

APPENDIX—Continued

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Invensys Siebe Automotive (UAW).	Carthage, TN	10/14/1999	NAFTA-3,521	Bellows & bellows assemblies.
SMF (Wkrs)	Danville, IL	10/13/1999	NAFTA-3,552	Oil.
Oxford of Monroe (Co.)	Monroe, GA	10/19/1999	NAFTA-3,523	Men's slacks.
Cambior Exploration (Wkrs)	Sparks, NV	10/20/1999	NAFTA-3,524	Gold mining.
Acme Steel (Wkrs)	Riverdale, IL	10/20/1999	NAFTA-3,525	Steel strapping.
IMC Plastics (Co.)	Tualatin, OR	10/20/1999	NAFTA-3,526	Plastics injected molded parts.
Cooper Energy Services (Wkrs).	Grove City, PA	10/21/1999	NAFTA-3,527	Pistone.
Townwear Garment (Co.)	Blairsville, GA	10/21/1999	NAFTA-3,528	Garments.
Cerplex Group (Wkrs)	Corvallis, OR	10/22/1999	NAFTA-3,529	Repair printers.
Deluxe Corporation (Wkrs) ..	Springfield, MA	10/14/1999	NAFTA-3,530	Programming & processing services.
Cone Mills (Co.)	Cliffside, NC	10/25/1999	NAFTA-3,531	Denim fabric.
Cone Mills (Co.)	Henrietta, NC	10/25/1999	NAFTA-3,531	Denim fabric.
Cone Mills (Co.)	Forest City, NC	10/25/1999	NAFTA-3,531	Denim fabric.
Fluid Process Systems (Co.)	El Paso, TX	10/25/1999	NAFTA-3,532	Water treatment systems.
Sweetwater Walls Industries (Co.).	Sweetwater, TX	10/19/1999	NAFTA-3,533	Work clothing.
Robett Manufacturing (Wkrs)	Riceville, TN	10/26/1999	NAFTA-3,534	Men & boys camouflage clothing.
Aalfs Manufacturing (Wkrs) ..	Lemars, TN	09/30/1999	NAFTA-3,535	Denim jeans.
Spartan Mills (Wkrs)	Spartanburg, SC	10/27/1999	NAFTA-3,536	Unfinished cloth.
Glamis Gold (Co.)	Valmy, NV	10/26/1999	NAFTA-3,537	Gold mining.
U.S. Sack (Wkrs)	Grand Junction, CO	10/26/1999	NAFTA-3,538	Polypropylene bulk bags.
Stupp Bros. (Co.)	Baton Rouge, LA	10/28/1999	NAFTA-3,539	Steel line pipe.
Columbiaknit (Wkrs)	Portland, OR	10/28/1999	NAFTA-3,540	Mens & women's outerwear.
Fag Bearings (Co.)	Joplin, MO	10/29/1999	NAFTA-3,541	Automotive hub bearings.
Mobius (Wkrs)	Eugene, OR	11/01/1999	NAFTA-3,542	Store display fixture.
Avery Dennison (Co.)	Greenboro, NC	11/01/1999	NAFTA-3,543	Clothing tags.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99-46; Exemption Application No. D-10514]

Grant of Individual Exemption; Plumbers and Pipe Fitters National Pension Fund (the Fund), Located in Alexandria, VA

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested

persons to the respective application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is:

- (a) Administratively feasible;

- (b) In the interests of the plan and its participants and beneficiaries; and
- (c) Protective of the rights of the participants and beneficiaries of the plan.

Plumbers and Pipe Fitters National Pension Fund (the Fund), Located in Alexandria, VA

[Prohibited Transaction Exemption 99-46 Application No. D-10514]

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code* shall not apply, effective October 9, 1997, to the transfer to the Fund from the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union), a party in interest with respect to the Fund, of the Union's limited partnership interests in Diplomat Properties, Limited Partnership (the Partnership), the sole asset of which is the Diplomat Resort

* For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

and Country Club (the Property); and to the transfer to the Fund of the Union's holding of stock in Diplomat Properties, Inc., the corporate general partner of such Partnership, in consideration for a capital contribution by the Fund to the Partnership in the amount of \$40 million dollars, plus reasonable costs incurred by the Union in purchasing the Property, and in consideration for the release of a certain loan obligation of the Partnership which was guaranteed by the Union and collateralized by Union assets; provided that:

(1) The transaction was a one-time transaction;

(2) An independent fiduciary (the I/F) which has the following qualifications acted on behalf of the Fund:

(a) The I/F is an individual, group of individuals, or a business entity which has substantial experience and expertise in the commercial real estate field;

(b) Neither the I/F nor any of its affiliates have any ownership or other interest in the Union or its affiliates, nor does the Union or any of its affiliates have any ownership interest in the I/F or its affiliates; and

(c) Neither the I/F nor its affiliates engages in any business transactions with the Union or its affiliates.

(3) Prior to the Fund entering the transaction, the I/F reviewed and approved the terms of the transaction, determined that the transaction was an appropriate investment for the Fund, that the amount paid by the Fund to acquire ownership of the Property through the Partnership was appropriate and fair, that the total costs incurred were necessary for the acquisition of the Property and were reasonable, and that the transaction was in the best interest of the Fund and its participants and beneficiaries;

(4) The fair market value of the Property held by the Partnership was determined by an independent, qualified appraiser, as of the date of the transaction;

(5) The Fund paid no fees or commissions as a result of the transaction; and

(6) The terms of the transaction were no less favorable to the Fund than those it would have received under similar circumstances when negotiated at arm's length with unrelated third parties.

Effective Date: The exemption is effective October 9, 1997.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the

Notice in the **Federal Register** on May 29, 1998. All comments and requests for hearing were due by August 3, 1998.

During the comment period, the Department received four (4) requests for a hearing. The Department has considered the concerns expressed by the individuals who have requested a hearing. After due deliberation, the Department does not believe that any issues have been raised by the commentators which would require the convening of a hearing.

The Department received letters from 65 interested persons commenting on the proposed transaction. At the close of the comment period, the Department forwarded copies of these letters to the applicant for response. The applicant responded in writing to the various concerns raised by the commentators. A description of the comments and the applicant's responses thereto are summarized below.

1. Many commentators questioned whether the acquisition, holding, and redevelopment of the Property by the Fund was an appropriate investment. In this regard, some commentators opined that real estate is a poor investment and that either hotels, in general, and/or the Property, in particular, which is the subject of the exemption, are poor real estate investments. Further, some commentators were concerned about the prudence and/or risks associated with the acquisition of the Property by the Fund in what commentators perceived to be a declining hotel market. Other commentators expressed concerns about the rehabilitation costs of the Property and questioned whether the Fund could make a profit where previous owners of the Property had failed. In this regard, a number of commentators noted that the cost to the Fund to repair and redevelop the Property would likely exceed the \$40 million expended by the Fund in acquiring the Partnership which holds title to the Property. Finally, a commentator was concerned about the loss to the Fund that might result from damage to the Property because of hurricanes.

Other commentators were concerned about conflicts of interest arising in connection with the use of the Property or the operations of the Partnership. In this regard, it was alleged by several commentators that the purchase of the Property was an effort to divert plan assets to benefit private individuals. Another commentator alleged that the Property was acquired for the personal use of union officials. One commentator noted that "there would be too great of a chance of graft and unwise decisions to enter in this venture." Another commentator questioned whether

"outside investors" could become involved in the Partnership.

In response to these concerns raised by the commentators, the trustees of the Fund (the Trustees) have agreed to a number of additional requirements, including the retention by the Fund of an independent named fiduciary to oversee the Fund's investment in the Property. A term sheet dated October 13, 1999, attached as part of the representations made to the Department in a letter dated October 29, 1999 on behalf of the Trustees, details these additional requirements and the retention of the independent named fiduciary. In this regard, the Trustees will undertake such actions as are required, including amendment of the Trust Agreement, and entering into a services contract, to appoint Actuarial Sciences Associates (ASA) as named fiduciary of the Fund account which holds the Partnership, Diplomat Properties, Inc. (the general partner of the Partnership) (the GP), and other assets of the Fund either invested in or awaiting investment in the Property (collectively, the Diplomat Account).

ASA's services contract shall be subject to approval by the Secretary of Labor (the Secretary). The performance of ASA's services and responsibilities shall commence on the date when this exemption is executed by the Secretary or her delegate. Upon the effective date of the services contract, ASA or its designees will be substituted for the current board and officers of the GP. The parties agree to provide to the Secretary such information related to the Diplomat project as may be requested in order to perform her duties under the Act.

Pursuant to the terms of such services contract, ASA shall have full and complete authority, control, and discretion with respect to the construction, use and/or sale of the Property and all of its components, including, but not limited to, authority to cease or modify any construction, sell or lease any component of the project or the entire project, terminate or modify any or all existing contractual relationships, enter into new contracts and perform whatever other tasks might be necessary to maximize the financial return to the Fund of its investment in the Partnership. ASA shall (and shall have the authority to) retain on its own behalf or on behalf of the Fund or the Partnership, or continue the retention of, such individuals and entities as ASA determines are necessary and appropriate for ASA to carry out its responsibilities under the services contract consistent with its fiduciary

duties under the Act with respect to the Fund.

ASA shall not be responsible for fiduciary breaches, if any, which occurred prior to its appointment, but shall use its best efforts to mitigate any losses arising from such breaches. ASA shall be responsible for any losses caused by its own breaches of fiduciary responsibility, and by the breaches of others as provided in the Act or as set forth below.

ASA will be retained for a period of three (3) years from the date of the issuance of the exemption unless removed by the Trustees with the concurrence of the Department or pursuant to a court order for cause. In this regard, "cause" shall mean a material breach by ASA of its services contract with the Fund, a breach of fiduciary duty under the Act by ASA with respect to the Fund, a change in control of ASA, or the bankruptcy or insolvency of ASA. If ASA is removed during such three-year period, the Trustees shall appoint a replacement named fiduciary that is acceptable to the Department and shall designate such acceptable replacement and arrange for its acceptance of responsibility prior to the effective date of the removal. ASA may not resign during such three-year period prior to the designation of a replacement acceptable to the Department.

The Trustees will instruct the custodian of the Fund to transfer to the Diplomat Account any additional amounts requested by ASA for the operations or expenses of the Diplomat Account or the Partnership, so long as the total amount of Fund assets at risk (i.e., the Fund's investment in the Partnership plus any recourse debt in excess of the value of the assets in the Partnership) does not exceed 13 percent of the Fund assets at the time of the transfer.

ASA will be reimbursed for expenses to the extent permitted under the Fund's guidelines for expense reimbursement (the Guidelines). The auditor for the Fund will review annually ASA's expense reimbursement for compliance with the Guidelines.

ASA will request and Department will expeditiously consider a separate exemption that will permit ASA to act as a QPAM with respect to the Diplomat Account, to be retroactively effective as of the date that ASA's appointment is effective.

ASA will be permitted to retain, or continue the existing services of, such third party service providers as it deems appropriate. To the extent that ASA retains or continues to retain any such service providers to carry out any

functions currently contained in the contracts of Saylor, Driscoll, and Structure Tone, Inc., with respect to the Diplomat Account, the Partnership or the successor(s) thereof, ASA shall indemnify the Fund for any losses or damages resulting from the fiduciary breaches of such service providers which occur subsequent to the appointment of ASA. ASA shall not be precluded from obtaining indemnification from any such service providers or from exercising any rights that the Fund has for indemnification under its existing agreements with any service providers and collecting any damages owed to the Fund. To the extent that the Fund, directly or indirectly, maintains a controlling interest in the underlying assets of the Partnership, or any successor(s) thereof, ASA will continue to exercise control over the Partnership, its successor(s) and any general partner thereof, including acting as or designating the board of directors and officers of said Partnership, successor(s) or general partner. In the event that the fiduciary responsibility provisions of the Act no longer apply to the underlying assets of the Partnership or its successor(s), and in the event that the Fund, directly or indirectly, maintains a controlling interest in the Partnership or its successor(s), ASA or such designees for whom ASA agrees to take full responsibility, shall make, and shall retain full responsibility for: all decisions regarding the purchase, sale, acquisition, exchange, lease, or encumbrance or sale and leaseback of any real property owned by the Partnership and of any personalty for which the transaction cost, or series of related transaction costs, exceeds \$1,000,000; all decisions regarding brand affiliation for the hotel or any other piece of Partnership Property; and all decisions to assign or lease general management responsibility over the Partnership Property or any major component thereof.

