ELECTRICAL WELFARE FUND

The Trustees have made the following CHANGES to the Plan that will affect various provisions of your Summary Plan Description (SPD). This "Summary of Material Modification" explains this change and should be kept with your SPD.

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Effective October 1, 2008, Article III, Section 4 entitled "Subrogation" (page 12) is deleted in its entirety and the following is substituted therefor:

#### 4. Subrogation

The Plan shall be entitled to subrogation and reimbursement if you or your Dependent (claimant) are paid benefits under the Plan for claims due to injuries or illness for which a third-party may be obligated to pay you for any person.

#### **Right to Subrogate**

The Plan is subrogated to any and all rights of recovery and causes of action that the claimant may have against any third party, whether by suit, settlement, or otherwise, that may be liable for a claimant's injury or illness for which the Plan has paid or is obligated to pay benefits on the claimant's behalf.

#### **Rights to Reimbursement With Source of Funds Specifically Identified**

The Plan shall also be entitled, to the extent of payments made or to be made on account of the claim, to the proceeds of any settlement, judgment, or payment from any source liable for making a payment relating to the claimant's injury, illness, or condition. A source includes, but is not limited to, a responsible party and/or responsible party's insurer (or self-funded protection), no-fault protection, personal injury protection, medical payments coverage, financial responsibility, uninsured or underinsured insurance coverage, an employer under the provisions of a workers' compensation law, an individual policy of insurance maintained by a claimant, and organization, corporation, or government agency.

#### **Rejection of Make-Whole Doctrine**

Such subrogation and reimbursement rights shall apply on a priority, first dollar basis to any recovery, whether by suit, settlement, or otherwise, whether there is a partial or full recovery and regardless of whether the amounts are characterized or described as medical expenses or as amounts other than for medical expenses. **This provision is intended to and does reject and superseded any "make-whole" rule/doctrine, which rule/doctrine might otherwise require that you be "made whole" before the Plan may be entitled to assert its subrogation right.**

#### **Equitable Lien by Agreement**

Once the Plan makes or is obligated to make payments on behalf of a claimant, the Plan is granted, and the claimant consents to, an equitable lien by agreement or a constructive trust on the proceeds of any payment, settlement, or judgment received by the claimant or dependant

from any source to the extent of payments made or to be made by the Plan on the claimant's behalf.

**Claimant Must Set Aside Funds**

The claimant shall hold in trust for the Plan's benefit that portion of the total recovery from any source that is due for payments made or to be made. The claimant shall reimburse the Plan immediately upon recovery. The claimant shall immediately notify the Plan if he or she is involved in or suffers an accident or injury for which a third party may be liable. The claimant shall again notify the Plan if he or she pursues a claim to recover damages or other relief relating to an injury or illness for which the Plan may make payments on the claimant's behalf. The claimant shall do nothing to impair, release, discharge or prejudice the Plan's rights to subrogation and/or reimbursement. The claimant shall assist and cooperate with representatives the Plan designates. The claimant shall do everything necessary to enable the Plan to enforce its subrogation and reimbursement. The claimant shall immediately notify the Plan upon receiving a judgment, settlement offer or compromise offer and shall not settle or compromise any claims without the Plan's consent.

**First-Dollar Recovery**

The Plan's subrogation and reimbursement rights shall apply on a priority first-dollar basis to any recovery whether by suit, settlement, or otherwise regardless of whether a claimant is made whole.

**Disavowal of "Common-Fund" Doctrine**

The Plan's subrogation and reimbursement rights apply to any recovery by the claimant without regard to legal fees and expenses of the claimant. The claimant shall be solely responsible for paying all legal fees and expenses in connection with any recovery for the underlying injury, sickness, accident or condition, and the Plan's recovery shall not be reduced by such legal fees or expenses.

**The Plan specifically disavows any claims that a claimant or dependant may make under any federal or state common law defense including, but not limited to, the make-whole doctrine and/or the common-fund doctrine.**

**Cooperation**

The Plan Administrator may require the claimant to complete and/or execute certain documentation to assist the Plan in the enforcement of its subrogation rights including, but not limited to, a subrogation and reimbursement questionnaire and a repayment agreement. **The completion and/or execution of any documents requested by the Plan Administrator shall be a condition to receiving payment for a claim. Further, the Plan shall have the right to suspend all benefit payments due to a claimant, the employee of whom a claimant is a dependent, and/or any other dependent of such an employee if the claimant fails to complete and/or execute such documentation.**

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Please keep this information with your Summary Plan Description. Also, if you have any questions regarding these changes, please contact the Fund Office.

November 10, 2008

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CANTON ELECTRICAL WELFARE FUND