



October 27, 1993

Mr. William G. McKelvey
Medical Claims Service, Inc.
300 Congress Street
Quincy, Massachusetts 02169

93-30A
ERISA SECTION
3(1)

Dear Mr. McKelvey:

This is reply to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Tremont Nail Company Health Benefits Plan (the Tremont Plan) is an employee welfare benefits plan within the meaning of Title I of ERISA.

You advise that Tremont Nail Company (Tremont) adopted the Tremont Plan effective April 6, 1982, to provide group health coverage to its employees. Only employees of Tremont itself are covered under the Tremont Plan. You further advise that the Tremont Plan is self-funded although Tremont has obtained stop-loss coverage from General American Life Insurance Company. Claims under the Tremont Plan are sent to your company, Medical Claims Service, Inc. (MCS), which provides administrative services, including billing and claims payment, to the Tremont Plan as well as other clients.

Section 3(1) of Title I of ERISA defines the term "employee welfare benefit plan to include:

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 Relation Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

The terms "employer" and "employee" are defined in sections 3(5) and 3(6) of ERISA, respectively:

The term "employer" means 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.

The term "employee" means any individual employed by an employer.

From the material you have submitted, it appears that the Tremont Plan provides benefits among those identified in section 3(1), and that it was established and is maintained by an employer for its employees, as those terms are defined in section 3(5) and 3(6). Based on the information you have provided, it is the position of the Department of Labor (the Department) that the Tremont Plan is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. Moreover, because the Tremont Plan does not offer or provide benefits to the employees of two or more employers, the Tremont Plan is not a multiple employer welfare arrangement with the meaning of section 3(40) of ERISA.

We note that section 514(a) of ERISA generally preempts any state law or regulation which relates to an employee benefit plan covered under Title I of ERISA. Although section 514(b) provides exceptions to this general rule, including, at section 514(b)(6), exceptions that apply to multiple employer welfare arrangements, the Department considers the Tremont Plan to be a single-employer employee welfare benefit plan to which the exceptions in section 514(b)(6) do not apply.

This opinion applies only to the status of the Tremont Plan under Title I of ERISA, however, and, in providing this opinion, the Department is not taking a position on whether MCS itself is an employee benefit plan or a multiple employer welfare arrangement.

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

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations