

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-17A
Sec. 3(1), 3(5), 3(7), 3(6), 3(8)

MAR 29 1983

Mr. Paul K. Casey
Piper & Marbury
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201

Dear Mr. Casey:

This is in reply to your letter of February 12, 1982, requesting an opinion from the Department of Labor (the Department) that Ryland Group, Inc. Health Benefit Plan (the Plan) is an employee welfare benefit plan covered by title I of the Employee Retirement Income Security Act of 1974 (ERISA).

You state that under the Plan, Ryland Group, Inc. (Ryland) provides health benefits for certain of its eligible employees and those of its subsidiary, the Ryland Mortgage Company. Participation under the Plan is limited to those groups of employees. The Plan has been in existence for some time; however, effective August 1, 1981, Ryland provided for a self-funded arrangement for benefits not in excess of a specified amount. Aetna Life Insurance Company (Aetna) pays benefits in excess of such amounts under a group insurance policy. Under the document you submitted entitled "Health Benefit Plan," Ryland and Aetna agree on the aggregate amount, termed the "Policy-holder Liability Limit." The benefits Ryland pays are termed "Uninsured Benefits." Valid benefit claims in excess of the "Policy-holder Liability Limit" paid by Aetna are termed "Insured Benefits."

Pursuant to ERISA section 4, in pertinent part, title I of ERISA applies to any employee benefit plan if it is established or maintained by an employer engaged in commerce or in any industry or activity affecting commerce except those plans exempt under section 4(b). Some plans covered by title I of ERISA are exempted from certain parts thereof. The term "employee benefit plan," as defined in section 3(3) of title I of ERISA, includes employee welfare benefit plans.

ERISA section 3(1) provides that the term "employee welfare benefit plan" includes "... 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 benefits 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)." Health benefits of the type provided by the Plan are included in ERISA section 3(1).

The term "employer" is defined in ERISA section 3(5) as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and

includes a group or association of employers acting for an employer in such capacity." Ryland meets this definition with respect to the Plan for the purpose of providing benefits for its employees and those of its subsidiary.

The term "participant" is defined in section 3(7) of ERISA title I, in pertinent part, as "any employee or former employee of an employer, ... who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer ..., or whose beneficiaries may be eligible to receive any such benefit." The employees of Ryland and its subsidiary, Ryland Mortgage Company, are participants under the Plan.

The term "employee" is defined in section 3(6) of ERISA title I as "any individual employed by an employer." Because Ryland meets the definition of "employer" in ERISA section 3(5) with respect to the Plan, the individuals employed by Ryland and its subsidiary, Ryland Mortgage Company, meet the definition of employee in ERISA section 3(6).

The term "beneficiary" is defined in section 3(8) of ERISA title I as "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." Persons designated by Plan participants or by the terms of the Plan are "beneficiaries" under section 3(8) of ERISA title I.

Because the Plan was established and is maintained by Ryland, an employer within the meaning of section 3(5) of ERISA, to provide health benefits for Plan participants (solely eligible Ryland employees and employees of its subsidiary) and their beneficiaries, the Plan constitutes an employee welfare benefit plan as defined in ERISA section 3(1). An employer's program of benefits, which otherwise meets the definition in section 3(1) of ERISA, is deemed an employee welfare benefit plan by the Department without regard to whether the Plan provides benefits through insurance or otherwise.

Accordingly, the Department views the Plan as an employee welfare benefit plan covered by title I of ERISA both as it formerly provided for benefits and as it currently provides for benefits.

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

Sincerely,

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs