

SEP 9 1977

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

OPINION 77-68 A

3 (21) (A)

Dear Mr. Berger:

In response to your letter of July 29, 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-3567A.

Sincerely,

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

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July 29, 1977

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

Commissioner of Internal Revenue
Attention: E:EP:T
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Request for Advisory Opinion and Ruling
Submitted by Victor Palmieri and Company
Incorporated -- Definition of Fiduciary

Gentlemen:

Enclosed is a request for an advisory opinion or ruling with respect to the status of Victor Palmieri and Company Incorporated ("VPCO"), as a fiduciary pursuant to certain provisions in the contracts between the Central States, Southeast and Southwest Areas Pension Fund (the "Fund"), and VPCO, as an investment manager of the Fund.

This request is part of the series of ruling, advisory opinion and exemption requests that VPCO is submitting in connection with the new arrangements for independent management of the assets of the Fund. These

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Office of Regulatory Standards
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Commissioner of Internal Revenue
July 29, 1977
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new arrangements, which are generally believed to be an integral part of the government's efforts to reform the management of the Fund's assets, are scheduled to go into effect on September 1, 1977. Accordingly, it is absolutely essential that favorable action be taken on this request by that date. In order to expedite the processing of this request, we are prepared to meet with representatives of the agencies at any time to discuss it and to cooperate with and assist the agencies to the fullest extent possible.

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

Respectfully submitted,



Paul S. Berger
Attorney for
Victor Palmieri and Company
Incorporated

Enclosure

Request for Advisory Opinion and Ruling
Submitted by Victor Palmieri and Company Incorporated
Definition of Fiduciary

It is respectfully requested that the Department of Labor and the Internal Revenue Service issue an advisory opinion and ruling with respect to the status of Victor Palmieri and Company Incorporated ("VPCO") as a fiduciary under certain provisions in the contracts (described herein) between the Central States, Southeast and Southwest Areas Pension Fund (the "Fund"), the Equitable Life Assurance Society of the United States ("Equitable"), and VPCO. This request is submitted on behalf of VPCO pursuant to ERISA Procedure 76-1 (41 F.R. 36281, August 27, 1976) and Treasury Regulation section 601.201.

Effective on the closing date of agreements hereinafter described, Equitable will be the named fiduciary of the Fund with specified overall responsibilities for investment of the assets of the Fund. Equitable, VPCO and other organizations will be the investment managers for specific blocks of Fund

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assets with responsibility for the daily investment management decisions relating thereto. In order for the new fiduciaries to properly undertake these functions and to achieve the best investment results consistent with prudent management, it is necessary to obtain certain exemptions from, and interpretations with respect to, provisions of ERISA and the Code.

In this connection we describe and identify (a) the general structure of the Central States Plan; (b) the general background of the contractual arrangements -- i.e., -- those events and circumstances leading to the appointment of Equitable as named fiduciary and to the appointment of Equitable, VPCO and other independent organizations as investment managers; (c) VPCO and those organizations designated as investment managers of fund assets and their agreements with the Fund; and (d) the specific transactions here involved.

(a) The Central States, Southeast and
Southwest Areas Pension Fund

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.*/ It was originally established in 1955 by trust agreement, amended from time to time thereafter, by and between Central Conference of 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; Cartage Employers Management Associations; Cleveland Draymen Association,

*/ The Fund's Employer I.D. No. is 36-6044243 its Fiduciary No. is 36-6514764.

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Inc.; and Northern Ohio Motor Truck Association, Inc.*/
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 over 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

*/ Central States, Southeast and Southwest Areas Pension
Plan, Effective January 1, 1976, Art. I. sec. 2.

**/ We understand that negotiations between the Teamsters
and Employer Associations which result in the National
Master Freight Agreement effectively establish or set
the pattern for the applicable contribution rate in
most cases.

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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 multi-employer plan in the United States today.

(b) Background of the Contractual Arrangements

The Teamsters Central States Fund has been the subject of investigation by the Labor Department, the Justice Department, the Internal Revenue Service, the Securities and Exchange Commission and other government

*/ The information in the noted and immediately preceding paragraph is extracted from the Annual Report (Form 5500) of the Central States Plan filed by the Plan Administrator with the Internal Revenue Service and Department of Labor.

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agencies for a period of years. It has also been the subject of numerous Congressional inquiries and hearings. In published statements of government agencies, Congressional Committees, and the Fund's staff, and in other publicly-available information, there has been widespread criticism and allegation of civil and criminal abuse in connection with the management of the Fund's assets.

During the last year, the following governmental actions, among others, have been announced:

By letter dated June 25, 1976, the District Director of the Internal Revenue Service for Chicago revoked the Fund's tax exempt status.

Between the date of the initial revocation letter and March 14, 1977, the Internal Revenue Service delayed the application of the revocation four times while government attorneys and attorneys for the Fund engaged

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in a series of negotiations on problem areas.*'

On March 14, 1977, IRS and DOL issued a joint release (USDL 77-232, IR-1775) announcing the resolution of certain issues respecting asset management of the Fund "in a manner that meets the government's objectives." Among other matters the release stated:

The trustees of the fund have resolved to delegate to one or more investment managers (as defined in section 3(38) of ERISA) the control of all investments of the Fund.

Based on this and other matters announced, and subject to the engagement of professional investment managers and other conditions, IRS said that it would issue a determination letter requalifying the Fund and DOL said that it would terminate that portion of its investigation relating to procedures of the Fund respecting asset management.

*' See IR-1637 (July 8, 1976); IR-1664 (August 30, 1976); IR-1699 (November 26, 1976); IR-1763 (February 25, 1977). See also statement of Daniel Shannon, Executive Director, Central States Pension Fund, Before the House Ways and Means Oversight Subcommittee (March 21, 1977).

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Subsequently, on April 26, 1977, the IRS issued a determination letter announcing the qualification of the Plan and Fund for tax years beginning after December 31, 1976. This determination letter was subject to a number of conditions which included the following:

8. The Trustees placing all Fund assets and receipts, including funds derived from liquidation of existing investments (except funds reasonably retained by the Fund for (a) payment of plan benefits and (b) payment by administrative expenses), under direct continuing control of independent professional investment managers as defined by Section 3(38) of ERISA. The Trustees will adopt appropriate amendments to the trust agreement to accomplish this condition and will expeditiously transfer the assets to the investment managers. Recognizing the complexities of the large investment portfolio, the completion date for accomplishing delivery of the investment assets will be no later than December 31, 1977. However, the securities-related assets and the majority of the real estate-related assets will be made available to the investment managers for inspection, documentation and evaluation no later than June 30, 1977.

During this same period of time, representatives of the Fund were actively discussing arrangements with

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potential investment managers including Equitable and VPCO and on Friday, June 17, 1977, the trustees of the Fund announced their decisions to select Equitable as managing fiduciary with primary responsibility for the investment and management of all fund assets and to select Equitable, VPCO and others as investment managers.*/
The contractual arrangements, described in greater detail in the following paragraphs, were executed by the Trustees on July 7, 1977, effective as of June 30, 1977.

The selection of independent investment managers for the Fund was clearly regarded by the government as a crucial objective of governmental demands upon representatives of the Fund. This fact was attested to in testimony of Secretary of Labor Marshall before a subcommittee on the Senate Committee on Government

*/ Initially the Fund undertook negotiations with Crocker National Corporation, or an affiliate thereof, to be overall fiduciary of the Fund; when these negotiations could not be completed to the satisfaction of both parties, the negotiations with Equitable commenced.

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Operations on July 18, 1977, in which he indicated that the "primary goal had to be the preservation of the Fund assets," and in which he also stated:

"In many ways, the second objective (that day-to-day asset management be taken out of the hands of the Fund's trustees) was the most important. It was imperative that those who contributed to the Fund should not see their assets dwindle because of mismanagement.

* * *

At a meeting on March 11, the trustees decided to comply with the Government's demand. On March 12, we met with their representatives. On March 14, the Labor Department the IRS issued identical news releases announcing the terms of an agreement. The critical points were as follows: (1) that the trustees would reach agreement in principle as soon as possible with one or more independent investment managers.

* * *

We believe that the contractual structure [between the Fund and Equitable, VPCO and other independent managers] provides a sound basis for proper future management of the Central States Fund's giant portfolio. It removes entirely asset management control from the trustees, yet retains

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their authority and power to monitor performance. It provides sufficient security for the independent professional fiduciary and the investment managers to insure that they cannot be dismissed at the whim of the trustees, yet permits the trustees to dismiss them for cause. It leaves the affairs of a private sector fund in private sector hands, yet provides for lawfully authorized government assistance. It also contains a triggering device to insure government oversight in the event the trustees, Equitable or the investment managers need advice or help in matters relating to Fund management. And it contains great promise of ending, once and for all, the years of suspicion, allegations and demonstrable wrongdoing that have surrounded asset management of the Fund and the people associated with it."

- (c) Description of VPCO and the Contractual Arrangements With the Fund for the Management of Assets.
-

The Equitable Life Assurance Society of the United States ("Equitable") is a mutual life insurance company whose principal office is located at 1285 Avenue of the Americas, New York, New York 10019. Its Employer I.D. No. is 13-5570651. It is a New York corporation subject to the insurance laws of New York, and it is

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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 were a total of \$22,430,472,618. Prior to its execution of the June 30, 1977 contracts, with a minor exception described below, it had no affiliation or relationship with the Central States Fund.*/

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 nonrail assets and operating companies of the Penn Central Transportation Company and those of Levitt and

*/ The minor exception involves a ground lease between the Fund and Equitable which arose because of a mortgage foreclosure between Equitable and an unrelated third party.

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Sons, Inc. It has a principal office at 2021 K Street, N.W., Washington, D.C. 20006; its Employer I.D. No. is 95-2644662. It has had no prior affiliation with the Fund.

In order to carry out that part of their agreement with the Department and the Service of March 14, 1977, and the condition of the Fund's requalification letter requiring independent investment managers for the assets of the Fund, the Trustees of the Fund have entered into two agreements with VPCO.*/ These agreements (attached as Exhibits A and B) establish the following

*/ It might be noted that the Labor Department had an interest in the quality of the investment managers chosen. In the Senate testimony cited at page 10, Secretary Marshall set forth several criteria which the government required be met in the contractual arrangement divesting the Trustees of management responsibility. He stated one criterion as follows: "The arrangement also had to involve managers who were competent and who could withstand public scrutiny." Later in the same prepared statement, Secretary Marshall listed the investment managers which have been appointed, and stated, "These institutions and their management assignments were fully satisfactory to the Labor Department."

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arrangements for the management of the assets of the Fund:

The securities-related assets of the Fund (corporate stocks and debt securities, U.S. government securities, etc.) will be allocated for investment management initially to four investment managers: Equitable, and three others. Each investment manager will be allocated 25 percent of the total market value of the securities-related assets.

The real estate-related assets of the Fund (mortgages and properties), which comprise approximately 70 percent of the value of the assets of the Fund, will be allocated to Equitable and VPCO for investment management. Equitable will generally be responsible for the management of the assets located east of the Mississippi River (approximately one-third of the total value of the real estate-related assets), and VPCO will manage the assets located west of the Mississippi River (the remaining two-thirds of the Fund's real estate-related assets). VPCO will also be responsible for

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preparing a study evaluating the Fund's asset management staff.

Equitable will also assume the role of Fiduciary for the Fund, which will require Equitable to fulfill a number of functions in addition to serving as investment manager. Equitable will have exclusive authority and responsibility to monitor the performance of the other securities investment managers, to appoint and remove any or all of such managers, and to increase or decrease the portion of the securities-related assets allocated to such managers. Equitable cannot, however, allocate assets to itself for management if such allocation would increase the percentage of the securities-related assets under its management to above 25 percent. Further, when additional funds become available for investment in securities-related assets, it is Equitable's responsibility to allocate such additional assets to investment managers. Under the agreement, however, Equitable will receive one-fourth of such additional funds as may become available for new investment in securities-related assets.

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Equitable, together with the Trustees, is also responsible for monitoring VPCO's real estate investment management performance. However, within the initial five-year period of the investment management arrangements, VPCO can only be removed (by the Trustees) for cause and with the approval of the Secretary of Labor.

The investment objectives and policies to be followed by all of the Fund's investment managers are to be developed by Equitable. Equitable can also give specific guidelines to any of the securities investment managers with respect to the management of a particular portion of the Fund's assets.

While the other investment managers will be subject, for the most part, to Equitable's oversight, Equitable's performance as fiduciary and investment manager will be monitored by the Trustees. As in the case of VPCO, however, Equitable can be removed by the

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Trustees within the initial five-year period of the new arrangements, only for cause and with the approval of the Secretary of Labor.

At the present time, it is uncertain whether there will be any other Fund assets besides securities-related or real estate-related assets when Equitable and the other investment managers assume their responsibilities for the Fund. If there are "other assets" at that time, Equitable is empowered to appoint an investment manager (including itself) to manage such assets. In such a case, it is Equitable's intention to either appoint someone other than Equitable to manage the assets, manage the assets itself at no charge to the Fund, or manage the assets itself for compensation upon the approval of the Fund's Trustees.

These investment management arrangements encompass all of the assets of the Fund, except those assets held in the Fund's Benefit and Administration Account. The assets held in the Benefits and Administration Account are those which, in the

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determination of the Trustees, are needed by the Fund for payment of pension benefits, Fund administrative expenses, and an appropriate reserve therefor. The Benefits and Administration Account is managed by the Executive Director of the Fund under the supervision of the Trustees. Under the agreements, neither Equitable nor any of the investment managers have any responsibility with respect to the assets held in the Account.*

These investment management arrangements are scheduled to go into effect on the Closing Date of the agreements, September 1, 1977. This date can be extended by Equitable or VPCO if either determines that it has not received all necessary rulings, exemptions and opinions of governmental authorities. However, if the Closing Date does not occur on or before November 1,

*/ Subsequent references in this application to asset managers, investment managers, independent investment managers, etc. are not intended to include the manager of the Benefits and Administration Account.

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1977, the Trustees of the Fund can elect to rescind the agreements.

Equitable and VPCO believe that the granting of the exemptions applied for herein and in separate applications and the issuance of interpretations in response to various requests therefore are essential if Equitable and VPCO are to assume their responsibilities for the Fund.

(d) The Specific Transactions Involved

The Master Agreement (Exhibit A) between the parties provides that the responsibility for overall investment policy and goals lies with Equitable:

"The short term and long-term investment objectives and policies of the Fund shall be developed by Equitable with appropriate regard for the actuarial requirements of the Fund, and shall be submitted for review by the Trustees on a regular basis." Id. at § 1.06.

The contract, however, requires Equitable to establish an "Investment Managers Committee" ("IMC") and to consider certain input from the other investment managers:

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"In developing long-term investment objectives and policies pursuant to § 1.06 of this Agreement, Equitable shall take into consideration information, reports and advice requested and received from the investment managers. Equitable shall invite each investment manager to designate one of its executives to serve as a member of the Investment Managers Committee ("IMC"). Id. at Article X.

Thus VPCO will be furnishing Equitable with information, reports and advice which Equitable may use in discharging its duties with respect to plan assets generally. Neither furnishing this data nor being represented on the IMC should render VPCO a "Fiduciary" within the meaning of ERISA with respect to Fund assets which VPCO does not itself manage. A "fiduciary" is defined generally under ERISA as including the following

"a person (who) . . . renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so. . . ." ERISA § 3(21)(A)(ii).

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Regulations under this section provide:

"A person shall be deemed to be rendering 'investment advice' . . . within the meaning of section 3(21)(A) . . . only if: Such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property . . . pursuant to a mutual agreement, arrangement or understanding . . . between such person and . . . a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the person based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments." 29 C.F.R. § 2510.3-21(c).

While the activities and responsibilities of VPCO with respect to the IMC may meet some of the criteria set forth in the statutory and regulation definitions reproduced above, it is clear that VPCO's services will not "serve as a primary basis for investment decisions"

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with respect to any assets it does not manage. The contract itself states:

"The discussions of the IMC shall be informational in nature and nothing contained herein shall be so construed as to impose any constraint on the decisions of any investment manager or of Equitable as Fiduciary." Id. at Article X.

In these circumstances, VPCO's activities and responsibilities with respect to the IMC do not constitute such "rendering of investment advice" as would make VPCO a fiduciary with respect to assets it does not itself manage.

Staff Evaluation

The Master Agreement entered into between Equitable, VPCO, and the Fund also provides that VPCO shall perform certain evaluative functions with respect to the Fund's current asset management staff:

" . . . VPCO shall undertake and complete a study, to be submitted to Equitable, of the investment administrative functions of the Fund's

asset management staff, with a view to determining the extent to which, and the basis upon which, such functions should continue to be performed by such staff so as to promote efficiency and economy in the administration of the Fund's assets without impairing the efficiency or independence of any of the investment managers." MA § 8.07.

A "fiduciary" is defined generally under ERISA as including the following:

"a person [who] . . . has any discretionary authority or discretionary responsibility in the administration of [the] plan." ERISA § 3(21)(A).

VPCO's obligations, however, to evaluate the Fund's asset management staff, do not involve such discretionary authority or responsibility as to make VPCO a fiduciary with respect to assets which it does not manage.

Interpretive Bulletin 75-8 (29 C.F.R. § 2509.75-8) consists of a series of questions and answers issued by the Labor Department including the following:

"Q: Are persons who have no power to make any decisions as to plan policy, interpretations,

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practices or procedures, but who perform the following administrative functions for an employee benefit plan, within a framework of policies, interpretations, rules, practices and procedures made by other persons, fiduciaries with respect to the plan: . . . (11) Making recommendations to others for decisions with respect to plan administration?

"A: No. . . . a person who performs purely ministerial functions such as the types described above . . . is not a fiduciary because such person does not have discretionary authority or discretionary control respecting management of the plan, does not exercise any authority or control respecting management or disposition of the assets of the plan, and does not render investment advice" Id. at D-2.

VPCO's authority under the contract clause providing for the evaluation discussed above is extremely limited. It is to make a study of the Fund's staff, and to submit that study to Equitable. VPCO has no authority under this provision to make changes respecting the makeup or existence of the Fund's asset management staff, let alone any authority or control over the handling, disposition or acquisition of assets which it does not manage. VPCO's responsibilities are purely ministerial (i.e., to make a study and to report the results to Equitable), and are within a contractual framework

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providing for ultimate decisions about general plan administration to be made by persons other than VPCO.

Conclusion

Based on the facts and circumstances described above, it is requested that the Department and the Service issue an advisory opinion or ruling that neither the performance of its obligations or activities with respect to the Investment Managers Committee nor its performance with respect to the study to be made of the Fund's asset management staff will constitute VPCO a fiduciary with respect to Fund assets which it does not manage.

To the best knowledge of VPCO, the requests set forth herein are not currently being considered by any field office of the Service in connection with an active examination or audit of a tax return of VPCO. If it is contemplated that the agencies will not issue the requested advisory opinion or ruling, a conference is hereby requested. If any further information is required by the agencies in connection with this request, please contact the undersigned.

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Sincerely,

Paul S. Berger
Attorney for
Victor Palmieri and Company
Incorporated

Enclosures: Exhibit A, B -- Contracts dated June 30, 1977
Exhibit C -- Statement required by 26
C.F.R. § 601.201(e) (1)
Exhibit D -- Statement required by 26
C.F.R. § 601.201(e) (5)
Exhibit E -- Power of Attorney

Response of the Director,
Office of Regulatory Standards
and Exceptions

9 SEP 1977

Based on the facts and representations stated in the foregoing letter and the exhibits attached thereto, and more particularly the facts and representations contained on pages 19 through 25 of your letter, and without necessarily agreeing with the legal analysis set forth therein, it is the opinion of the Department of Labor that Victor Palmieri and Company Incorporated (VPCO) would not be a fiduciary as defined by section 3(21)(A)(ii) and (iii) of the Employee Retirement Income Security Act of 1974 (ERISA) with respect to assets of the Central States, Southeast and Southwest Areas Pension Fund (the Fund) which it does not manage, as a result of activities it would perform pursuant to Articles X and 8.07 of

the Agreement dated June 30, 1977 entered into between and among the trustees of the Fund, The Equitable Life Assurance Society of the United States (Equitable) and VPCO.

Section 3(21)(A)(ii) and (iii) of ERISA provides, respectively, that the term fiduciary means any person who renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of a plan, or has any authority or responsibility to do so; or who has any discretionary authority or discretionary responsibility in the administration of a plan.

29 CFR 2510.3-21(c) provides, in pertinent part, that a person shall be deemed to be rendering investment advice to an employee benefit plan within the meaning of section 3(21)(A)(ii) of ERISA only if such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing or selling securities or other property and such person either directly or indirectly has discretionary authority or control, whether or not pursuant to agreement, arrangement, or understanding, with respect to purchasing or selling securities or other property for the plan or renders any advice to the plan on a regular basis pursuant to a mutual agreement, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets.

VPCO's service on the Investment Managers Committee (IMC) and its furnishing of information, reports and advice to Equitable pursuant to Article X of the Agreement will not cause it to be a fiduciary under section 3(21)(A)(ii) and the regulations thereunder, because neither the date submitted by VPCO nor the discussions by the IMC will serve as a primary basis for investment decisions with respect to assets VPCO does not manage. In performing its evaluation of the asset management staff pursuant to Article 8.06 of the Agreement, VPCO will not exercise any discretionary authority or responsibility in the administration of the plan so as to cause it to be a fiduciary under section 3(21)(A)(iii).

We have conferred with representatives of the Internal Revenue Service (the Service) and they have advised us that the Service concurs with the Interpretation contained in this response insofar as it relates to section 4975(e)(3)(B) and (C) of the Internal Revenue Code of 1954 and 26 CFR 54.4975-9(c)(1) thereunder.

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