2. One commentator asked why Chadwick, Saylor & Co. Inc. (CSC) had rendered its September 1997 opinion "without all of the information that was available." In response, the applicant represents that although the Partnership's consultants and advisors were in the process of finalizing certain economic and financial models for the project, CSC's opinion was rendered utilizing all "available" information. Further, the applicant maintains that there was sufficient information at the time for CSC to determine that the transaction was a prudent investment for the Fund.

3. One commentator asked what would happen if the exemption were not granted. Another commentator asked why the transaction did not include a contingency clause relating to the requested prohibited transaction exemption. In response, the applicant expressed its understanding that in the event the exemption were denied, the Fund's transaction with the Union must be rescinded, pursuant to the Department's regulations and applicable law. Further, the applicant stated that the terms of the Fund's acquisition of the Property did not contain a contingency clause, because the applicant believed and intended that the transaction would satisfy the Department's requirements for an administrative exemption.

4. One commentator questioned whether the transaction was a way for the Fund to finance alleged losses of the Union Labor Life Insurance Company (ULLICO) in which the Fund had invested some of its assets. In response, the applicant represents that the Fund acquired the Property solely as an investment for the exclusive benefit of participants and beneficiaries of the Fund. It is represented that the transfer of the Property to ULLICO, then to the Union, and finally from the Union to the Fund was in no way intended to finance ULLICO financial losses, if any, nor were such transactions related to any investment that the Fund has in several ULLICO separate accounts and other investment vehicles.

5. A number of commentators stated that their pensions and/or the cost-of-living increases to their pensions were not large enough. Several individuals requested increased "medical" benefits, even though the Fund does not provide such benefits, or asked for a transfer of pension plan assets to a medical fund. One commentator objected to the denial by the Board of Trustees (the Trustees) of a pension disability claim.

The Trustees believe that the Prohibited Transaction Exemption Procedure is not the appropriate venue in which to address concerns about the administration of the Fund, benefits levels, or individual benefit claims. Accordingly, the Trustees have made no attempt to address these comments.

6. One commentator expressed opposition to the acquisition of the Property by the Fund on the basis that a pension fund sponsored by the United Association Local 777, an affiliate of the Union, improperly invested the assets of such pension fund. After researching the public records, the applicant informed the Department that consent judgments were entered on May 5, 1998, against a broker and the trustees of the

Connecticut Plumbers and Pipefitters Pension Fund (the Connecticut Fund) for violations of the Act involving imprudent investment in risky mortgage-backed securities. The applicant maintains that, as a legal matter, the Connecticut Fund is a separate and distinct entity, and the activities of its broker and trustees are unrelated to the Fund and the Union and, therefore, should not affect the requested exemption.

Accordingly, based upon the representations made by the applicant, the written comments received in response to the proposal and the applicant's responses, including the agreement to undertake the actions described in the term sheet, the Department has determined to grant the exemption. In this regard, the Department notes that the additional undertakings agreed to by the applicant, including the appointment of ASA as an independent fiduciary, were material factors in the Department's determination to grant a final exemption. Finally, the Department notes that the representations and term sheet contained in the applicant's letter dated October 29, 1999, supercede any of the applicant's earlier responses to the comments received by the Department to the extent inconsistent.

The comments submitted by the commentators to the Department and the applicant's response thereto have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on May 29, 1998, 63 FR 29453.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219-8883 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 8th day of November, 1999.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of

records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99-04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before December 30, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99-04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge \$.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle