

U.S. Department of Labor

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



Reply to the Attention of:

OPINION NO. 83-19A
Sec. 408(a), PTE 79-41

APR 21 1983

Mr. Thomas A. Jorgensen
Calfee, Halter & Griswold
1800 Central Bank Building
Cleveland, Ohio 44114

Re: Figgie International Employee Welfare Benefit Plans
Identification Number: F-2256A

Dear Mr. Jorgensen:

This is in response to your letters of January 15, 1982, and July 13, 1982, concerning section 406 of the Employee Retirement Income Security Act of 1974 (ERISA) and the Class Exemption to Permit Sales of Employee Benefit Funding Contracts by Insurance Companies that are Substantially Affiliated with Employers Maintaining the Plans, 44 FR 46365. (PTE 79-41).

You have indicated that Figgie International Inc. (Figgie) maintains the Figgie International Inc. Disability Plan for Salaried Employees (the Disability Plan), which provides long and short term disability benefits to participating Figgie employees, and also maintains the Figgie International Inc. Family Protection Plan (the Family Plan), which provides health and life insurance benefits to eligible Figgie employees. The Disability Plan is currently funded through contributions from both employees and the employer to a trust in amounts considered sufficient on an actuarial basis. The Family Plan is also funded through employer and employee contributions to a trust. The trust purchases life and accidental death and dismemberment insurance through a contract with Travelers Insurance Co. (Travelers). Health and dental benefits, however, are payable directly by the Family Plan trust up to a certain dollar limit. Beyond this limit a "stop-loss" insurance contract has been purchased from Travelers which obligates Travelers to pay those health and dental benefits. Travelers is also paid a fee by the Family Plan for administering claims paid by the plan and to perform other administrative functions not directly paid for by Figgie.

Colony Insurance Company (Colony) is an insurance company wholly owned by a Figgie subsidiary and is licensed to do business in Rhode Island. Figgie now proposes to substitute Colony for Travelers as the insurer on the stop-loss coverage for health and dental benefits under the family Plan and to initiate similar stop-loss insurance coverage with respect to the Disability Plan. The gross premium considerations received by Colony for those coverages during any taxable year would not exceed ten percent of the gross premium considerations received by Colony for all lines of insurance during that taxable year. You state that no commissions would be paid to Colony with respect to the sale of this coverage and that the proposed transactions would otherwise satisfy the conditions of PTE 79-41.

You state that no state insurance statutory or regulatory provisions specifically state that stop loss insurance coverage is considered property or casualty insurance rather than life or health insurance. You mention in your letter of July 13, 1982, however, that the Rhode Island Department

of Insurance considers such coverage as casualty insurance. You have asked if, for the purposes of PTE 79-41, this stop loss coverage would be considered to be a contract for life insurance, health insurance or annuities.

PTE 79-41 provides a class exemption from sections 406(a), 406(b)(1) and (b)(2) of ERISA which allows insurance companies that have substantial stock affiliations with employers establishing or maintaining employee benefit plans to sell life insurance, health insurance or annuity contracts to these plans if certain conditions are met. In discussing the scope of the exemption, the preamble to PTE 79-41 states that "while the exemption does not cover all products issued by an insurance company in the ordinary course of its business, including among other things fidelity bonds and casualty insurance," the exemption does cover "the acquisition of contracts used to fund the payment of benefits" by an employee benefit plan.

It is the opinion of the Department that, based on the information supplied in your letters, the stop-loss coverage contracts you describe, which are purchased by and have benefits payable to the Disability Plan or the Family Plan, would be contracts which fund the payment of health and disability benefits of the plans and would be included in the term "life insurance, health insurance or annuity contracts" as that term is used in PTE 79-41.

Your letter does not indicate whether you also intend to have Colonial perform the administrative services which are currently supplied by Travelers. We wish to note that the provision of these services would be a separate transaction not encompassed by this letter. In this regard you are referred to section 408(b)(2) of ERISA and the regulations issued thereunder which explain when a party in interest may perform services for a plan.

This letter is an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of advisory opinions.

Sincerely,

Alan D. Lebowitz
Assistant Administrator for Fiduciary Standards
Pension and Welfare Benefit Programs