

# THE CHANGING LANDSCAPE: IMPLICATIONS FOR ILLINOIS

**R. THEODORE CLARK, JR.**

Clark Baird Smith LLP

**JOEL D'ALBA**

Asher, Gittler & D'Alba, Ltd.

## **Pluralism Is a Cornerstone of American Workplace Democracy**

Pope Leo XIII wrote that among associations and organizations to aid those in distress, “the most important of all are working men’s unions” Encyclical of Pope Leo XIII, on Capital and Labor, Rerum Novarum ¶ 49 (May 15, 1891),

“History attests what excellent results were brought about by the artificers’ guilds of olden times.” Id

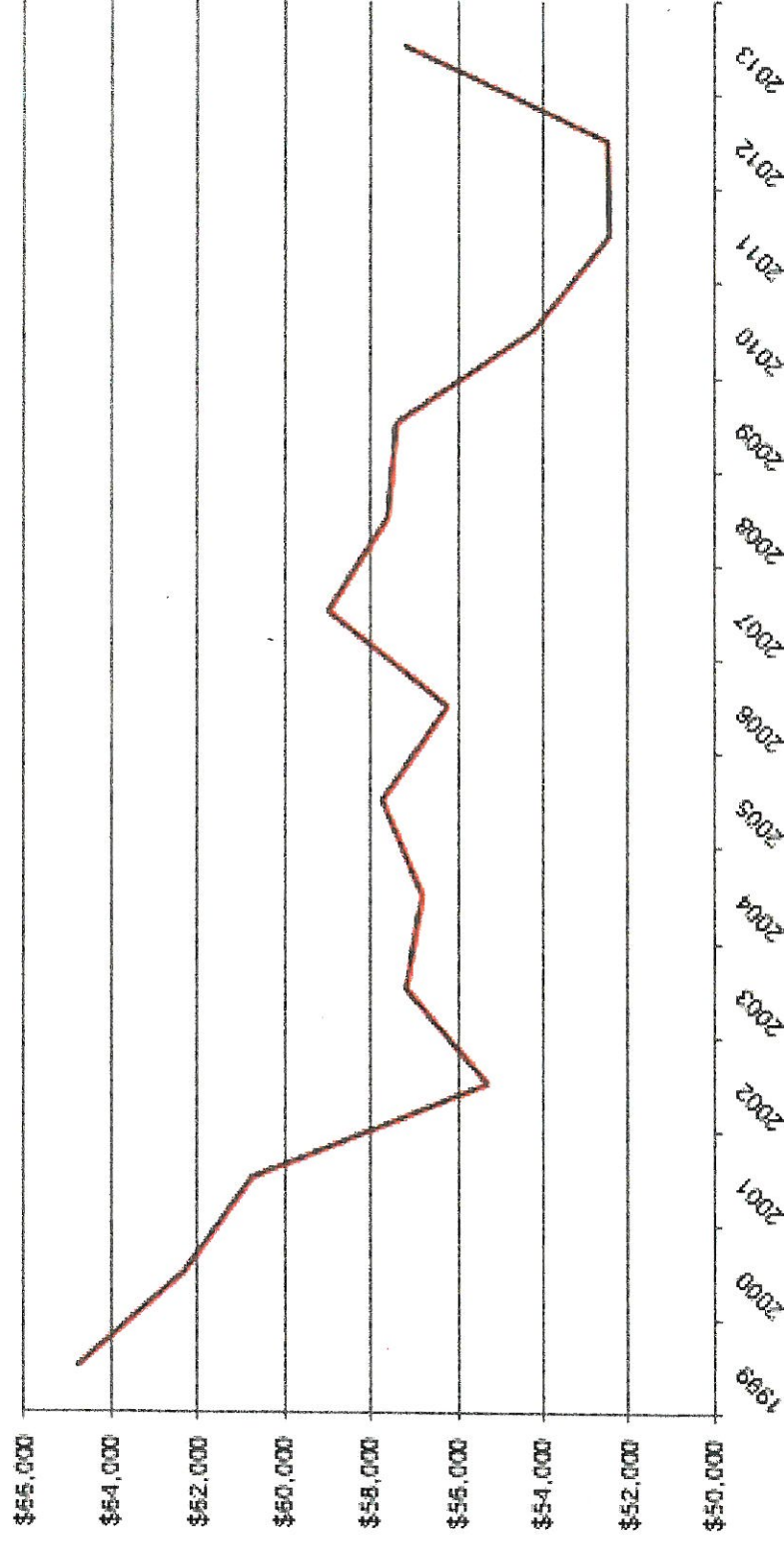
## **Pluralism Is a Cornerstone of American Workplace Democracy**

