

**U.S. Department of Labor**

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



OPINION 80-47A  
514

AUG 7 1980

Mr. Joel D. Baumgarten  
Plan Administrator  
Aristar Management, Inc.  
P.O. Box 343781  
Coral Gables, Florida 33134

Dear Mr. Baumgarten:

This is in reply to your letter of January 29, 1980, requesting an advisory opinion regarding the preemption provisions of the Employee Retirement Income Security Act of 1974 (ERISA). In your letter you state that a subsidiary of Aristar, Inc. has acquired an insurance company that is based in New York and is regulated by the State of New York Insurance Department (the Insurance Department), and ask whether New York laws and regulations which regulate insurance companies may extend to employee benefit plans of those insurance companies where such benefit plans are covered under ERISA.

In connection with your request, we note that section 214 of the New York State Insurance Law (NYIL) provides, in part, that no domestic life insurance company may grant a pension to any officer, director, or trustee of such insurance company, or to any member of his family after his death, except that an insurance company may provide a pension to salaried officers or employees, and for life insurance benefits, pursuant to a retirement plan adopted by the Board of Directors of the insurance company and approved by the Superintendent of Insurance. Further, you included with your letter a copy of a circular, dated October 16, 1979, issued by the Insurance Department, which contains detailed guidelines for the approval of retirement plans of domestic life insurance companies. The circular expressly states, however, that the guidelines do not preclude the Superintendent of Insurance from approving a plan that does not meet the standards established by the guidelines or from disapproving a plan that conforms to the guidelines.

ERISA section 514 provides in part:

Act Sec. 514(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b). This section shall take effect on January 1, 1975.

(b)(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under section (4)(b) (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 506 of this Act.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State ...

Section 514(a) does not merely preempt state laws which conflict with ERISA but all state laws which relate to employee benefit plans. Thus, NYIL section 214 would be preempted by reason of section 514(a) of ERISA unless it is a "law ... which regulates insurance, banking, or securities" which is specifically saved from preemption by section 514(b)(2)(A) of ERISA.

In the Department's view, in the exercise of its authority to regulate insurance and insurance companies, a state may have a legitimate interest in certain aspects of employee pension plans that are established and maintained by an insurance company (such as aspects of such plans that may affect the financial stability of the sponsoring insurance company), notwithstanding that such plans also are subject to the requirements of ERISA. Accordingly, a state law (such as the approval requirement of NYIL section 214) that merely provides for the approval of the retirement plans of domestic life insurance companies by a state agency responsible for insurance regulation is a law regulating insurance which is not, on its face, preempted by ERISA.

Because the circular which you submitted with your request is, by its terms, not binding on the Insurance Department, the Department expresses no opinion regarding the possible preemptive effect of ERISA on specific criteria listed in the circular as sufficient for approval of insurance company retirement plans.

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

Sincerely,

Ian D. Lanoff  
Administrator  
Pension and Welfare Benefit Programs