

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:  
Frederic Burke  
(202) 523-7901

OPINION 81-63A  
SECTION 3(1), 514

JUL 24 1981

Ms. Katherine D. Woodruff  
Vice President, Legal Counsel  
Beacon Insurance Company  
P.O. Box 633  
Wilkesboro, North Carolina 28697

Dear Ms. Woodruff:

This is in reply to your letter of December 9, 1980, requesting an advisory opinion regarding coverage under title 1 of the Employee Retirement Income Security Act of 1974 (ERISA). Your letter requests resolution of two issues. First, whether the plans of seven Holiday Inns<sup>1</sup> funded by a trust created by each of the Holiday Inns are employee welfare benefit plans within the meaning of section 3(1) of ERISA. Second, whether section 514 of ERISA preempts the procedural requirements of the Florida Department of Insurance (Insurance Department) which calls for a predetermination by the Department of Labor (the Department) that an employee benefit plan is subject to ERISA.

The following is a summary of the representations in your letter. Premier Management Corporation (Premier) is the sole shareholder and management corporation of the seven concerned Holiday Inns. Each Holiday Inn has established an employee welfare benefit plan (collectively, the Plans) which provides medical benefits to eligible employees. The Plans are self-insured, i.e., the employee welfare benefit trust provides payment for or reimbursement of the whole or any part of the cost of medical expenses for covered individuals. In addition,

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<sup>1</sup> Holiday Inn, Civic Center - #59-1780943  
Holiday Inn, Georgetown - #57-0620894  
Holiday Inn, Jessup - #58-1079801  
Holiday Inn, Natchez - #64-0547115  
Holiday Inn, Scottsboro - #59-1922754  
Holiday Inn, Statesboro - #58-1079801  
Holiday Inn, I776 - #59-1647867

Beacon Insurance Company (Beacon) has filed with the Insurance Department, as a contract of "reinsurance," a proposed form of contract designed to provide excess loss coverage for each of the Plans. On March 31, 1980, Beacon was notified by the Insurance Department that it intended to disapprove the contract. Among the reasons cited for the disapproval was the Insurance Department's observation that no advisory opinion had been issued by the Department concluding that the Plans were subject to the provisions of ERISA. You state that the Insurance Department requires such a predetermination as a prerequisite to approval of reinsurance agreements.

Section 3(3) of ERISA defines the term "employee benefit plan" as "... an employee welfare benefit plan or an employee pension benefit plan or a plan which is both ...."

The term "employee welfare benefit plan" is defined in section 3(1) of ERISA as "... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions)."

Since the Plans provide a benefit among those described in section 3(1)(A) of ERISA and otherwise appear to meet the definition of an employee welfare benefit plan, the Plans would be employee welfare benefit plans within the meaning of section 3(1).

Section 514(a) generally preempts state laws which relate to employee benefit plans. Although section 514(b)(2)(A) provides an exception to this general rule for state laws which regulate insurance, banking, or securities, section 514(b)(2)(B) provides that even though state insurance laws are not superseded by ERISA, employee benefit plans are not to be deemed to be engaged in the business of insurance for the purpose of any state insurance laws.

We are unable to determine, on the basis of your submissions, whether the Insurance Department's procedural prerequisite referred to above is a law which regulates insurance for purposes of section 514(b)(2)(A). However, since the Plans are employee benefit plans covered by title I of ERISA, they cannot be deemed to be engaged in the business of insurance.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff  
Administrator  
Pension and Welfare Benefit Programs