“The State should watch over these societies of citizens banded together in accordance with their rights, but it should not thrust itself into their peculiar concerns and their organization, for things move and live by the spirit inspiring them, and they may be killed by the rough grasp of a hand without.” *Id* at ¶ 55.

# Declining Real Median Household Income

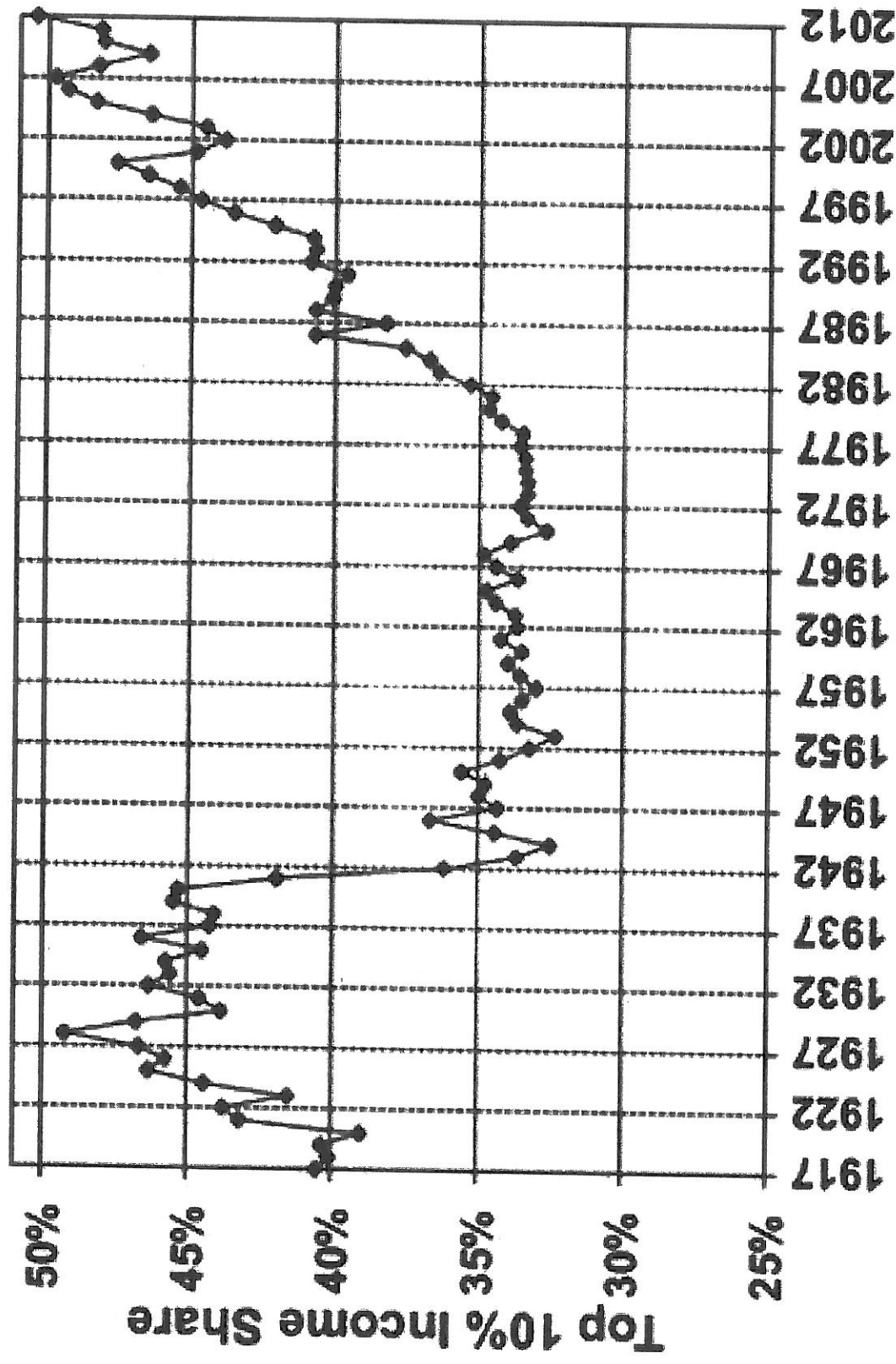
## Income

Even with a 9% spike in 2013, real median household income is still nearly 12% below its 1999 level



Source: U.S Bureau of Economic Analysis; income figures in 2014 dollars

# Top 10% Pre-tax Income Share in the US, 1917-2012



Source: Piketty and Saez, 2003 updated to 2012. Series based on pre-tax cash market income including realized capital gains and excluding government transfers. 2012 data based on preliminary statistics

## Who's Paying What?

How income and federal income taxes were distributed in 2014.

Groups of taxpayers by income	Income range	Share of total U.S. income	Share of total income tax
Bottom fifth	\$0 to \$24,200	4.5	-2.2%
	\$24,200 to \$47,300	9.3	-1.0
Middle fifth	\$47,300 to \$79,500	14.8	5.9
	\$79,500 to \$134,300	20.0%	13.4
Top fifth	Above \$134,300	51.3	83.9

Note: Total estimated U.S. income for 2014 is \$13.7 trillion. Total estimated U.S. individual income tax for 2014 is \$1.26 trillion. Income figures are higher than those shown on tax returns, as they include untaxed income due to employer-provided health coverage, municipal-bond interest, retirement plans and other items. Each quintile contains about 65 million people.

Source: Tax Policy Center

**Table 1. Hourly Wages—Private Sector vs. Public Sector**

<b>Hourly Rated Percentiles</b>	<b>Private Industry</b>	<b>State and Local Government</b>
10th	\$8.25	\$11.77
25th	\$10.69	\$15.52
50th (median)	\$15.87	\$22.27
75th	\$24.81	\$33.01
90th	\$37.89	\$45.31

**Table 5. Cost of Pension or Retirement Benefit: Private vs. Public Sector**

Type of Pension or Retirement Benefit	Private Employers, Cost Per Hour	State and Local Government, Cost Per Hour
Defined Benefit	\$0.45	\$3.10
Defined Contribution	\$0.56	\$0.33
Social Security	\$1.33	\$1.45
<b>Total Cost Per Hour</b>	<b>\$2.34</b>	<b>\$4.88</b>



# Newton's Third Law of Physics: "For Every Action, There is an Equal and Opposite Reaction"

## Pro-Union Legislation Enacted

- Card Check Law
- Fire Department Promotions Act
- Minimum Manning and Residency
- Mandatory Subjects of Bargaining
- Public Safety Employee Benefits Act
- Change the "Small Employer" Exemption from 35 Employees to 5 Employees
- Fire Department "No Substitution" Law
- First Contract Interest Arbitration for Units With Less than 35 Employees
- Requirement to Continue Checkoff of Union Dues and Fair Share Fees Following Expiration of Contract and Until a New Contract is in Place. Firefighter Probationary Period

## Pro-Management Legislation Enacted

- Two-Tier Pension Plans
- Exempt Several Thousand State Employees From Coverage Under FMLA



# **MAJOR ISSUES: FAIR SHARE**

- Governor Rauner's Executive Order
- Union litigation over Governor Rauner's Executive Order
- Federal litigation by Governor Rauner and three employees challenging the constitutionality of fair share clauses
- The Friedrichs Supreme Court case

# MAJOR ISSUES: FRIEDRICHS v. CALIFORNIA TEACHERS ASSOCIATION

- **Issue:** (1) Whether [\*Abood v. Detroit Board of Education\*](#) should be overruled and public-sector “agency shop” arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.
- Petition for Certiorari granted June 30, 2015
- Decision expected by close of Supreme Court’s current term in June of 2016

# MAJOR ISSUES: THE BUDGET CRISIS

- The State has been without a budget since July 1, 2015—the longest period of time in Illinois history
  - A deadlock between a Republican Governor and a General Assembly controlled by Democrats
- Illinois is not alone—Pennsylvania likewise has not had a budget since July 1, 2015—the longest period of time in Pennsylvania’s history
  - A deadlock between a Democratic Governor and a Legislature controlled by Republicans
- Even without a budget, the State continues to collect revenue and pay the salaries of State employees who are continuing to work, as well as pay for other expenses such as interest on debt, health care, day care, and other State functions.
  - The State’s decision to continue to pay employees without a budget in place had withstood judicial scrutiny to date
  - Oddly, the Governor Rauner and Comptroller Munger were on the same side of the public sector union in taking the position that State employees should continue to be paid; Attorney General Madigan has opposed such payments

# MAJOR ISSUES: THE BUDGET CRISIS— ITS CONTINUING IMPACT

- Monies are not being distributed to units of local government
- Illinois public sector colleges and universities have not received state funding since 7/1/15
- U of I President Killen told a House committee on 11/10/15 that the University is going through its case reserves at the \$75 million per month and that the University would be “very different” if there’s still no budget next spring
- Lottery winners are not being paid

## MAJOR ISSUES: THE BUDGET CRISIS—IMPACT OF POSSIBLE SOLUTIONS ON LOCAL GOVERNMENT

- Possible/Probable lost of Local Government Distributed Funds (LGDG)
  - The State collects sales taxes and income taxes, of which a portion by statute are paid to units of local government
  - Earlier this year Rauner proposed reducing LGDF by 50%
  - Since LGDF may make up as much as 10% or more of most local governments' annual revenues, any sizeable cut in the LGFD would have an significant impact on local governments

# MAJOR ISSUES: BUDGET CRISIS— IMPACT OF POSSIBLE SOLUTIONS

- The Illinois Senate has passed SB 318 that would broadly freeze **property taxes for two levy years**
  - If a majority of a government's EAV is located outside of Cook County, the two levy years are 2016 and 2017
  - If a majority of a government's EAV is located in Cook County, the two levy years are 2017 and 2018
- Broadly applies to all units of local government, including home rule municipalities
- Current status—Sponsored in House by Rep. Barbara Quinn Curie
- The final date for the House to take action has been extended three times, the last until 12/4/15
- Rauner has supported a property tax freeze, but has tied it to acceptance of other elements of his “turnaround agenda”

## MAJOR ISSUES: THE BUDGET CRISIS—IMPACT OF PROPERTY TAX FREEZE ON LOCAL GOVERNMENT

- It is a “hard freeze,” in that “no referenda [to increase the levy] may be held ... with respect to levy years 2016 and 2017”
- But there are a few exemptions, including:
  - Levies “made for public safety purposes”
  - Levies to pay interest and principal payments on bonds issued before March 1, 2016
- The impact of a two year property tax freeze would be significant, but its impact would vary considerably from jurisdiction to jurisdiction



## MAJOR ISSUES: STATUS OF STATE NEGOTIATIONS— BACKGROUND INFORMATION

- By law, all of the State's contracts covering 41 different bargaining units expired on June 30, 2015
- Of the State's approximately 46,000 employees, 93% are union represented, with AFSCME represents approximately 35,000
- A number of State's smaller bargaining units have settled contracts for the next four years

# MAJOR ISSUES: STATUS OF STATE NEGOTIATIONS—SETTLED CONTRACTS

- Teamsters contracts covering 4,600 employees statewide:
  - Four year contracts
  - Four year wage freeze, i.e., all employee pay levels frozen at current rate as of 7/1/15 for duration of contract
  - New performance incentive program to reward and incentivize high performing employees, with no less than 25% receiving some form of merit compensation; such performance bonuses subject to annual approval as part of State's overall budget
  - Reduction in payout for unused vacation from 75 days to 45 days for employees hired after 1/1/16
  - Maintenance of health benefits as part of the State's continued contributions to the Teamsters H&W Fund
  - Provides for "managed competition," i.e., the State has the right to subcontract if the bid submitted by an outside vendor is less than the bid provided by the Union for its bargaining unit members; all bids subject to review by a labor-management team

# MAJOR ISSUES: STATUS OF STATE NEGOTIATIONS—SETTLED CONTRACTS

- Trade Union Contracts
  - Four year contracts
  - Cover trades employees represented by the Operating Engineers, IAM, and Plumbers and Pipefitters
  - No details available pending ratification
  - According to the Governor's press release, the parties "pledged to form a long-term relationship to improve employer-labor relations in state government"

# MAJOR ISSUES: AFSCME

## NEGOTIATIONS—SB 1229

- Introduced at the behest of AFSCME and passed by the General Assembly
- As passed by the General Assembly, SB 1229 contained the following basic provisions:
  - State collective bargaining agreements expiring on or after June 30, 2015 but before July 1, 2019 that are not resolved by the expiration date shall be resolved through mediation or, if not successful, by interest arbitration under Section 14 of the IPLRA
  - Expired State contracts would remain in full force and effect could not be changed by action of either party without the consent of the other until a successor agreement is adopted
  - The right to strike is considered waived until the convening of the arbitration hearing.

# MAJOR ISSUES: SB 1229 VETOED AND VETO IS NOT OVERRIDEN

- Vetoed by Governor Rauner on 7/29/15
- Veto overridden in the Senate by a vote of 38-15 on 5/19/15,
- But the motion to override the Governor's veto failed to muster the necessary 3/5<sup>th</sup> votes in the House by two votes on 9/2/15
- Net result: The pre-existing impasse procedures in the ILPRA will continue to be applicable to negotiations between the State and AFSCME and any other units that do not have new contracts

# MAJOR ISSUES: STATUS OF AFSCME NEGOTIATIONS FOLLOWING VETO OF SB 1229

- Parties reportedly are far apart
  - Rauner has proposed a wage freeze for four years
  - Rauner has also proposed shifting significant health care costs to employees
- But the parties have agreed to a “tolling agreement” whereby all terms of existing contracts continue in full force and effect “until an impasse is reached”; absent mutual agreement that an impasse exists, the impasse issue will be submitted to the ILRB for resolution
- Since SB 1229 was vetoed, non-public safety employees represented by AFSCME and other non-public safety employees have the right to strike
- Public safety employees represented by AFSCME (e.g., prison guards) and other State public safety employees not represented by AFSCME (e.g., state police) have access to interest arbitration under Section 14 of the IPLRA

## MAJOR ISSUES: THE GOVERNOR'S LABOR RELATIONS "TURNAROUND AGENDA"

- Prevailing wages—exempt all units of local government, including school districts
- Amend the IPLRA and IERLA to permit public employees to exclude the many topics from negotiations, including the following:
  - Insurance
  - Wage increases
  - Outsourcing
  - Staffing
  - Seniority
  - Overtime

# MAJOR ISSUES: THE GOVERNOR'S LABOR RELATIONS "TURNAROUND AGENDA"

- "Right to Work" Zones
  - Rauner proposed permitting local governments to establish "right to work" zones in which it would be unlawful to require union membership or the payment of "fair share" fees as a condition of employment for both public and private sector employees
  - Significant questions exist concerning the legality of "right to work" zones for employees covered by the NLRA
  - In a preemptive move, Madigan introduced Rauner's proposal and it was rejected by a vote of 72-0, with all Republicans voting "present"
  - No "right to work" zone legislation is presently pending in the Illinois General Assembly



# MAJOR ISSUES: THE GOVERNOR'S LABOR RELATIONS "TURNAROUND AGENDA"

- Chapter 9 of the U.S. Bankruptcy Code provides the mechanism whereby municipalities and other units of local government can seek to reorganize their financial affairs
  - But units of local government cannot declare bankruptcy without a State's authorization
  - Approximately half the states have granted that right to units of local government, including California where several cities had declared bankruptcy (e.g., Vallejo, Stockton, and San Bernardino)
  - Currently, Illinois has not granted local governments the right to declare bankruptcy
  - See *Slocum Lake Drainage District of Lake County*, 336 B.R. 387 (N.D. Ill. 2006) (debtor failed to establish "that it is eligible to be a debtor under Chapter 9")
  - Rauner has proposed that local governments be given the right to initiate Chapter 9 proceedings following a neutral evaluation or the declaration of a fiscal emergency

# RAUNER'S "TURNAROUND AGENDA": PENSION REFORM

- Governor Rauner has proposed major pension reform that would affect virtually all of the State's Pension Systems
- Some of the key elements include:
  - For example, for newly hired police and fire employees, a new Tier 3 would be established with hybrid benefits, i.e., a combination of defined benefits and a 401(k)-style defined contribution
  - Consolidation of the states some 600 downstate police and fire pension systems under IMRF "for investment efficiency"
- Continuing constitutional issues in light of recent Illinois Supreme Court precedent

# MAJOR ISSUES: THE LOOMING ACA “CADILLAC TAX”

- Becomes effective for insurance years starting on or after January 1, 2018
- If the overall cost of health insurance is above the statutory threshold, the cost above the threshold is taxed at 40%
- The “Cadillac Tax” was projected to provide \$91 billion in revenue over 10 years to help offset the cost of the ACA
- **NOTE:** The threshold is measured against the overall cost of health insurance, regardless of how much the employer pays and how much employees pay

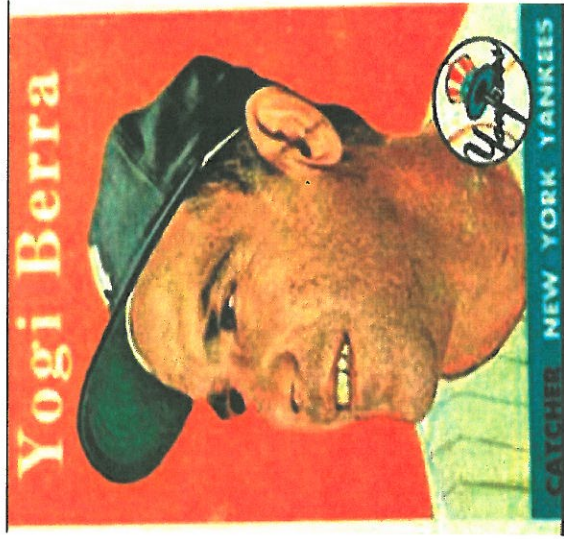
# MAJOR ISSUES: THE LOOMING ACA “CADILLAC TAX”

- The ACA Statutory Thresholds:

COVERAGE	NORMAL THRESHOLD	HIGH RISK THRESHOLD
INDIVIDUAL	\$10,200	\$11,850
FAMILY	\$27,500	\$30,950

# MAJOR ISSUES: THE LOOMING ACA “CADILLAC TAX”

- Emerging strategies to avoid imposition of the “Cadillac Tax”
  - Focus on the health plan structure rather than how much employees pay toward the cost of the premiums
  - E.g., increase deductibles, out of pocket maximums, RX co-pays, etc., in order to reduce the overall cost of the health plan
  - Consider reducing/eliminating HRAs since employer contributions to HRAs is included in determining the cost of a health plan
  - Health insurance reopeners that are triggered if it appears that the health plan’s cost will hit the “Cadillac Tax” thresholds



**“IT AIN’T OVER, TIL IT’S OVER.”**