

U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216



2 SEP 1977

Paul S. Berger, Esq.
Arnold & Porter
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

OPINION 77-62/63 A

404(a)(1)(c)

Dear Mr. Berger,

In response to your letter of August 1, 1977, and the exhibits attached thereto, we have written our answer on the enclosed photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts you have set forth in your letter.

In future correspondence please refer to our Reference No. C-3574A.

Sincerely,

Fred W. Stuckwisch
Director, Office of Regulatory
Standards and Exceptions

U.S. DEPARTMENT OF LABOR
Office of the Solicitor
WASHINGTON, D.C. 20210



2 SEP 1977

Theodore R. Groom, Esq.
Groom and Nordberg
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

OPINION 77-62/63 A

404(a)(1)(c)

Dear Mr. Groom:

In response to your letter of August 2, 1977, and the exhibits attached thereto, we have written our answer on the enclosed photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts you have set forth in your letter.

In future correspondence please refer to our Reference No. C-3574A.

Sincerely,

Fred W. Stuckwisch
Director, Office of Regulatory
Standards and Exceptions

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August 2, 1977

Advisory Opinion
Office of Regulatory Standards
and Exceptions
Pension and Welfare Benefit Programs
U.S. Department of Labor
Washington, D.C. 20216

Re: Request for Advisory Opinion
Submitted by The Equitable
Life Assurance Society of
the United States and Victor
Palmieri and Company Incorporated --
Diversification

Gentlemen:

Enclosed is a request for an advisory opinion submitted by The Equitable Life Assurance Society of the United States ("Equitable") and Victor Palmieri and Company Incorporated ("VPCO") with respect to the diversification of the assets of the Central States, Southeast and Southwest Areas Pension Fund ("Fund") under section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (ERISA).

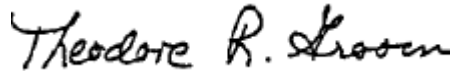
This request is part of the series of advisory opinion, ruling, and exemption requests that Equitable and VPCO are submitting in connection with the new arrangements for independent management of the Fund's assets. These arrangements, which are an integral part of the Labor Department's efforts to safeguard the Fund's assets for the payment of pension benefits are scheduled to go into effect on September 1, 1977, but will be delayed if the issues raised in this and the other requests are not resolved by September 1, 1977.

- 2 -

Accordingly, we are prepared to meet with the Labor Department with respect to this request, and to cooperate and assist the Department to the fullest extent possible to expedite the resolution of this matter.

If there are any questions with respect to the enclosed advisory opinion request, please contact the undersigned or Lawrence J. Hass of this firm.

Respectfully submitted,

A handwritten signature in dark ink, reading "Theodore R. Groom". The signature is written in a cursive, slightly slanted style.

Theodore R. Groom

Attorney for

The Equitable Life Assurance Society
of the United States

cc: Morton Klevan, Esq.

Enclosures

ARNOLD & PORTER

1229 NINETEENTH STREET, N. W.

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PAUL S. BERGER

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August 1, 1977

Advisory Opinion
Office of Regulatory Standards
and Exemptions
Pension and Welfare Benefit Programs
U.S. Department of Labor
Washington, D.C. 20216

Re: Request for Advisory Opinion Submitted
by Victor Palmieri and Company Incorporated
and The Equitable Life Assurance Society of
the United States - Diversification

Gentlemen:

Enclosed is a request for an advisory opinion submitted by The Equitable Life Assurance Society of the United States ("Equitable") and Victor Palmieri and Company Incorporated ("VPCO") with respect to the diversification of the assets of the Central States, Southeast and Southwest Areas Pension Fund ("Fund") under section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (ERISA).

This request is part of the series of advisory opinion, ruling, and exemption requests that Equitable and VPCO are submitting in connection with the new arrangements for independent management of the Fund's assets. These arrangements, which are an integral part of the Labor Department's efforts to safeguard the Fund's assets for the payment of pension benefits are scheduled to go into effect on September 1, 1977, but will be delayed if the issues raised in this and the other requests are not resolved by September 1, 1977.

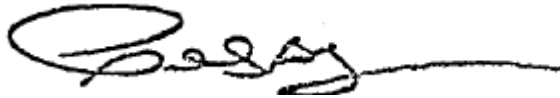
ARNOLD & PORTER

Advisory Opinion
August 1, 1977
Page Two

Accordingly, we are prepared to meet with the Labor Department with respect to this request, and to cooperate and assist the Department to the fullest extent possible to expedite the resolution of this matter.

If there are any questions with respect to the enclosed advisory opinion request, please contact the undersigned (872-6784), Peter Schmidt (872-6834), or Lauralee Matthews (872-6791) of this firm.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "P. Berger", with a long horizontal flourish extending to the right.

Paul S. Berger
Attorney for
Victor Palmieri and
Company Incorporated

Enclosure

In the Matter of:

The Equitable Life Assurance Society
of the United States
Victor Palmieri and Company Incorporated
The Central States, Southeast and
Southwest Areas Pension Fund

Request for Advisory Opinion on
Diversification of Fund Assets

It is respectfully requested that the Department of Labor issue an advisory opinion that the management of assets of the Central States, Southeast and Southwest Areas Pension Fund (the "Fund") by The Equitable Life Assurance Society of the United States ("Equitable") and Victor Palmieri and Company Incorporated ("VPCO") with respect to diversification as described herein will not be in violation of section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (the Act or ERISA).

Need for Requested Advisory Opinion

Pursuant to agreements dated June 30, 1977, between the Fund, Equitable and VPCO, Equitable will be the managing fiduciary of the Fund with specific overall investment responsibilities, including the setting of investment objectives and policies of the Fund, and Equitable and VPCO will be the investment managers of the Fund for real estate-related assets.

The appointment of Equitable as named fiduciary and the appointment of Equitable and VPCO as investment managers occur under highly unusual circumstances including the insistence by government agencies, after a long investigation of the Central

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States Fund, that the Fund turn control of its assets over to independent investment managers.^{1/}

A number of accusations have been made by members of Congress, government representatives and others to the effect that the Fund's assets have not been properly diversified. For example, in a hearing held on July 18, 1977, on the Teamsters Central States Pension Fund by the Senate Permanent Subcommittee on Investigations, the Chairman

1/ In his statement before the Senate Permanent Subcommittee on Investigations on July 18, 1977, Secretary of Labor Ray Marshall stated that:

From the standpoint of the Government, the arrangement had to satisfy several criteria. It had to provide for complete divestiture of trustee control, subject only to the obligations imposed by ERISA that the trustees be prudent in their choice of managers and that the trustees not be relieved of their duty to monitor. The arrangement also had to involve managers who were competent and who could withstand the public scrutiny. The contractual structure had to be one which was workable and which met ERISA's requirements. Most important, the arrangement had to be put in place as rapidly as possible.

Secretary of Marshall further stated that:

We believe that the contractual structure provides for a sound basis for proper future management of the Central States Fund's giant portfolio.

Repeatedly throughout his statement, Secretary Marshall testified that a central goal of the government was to preserve the Fund assets by obtaining independent investment managers.

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of the Subcommittee, Senator Jackson, stated:

Over the years - indeed, almost since its inception in about 1955 - the Fund's Trustees and Administrators have been the target of allegations of serious mismanagement of the Fund's assets. Serious questions have been raised concerning the soundness and extent of the Fund's real estate investments. Recent reports indicate that almost 90 percent of the Fund's assets have been invested in real estate ventures, contrary to sound pension fund investment practices*** (Emphasis added).

At that same hearing Mr. Eamon Kelly, Consultant to the Department of Labor, was reported by the New York Times, July 19, 1977 edition, as saying that 70 percent of the Fund's loan portfolio was in real estate, an amount he called "extraordinary," and that "five or ten percent would be usual."

Section 404 of ERISA requires among other things that a fiduciary shall discharge his duties with respect to a plan by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In the unusual circumstances of this case, it is important that the investment managers be confident that their management of Fund assets in accordance with the policy established by Equitable as managing fiduciary is consistent with the requirements of ERISA.

Also, from the standpoint of obtaining the maximum return on Fund assets in those situations where the investment managers determine that disposition of plan assets is appropriate, pros-

- 4 -

pective purchasers should not be under the misapprehension that Fund investment managers must sell Fund assets at sacrifice prices. Any such misapprehensions, if held on a widespread basis, could result in the inability of the managers to obtain the best possible prices for the Fund.

It is important to note that the interpretation requested does not ask the Department to determine whether any particular investment decision is prudent or whether any particular investment decision is necessary in order to meet the diversification requirements. What is sought is your agreement that to the extent that the investment managers make investment decisions pursuant to the investment objective that Equitable proposes to adopt, their decisions will be in accordance with the requirements of the Act.

Statement of Facts

Description of Parties

The Equitable Life Assurance Society of the United States is a mutual life insurance company whose principal office is located at 1285 Avenue of the Americas, New York, New York 10019. Its Employer Identification Number is 13-5570651. It is a New York corporation subject to the insurance laws of New York, and it is registered as an investment adviser under the Investment Advisers Act of 1940. Equitable is the third largest life insurance company in the United States; as of December 31, 1976 its assets exceeded \$22 billion.

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Victor Palmieri and Company Incorporated ("VPCO") is a corporation which has provided executive management services to various businesses and whose application for registration as an investment adviser under the Investment Advisers Act of 1940 is currently pending. It is presently managing assets and operating companies valued at more than \$1,500,000,000, including all the non-rail assets and operating companies of the Penn Central Transportation Company and those of Levitt and Sons, Inc. It has a principal office at 2021 K Street, N.W., Washington, D.C. 20006; its Employer I.D. Number is 95-2644662.

The Central States, Southeast and Southwest Areas Pension Fund is an employee pension benefit plan established and maintained pursuant to collective bargaining agreements between employers and certain affiliated unions of the International Brotherhood of Teamsters.^{2/} It was originally established in 1955 by trust agreement, amended from time to time thereafter, by and between Central Conference Teamsters, Central States Drivers Council, Southern Conference of Teamsters, and their affiliated local unions, and the Southeastern Area Motor Carriers Labor Relations Association; Southwest Operators Association; National Automobile Transporters Labor Council; Motor Carriers Employers Conference - Central States; Mortgage Employers Management Associations; Cleveland Draymen

^{2/} The Fund's Employer I.D. No. is 36-6044243; its Fiduciary No. is 36-6514764.

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Association, Inc.; and Northern Ohio Motor Truck Association, Inc.^{3/} In accordance with section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)), the Fund is jointly administered by ten trustees, consisting of an equal number of employee and employer representatives. Until now, the Trustees have had exclusive authority and responsibility for the management of the Fund's assets.

More than 16,000 employers make contributions to the plan pursuant to approximately 30,000 separate collective bargaining agreements involving approximately 300 local union organizations. For the Fund's plan year ending January 31, 1976, the Fund received in excess of \$300 million in employer contributions. The number of active and retired participants of the Fund as of January 31, 1976, was estimated to be in excess of 450,000, and for the plan year ending on that date, the Fund paid benefits in excess of \$210 million.

The Fund generally covers Teamster employment in 33 states located, as the name of the plan indicates, in the Central, Southeast and Southwest areas of the United States. As of January 31, 1976, the book value of all assets of the Fund was stated to be \$1,438,230,551. The Fund is believed to be the second largest multiemployer plan in the United States today.

Description of Fund Assets

As of the date that this application was being prepared, the process of delivering asset schedules, inspecting and verifying assets, determining the acceptability of assets for management,

^{3/} Central States, Southeast and Southwest Areas Pension Plan, effective January 1, 1976, Art. I, Sec. 2.

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allocating assets among managers and the like was at its inception. Consequently, neither Equitable nor VPCO had any significant first-hand knowledge concerning the assets of the Fund to be managed.

The latest available annual report for the Fund (Form 5500 for the fiscal year ending 1/31/76) indicates the following: Approximately 70 percent of the plan's assets consist of real estate-related assets. Approximately 30 percent of the plan's assets consist of corporate and other securities. The real estate-related assets consist of land and properties valued at approximately \$114 million and approximately 500 mortgage notes and collateral loans valued at \$832 million. (A number of the mortgage notes are secured by the same property so that the number of properties or projects with respect to which promissory notes are held is a lesser number.) The Form 5500 does not state the location of the various properties; nor does it state the location of the properties with respect to which mortgage notes have been issued.

We have been furnished information by the Fund with respect to real estate loans that indicates that as of March 31, 1977, the Fund had real estate loans relating to properties in 234 locations with a loan balance of \$909,277,928 distributed geographically as follows:

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CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND

ANALYSIS OF LOANS OUTSTANDING BY STATES

AS OF MARCH 31, 1977

REPORT DATED MAY 31, 1977

SUMMARY

<u>LOCATION</u>	<u>TOTAL</u>	<u>% TO TOTAL</u>
ALABAMA	\$ 661,526	00.07
ARIZONA	4,637,169	00.51
ARKANSAS	86,947	00.01
CALIFORNIA	257,565,908	28.33
CANADA	1,774,074	00.19
COLORADO	158,522	00.02
CONNECTICUT	11,002,990	01.21
FLORIDA	77,470,596	08.52
GEORGIA	1,204,617	00.13
ILLINOIS	65,811,303	07.24
INDIANA	32,929,049	03.62
KANSAS	68,486	00.008
LOUISIANA	5,189,581	00.57
MARYLAND	6,233,135	00.69
MASSACHUSETTS	5,518,170	00.61
MICHIGAN	12,029,505	01.32
MISSISSIPPI	2,203,227	00.24
MISSOURI	2,335,469	00.26
MONTANA	15,612	00.002
NEVADA	262,500,093	28.87
NEW HAMPSHIRE	1,140,174	00.12
NEW JERSEY	15,858,539	01.74

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<u>LOCATION</u>	<u>TOTAL</u>	<u>% TO TOTAL</u>
NEW YORK	27,551,196	03.03
NORTH CAROLINA	3,223,361	00.35
OHIO	18,079,233	01.99
OKLAHOMA	12,651,346	01.39
PENNSYLVANIA	26,332,915	02.90
PUERTO RICO	2,521,805	00.28
TENNESSEE	911,644	00.10
TEXAS	25,153,659	02.77
VIRGIN ISLANDS	2,467,298	00.27
VIRGINIA	18,265,891	02.01
WEST VIRGINIA	3,195,532	00.35
WISCONSIN	<u>2,529,356</u>	<u>00.28</u>
TOTAL	<u>909,277,928</u>	<u>100.00</u>

Our current information on property investments indicates that they consist primarily of undeveloped land, hotels, motels and resort complexes, office buildings and miscellaneous properties (such as dock space for ocean vessels), and that they are located throughout the United States including Florida, New York, Alabama, Missouri, Nevada and California.

Problems with Respect to Liquidation of Real Estate-Related Assets

Generally, the secondary market in large non-residential and non-guaranteed real estate mortgage loans is weak. Most purchasers

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of such loans acquire them to hold until maturity or liquidation by the borrower. Frequently, depending on the existing supply of mortgage loan money, current interest rates, market conditions and other factors, a substantial discount must be incurred if a loan is sold even if payments on the loan are current and the security is adequate. If there are difficulties with respect to the maintenance of the loan, the adequacy of the security, or the credit of the borrower, the amount of the discount that is ordinarily experienced upon disposition of the security is so large that most experienced holders prefer to foreclose on the mortgage or alter the terms of the agreements with the borrower in an effort to "work-out" the problem.

Property holdings are also generally considered to be illiquid although the degree of liquidity varies with the location of the property, the demand for the property and the cycle that is being experienced in the local area (office buildings, for example, tend to go through cycles of over-supply and under-supply).

General Observations on Diversification of the Central States Fund's Assets

There are several important points to be made with respect to diversification of the Fund's assets.

There is nothing imprudent, per se about a heavy concentration by a pension fund in fixed-dollar investments. Generally, the investment portfolios of life insurance companies, including the largest in the world, are heavily concentrated in

- 11 -

fixed income investments -- ordinarily consisting primarily of real estate mortgages, private placements, and to a lesser extent, publicly traded bonds. Generally, long term, investment grade fixed income investments are considered to be ideal assets to hold in connection with long term liabilities that are fixed in amount.

At this time, Equitable has insufficient information to establish any specific goals as to the desirable level of real estate-related investments. It appears likely, however, that Equitable will determine that the Fund should move in the direction of investing a larger portion of its portfolio in investments that are not real estate-related, at least until the investments of the Fund are more widely diversified.

If Equitable in fact determines to adopt such an objective it is likely that it would attempt to achieve it through a policy of attrition with respect to real estate-related assets. Under such an investment policy, no new funds, from whatever source, would be invested in real estate-related properties unless the investment seemed desirable in order, for example, to protect Fund interests in particular investments. Thus, as real estate mortgages are paid off, or, in those cases where it is deemed to be appropriate, the manager disposes of real estate mortgages or real properties by sales to third parties, available cash would be invested in areas other than real estate.

Decisions to retain or dispose of individual loans and properties (or, where it is clearly prudent for the manager to do so, to make further investments in such loans or properties) would be

made on the basis of economic and prudent management criteria generally, and not on the basis of a "need" to achieve further diversification of plan assets.

Moreover, contributions by employers in excess of benefit and administration costs currently generate a positive cash flow. For the Fund's plan year ending January 31, 1976, total employer contributions (\$303,611,182) exceeded total benefit and administration costs (\$225,786,898) by \$78,824,284.^{4/} Excess funds generated in this manner would also generally be invested in non-real estate-related investments.

As a result of these policies, it would be expected that the diversification objective of the Fund would be achieved gradually over a period of years and that there would not be an immediate, dramatic reduction in the proportion of Fund assets invested in real estate-related assets.

The speed by which such a gradual diversification process would take place depends upon a number of variable factors. These include (1) future expectations with respect to the level of employer contributions, the level of benefits, and the level of plan administrative costs; (2) the portion of the real estate-related portfolio that consists of troubled assets; (3) the portion of troubled assets that it is desirable to sell rather than to

^{4/} Annual Report (Form 5500) for the Central States, Southeast and Southwest Areas Pension Fund for the plan year ending January 31, 1976.

"work-out"; and (4) the distribution of real estate loans by vintage year, manner of repayment (e.g., whether the loan provides for a balloon payment or level payments) and similar factors.

In 1976 and 1977, three actuarial studies were undertaken for the Fund.^{5/} These reports indicate that the assets of the Fund will increase to the \$2.5 billion range by the early to mid-1980's assuming significant increases in the level of contribution rates and improvement of the rate of investment return on the Fund's assets. Whether there are significant increases contribution levels depends upon the outcome of future collective bargaining agreements. It is our understanding that the parties are currently engaged in negotiations to increase contribution rates and generally it is the intention of those involved to establish contributions at a level necessary to maintain the Fund on an actuarially sound basis.

The above projections indicate that even without any decrease in the size of the real estate mortgage loan and property portfolio, these assets will account for less than one-half of the Fund's overall assets by the early 1980's.

⁵ / These were by the Wyatt Company (January 13, 1977), Dan McGinn & Associates, Inc. (January 11, 1976) and American Actuarial Pension Consultants, Inc. (December 15, 1976). An earlier report by the Wyatt Company, dated June 4, 1976, had not yet been obtained by counsel at the time of this submission.

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Interpretation Requested

The management of Fund assets by the new managers in accordance with a diversification objective that recognizes the need to accomplish further diversification gradually, through a policy of attrition, and under which decisions to retain or dispose of individual loans and properties are made on a basis of economic and prudent management criteria generally, and not on a basis which requires further diversification at the cost of obtaining the best return on existing assets, under all the special circumstances of this case as described herein, will be in accordance with section 404(a)(1)(C) of ERISA.

Discussion of Law

Section 404(a)(1) of the Act provides as follows:

Sec. 404 (a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and --

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

As may be noted, the diversification requirement is stated separately in section 404(a)(1)(C).

On its face, the purpose of the diversification requirement is "to minimize the risk of large losses." It would seem clear from the structure of section 404 that the diversification requirement must be read in the context of all of the requirements of that section. Thus, it would be inconsistent with section 404, and patently wrong from the standpoint of proper asset management, to apply a requirement intended to minimize a potential future risk in a way which imprudently causes a current actual loss. Moreover, the statutory diversification rule itself states that it is not necessary to diversify investments for a plan if "under the circumstances it is clearly prudent not to do so." One of the circumstances present in this case is that the assets which the investment managers will have under management are all "inherited" assets--i.e., assets originally acquired by the previous Fund asset managers (primarily the Fund Trustees). In such circumstances, of course, the diversification and prudence requirements must be applied from the starting point of an established portfolio of assets. Based on the composition of that portfolio and all of the other circumstances described above, we submit that it would not be prudent to cause further diversification of the Fund's assets other than by the gradual process which is described in the proposed investment objective set forth above.

Language in the Conference Report accompanying ERISA indicates a rejection of any approach which would express any

mechanical or written rule with respect to the degree of diversification of the plan's assets. Rather, it is contemplated that fiduciaries will consider the particular needs of the plan under the circumstances surrounding particular investments. See Conference Report, page 304.

The requirements of the Act would seem to be consistent with state law under which the diversification requirement was generally treated as one aspect of the prudent man rule. See 3 Scott, Law of Trust, Sec. 228 (3d Ed. 1967); Restatement (Second) of the Trust, Sec. 228 (1967).

While the main thrust of the interpretation requested herein is that the new managers of Fund assets, having inherited those assets for management, will not violate the diversification requirements of the law under all of the circumstances specified herein, it is worthy of note that even under very different circumstances, the diversification requirement does permit relatively heavy concentrations of trust assets in single categories of investment.

This was certainly true under state trust law. An illustrative case is In re Adriance's Estate, where the court upheld the prudence of an investment of 40 percent of the assets of a trust fund in a first mortgage loan on improved real estate.^{6/}

^{6/} 145 Misc. 345, 260 N.Y.S. 173 (Surr. Ct. 1932). See also, e.g., In re First Nat'l Bank of City of New York, 25 N.Y.S. 2d 221 (Sup. Ct. 1941) (80 percent of estate invested in railroad stocks); In re Saeger's Estate, 340 Pa. 73, 16 A. 2d 19 (Sup. Ct. 1940) (50 percent of funds invested in mortgages); Restatement (Second) of Trusts §228, comment d (1957) (investment of 50 percent of funds of small estate in railroad bonds would constitute breach of diversification rule).

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An explanation, inserted in the Congressional Record, of the pension reform bill of the House Committee on Education and Labor (the bill that became Title I of the pension bill that passed the House) contained the following statement which recognizes this state law background:

To apply these principles in a particular case is ultimately a judicial function. In the past, fiduciaries have seldom been liable for investment losses unless the degree of concentration in a single security or type of security has exceeded 50%. Currently we would expect the courts to follow those cases which have applied a stricter standard, particularly as to equities of a single issuer. On the other hand, there appears to be no judicial indication that a fiduciary would ordinarily be prohibited from investing as much as 25% of trust assets in one type of securities, like real estate in a particular locale or securities of a particular industry. ^{7/}

A cursory look at the investment practices of major benefit plans today also indicates a fairly low degree of diversification by type of investment. For example, as of December 31, 1974, the investment portfolios of the ten largest private employee benefit plans in the United States averaged a direct investment of more than 50 percent in a single category of investment.^{8/}

^{7/} Material Explaining H.R. 12906 Together with Supplemental Views (To accompany H.R.2), 120 Cong. Rec. H 1094, H 1101 (Feb. 25, 1974). For a similar discussion of the ERISA diversification requirement, see Groom and Mazawey, ERISA-Fiduciary Responsibility, U.S.C. Law Center Twenty-Eighth Tax Institute (1976) at 991.

^{8/} See, generally, Pensions and Investments, Jan. 5, 1976 (report on 100 largest private retirement plans). In nine of the ten plans, the largest single category of investment was in common stock; the other plan was the Central States Fund.

Finally, the Conference Report accompanying ERISA suggests that, generally, it would be a violation of the diversification requirements to concentrate investments heavily in a single security, a single enterprise, or a single location, but it does not necessarily preclude the investment of a large portion of trust assets in a single category of investment where investments within that category are themselves widely diversified. See Conference Report, PP. 304-306.

Conclusion

Accordingly, based on the facts and circumstances of this case we believe that it is appropriate for the Department to rule that management of plan assets in accordance with an investment objective relating to diversification of the type described herein will not be violation of section 404(a)(1)(C) of ERISA.

If it is contemplated that the Department will not issue the requested advisory opinion, a conference is hereby requested. If any further information is required in connection with this request, please contact Theodore R. Groom or Lawrence J. Hass, attorneys for Equitable or Paul S. Berger, attorney for VPCO.

Respectfully submitted,

Paul S. Berger
Attorney for
Victor Palmieri and Company
Incorporated

Theodore R. Groom
Attorney for
The Equitable Life Assurance Society
of the United States

Response of the Director,
Office of Regulatory Standards
and Exemptions

2 SEP 1977

Based on the facts and representation stated in the

particularly the facts and representations contained on pages 6 through 13 of your letter, and without necessarily agreeing with the legal analysis set forth therein, it is the opinion of the Department of Labor (the Department) that the management of the real estate-related assets of the Central States, Southeast and Southwest Areas Pension Fund by The Equitable Life Assurance Society of the United States (Equitable) and Victor Palmieri and Company Incorporated (VPCO) under a policy whereby decisions to retain or dispose of individual loans and properties are made on a basis of economic and prudent management generally, and not on a basis which requires diversification of plan assets in situations in which principles of economic and prudent management would indicate that such loans and properties should be retained, does not contravene section 404(a)(1)(C) of the Employee Retirement Income Security Act of 1974 (ERISA).

The Department is not hereby ruling as to the prudence of any particular action which Equitable and VPCO propose to take. Further, the Department, in reaching this conclusion, has not determined that the original investment decisions which resulted in the portfolio which Equitable and VPCO will be assuming would meet the criteria of section 404(a)(1)(C) of ERISA.

Fred W. Stuckwisch
 Director, Office of Regulatory
 Standards and Exceptions