

INS 8

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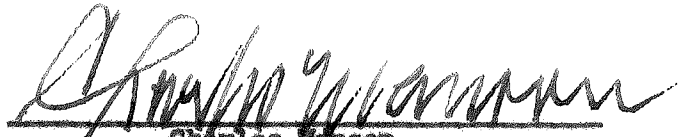
STATE OF WISCONSIN }
DEPARTMENT OF INSURANCE } ss.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Charles Manson, Commissioner of Insurance and custodian of the official records of said department, do hereby certify that the annexed rules relating to employe welfare funds were duly approved and adopted by this department on June 28, 1962.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Capitol, in the city of Madison, this 28th day of June, A. D., 1962.


Charles Manson
Commissioner of Insurance

ORDER OF THE DEPARTMENT OF INSURANCE

Adopting Rules

Pursuant to authority vested in the Commissioner of Insurance by section 200.03(2), Wis. Stats., the Commissioner of Insurance hereby adopts rules as follows:

Sections Ins 8.02 to 8.09, inclusive, of the Wisconsin Administrative Code are adopted to read:

Ins 8.02 "Employe welfare funds", definition of. (1) An "employe welfare fund" within the meaning of section 211.02(1), Wis. Stats., is any fund, program or plan of employe benefits which:

(a) is operated, at least in part, through means of a trust fund or other fund, and

(b) is established or maintained, whether directly or through trustees, by a labor organization or jointly by labor organizations or by an employer or jointly by employers or by one or more labor organizations together with one or more employers, and

(c) provides for "employe benefits" within the meaning of section 211.02(2), Wis. Stats., and

(d) receives, has received, or is entitled to receive payments, other than income from investments, by any employer doing business in this state, or for the benefit of any person employed in this state.

(2) The words "trust fund or other fund" as used in section 211.02(1), Wis. Stats., and subsection (1)(a) of this rule have the following meaning:

(a) If money, property or assets of any type are separately maintained and administered for use under a fund, program or plan of employe benefits, the fund, program or plan operates through means of a "trust fund or other fund". This is true whether benefits are paid directly out of the trust fund or other fund or are provided through insurance purchased by trustees or managers of the fund, program or plan.

(b) A fund, program or plan of employe benefits under which benefits are paid to participants directly out of the general funds of an employer or labor union without the actual segregation of monies or other assets to meet liabilities for benefits does not operate through means of a "trust fund or other fund". This is true although a balance sheet reserve account may be maintained for such estimated liabilities. A common plan of such type is a plan of continuation of wages in the event of sickness or accident.

(c) A fund, program or plan of employe benefits in which all benefits are provided through insurance contracts issued to an employer or labor union under which premiums are paid out of the general funds of such employer or union directly to the insurance carrier without the interposition of trustees or a fund, although employes may contribute through payroll deductions or otherwise, does not operate through means of a "trust fund or other fund".

(d) A fund, program or plan in which benefits are provided through an insurance contract issued to a labor union or employer association, under which premium payments are made by employers or employes to a designated administrator or to the union or association which administers the plan as a segregated fund or as an activity

separate from the general funds or general books of account of the union or association, operates through means of a "trust fund or other fund". On the other hand, a life insurance program maintained by a union for its members as a part of the general revenues and disbursements of the union without segregating receipts and disbursements of the program in a separate bank account and without maintaining records separate from the general books of account of the union would not operate through means of a "trust fund or other fund".

(3) Under certain forms of insurance or annuity contracts available to pension plans, insurers guarantee that benefits will be paid to participants only to the extent that a fund or account held by them will be sufficient to provide them. Under such contracts, amounts paid to the insurer for credit to the deposit fund are not allocated to reserves for the participants until withdrawn from the deposit account to purchase benefits. Deposit administration contracts with variations thereof, such as immediate participation guarantees, are a common form of contract under which such unallocated funds or accounts are held. Also unallocated funds may be held to supplement or convert, at retirement, reserves under other forms of insurance or annuity contracts. This is common under forms of life or group permanent contracts. Funds, programs or plans of employe benefits which provide benefits through such unallocated funds or accounts held by insurers operate through a "trust fund or other fund". Such funds, programs or plans constitute employe welfare funds under the law irrespective of the parties and methods through which premiums are paid under subsection (2) of this rule.

Ins 8.03 "Employee benefits", definition of. (1) The term "employee benefits" under section 211.02(2), Wis. Stats., must be broadly construed. The definition covers both benefits and services. Section 211.02(2), Wis. Stats., declares that the types of benefits covered by the law are not limited to those specifically enumerated therein.

(2) Section 211.02(2), Wis. Stats., enumerates four classes of benefits as being among the forms of benefits covered by the law. These are:

- (a) Medical, surgical or hospital care or benefits
- (b) Benefits in the event of sickness, accident, disability or death
- (c) Benefits in the event of unemployment
- (d) Retirement benefits

(3) Other types of benefits commonly offered to employees which are covered by the law include:

- (a) Deferred benefits from profit-sharing, savings or stock bonus plans.
- (b) Benefits upon termination of employment
- (c) Vacation benefits

Ins 8.04 Registration, requirements of. (1) Every employe welfare fund within the meaning of section 211.02(1), Wis. Stats., must be registered with the commissioner of insurance within 3 months after the first day on which coverage is provided for any person employed in Wisconsin. For purposes of computing the time in which to register a fund in which the plan is back-dated or provides coverage to participants retroactively, the plan should be construed to provide coverage as of the date of its formal establishment.

(2) Registration shall be made on Form No. 71-3. A fund which covers more than 25 persons employed in Wisconsin at the time of registration must file a copy of the following documents, if applicable, as a part of such registration:

- (a) Plan, as amended to date
- (b) Trust indenture, as amended to date
- (c) Any separate contract or other instrument under which the fund is administered
- (d) Collective bargaining agreement(s), or provisions thereof relating to the fund, as currently in force
- (e) Any booklet or other written material descriptive of the fund which is given or made available to employees

(3) An employe welfare fund which does not cover more than 25 persons employed in Wisconsin at the time of registration is not required to submit copies of fund documents when registered; however, if subsequently it provides coverage to more than 25 persons employed in Wisconsin, the fund documents must be submitted with the annual statement for the first year in which more than 25 persons employed in Wisconsin are covered.

Ins 8.05 Registration, cancellation of. When a registered employe welfare fund is merged or consolidated with another fund, or is terminated, or ceases to cover any person employed in Wisconsin, the trustee of such fund must file written notice of such action with the commissioner of insurance within 30 days after its occurrence. Such notice shall be verified by the oath of the trustee of the fund, or if there is more

than one trustee, then by the oaths of at least two trustees. If more than 25 persons employed in Wisconsin were covered by such fund, the notice shall include a certified true copy of the resolution of the trustees or of the board of directors of the employer or similar authority under which such action was taken.

Ins 8.06 Annual statement and notice of number of fund participants in Wisconsin, when required. (1) An annual statement on Form No. 71-9 must be filed under section 211.08, Wis. Stats., by the trustee of every employe welfare fund subject to chapter 211, Wis. Stats., for each fiscal year of the fund during which coverage is provided to more than 25 persons employed in Wisconsin. The annual statement must be filed within 5 months after the close of the fiscal year of the fund.

(2) The trustee of every employe welfare fund subject to chapter 211, Wis. Stats., within 5 months after the close of its first fiscal year during which less than 26 persons employed in Wisconsin were covered, must file a written notice with the commissioner of insurance that less than 26 persons employed in Wisconsin participated in the fund during such year. Such notice will remain in effect for all subsequent years until the first year thereafter during which more than 25 persons employed in Wisconsin participate at any time. The filing of a notice under this rule does not relieve the trustee of a fund from the responsibility to file an annual statement for any year during which more than 25 persons employed in Wisconsin participate in the fund. If an annual statement must be filed for any year after a notice has been filed, the procedure of filing a notice will again apply for the first year thereafter during which coverage is provided to less than 26 persons employed in Wisconsin.

Such renewed notices shall have the same force and effect as an initial notice.

(3) When an employe welfare plan which covers more than 25 persons employed in Wisconsin is terminated and fund assets are completely distributed or paid over to another fund, an annual statement must be filed under section 211.08, Wis. Stats., within 5 months after the date of final distribution of the fund. Such annual statement must report the affairs of the fund from the date of the last previous annual statement and must reflect the final accounting of the fund for the transfer or distribution of all its assets.

(4) When an employe welfare plan is terminated but assets are held for distribution at a later date, the fund remains subject to chapter 211, Wis. Stats., as long as at least one Wisconsin employe participates. Annual statements must be filed by the trustee of any such fund for every year in which more than 25 persons employed in Wisconsin participate at any time. Notice under subsection (2) of this rule must be given for the first fiscal year in which less than 26 persons employed in Wisconsin participate. Notice of termination of the fund must be given in accordance with Ins 8.05.

Ins 8.07 "Persons employed in this state". The term "persons employed in this state" as used in chapter 211, Wis. Stats., includes both active employes in Wisconsin and retired or terminated persons participating in the fund who were employed in Wisconsin at the time of retirement or other separation. The term includes anyone whether or not a resident of Wisconsin, who is employed at a place of business maintained by an employer in the state of Wisconsin; however, an employe who is not

regularly employed at a place of business maintained by an employer shall be deemed to be employed in Wisconsin if service is performed solely within Wisconsin, or if his service is performed partly within Wisconsin and partly outside of Wisconsin and

(1) his service outside of Wisconsin is incidental to his service within Wisconsin (for example, is occasional, temporary or transitory in nature) or

(2) his base of operations is in Wisconsin, or

(3) if there is no base of operations, then the place from which his service is directed or controlled is in Wisconsin.

Note: Example: A salesman who spends 20% of his hours of employment in Wisconsin and who works from a base of operations in Wisconsin would be "employed in this state". A salesman who spends 50% of his hours of employment in Wisconsin but who works from a base of operations outside of Wisconsin would not be "employed in this state". A salesman whose service is performed primarily in Wisconsin (service outside of the state is only occasional) is "employed in this state" even though his base of operations is in another state or he is directed or controlled from another state.

Ins 8.08 Availability of information to fund participants. The following information shall be available to all fund participants, including covered employees and their beneficiaries, contributing employers and participating labor organizations, in the office of the fund at all reasonable hours: (In the case of a fund which is administered solely by an employer or union, a separate fund office may not be maintained. In such case the following information must be available at the

principal office of the employer or union in this state.)

(1) Copy of registration statement under section 211.03, Wis. Stats., including all current fund documents specified by such statement. A fund which covers less than 26 persons employed in Wisconsin must maintain such documents although it is not required to file them with the commissioner of insurance under Ins 8.04.

(2) Copies of annual statements under section 211.08, Wis. Stats., for the 3 latest fiscal years.

(3) Copy of latest report of examination of the fund by the commissioner of insurance.

Ins 8.09 Preservation of records. The trustee of every employe welfare fund subject to chapter 211, Wis. Stats., shall maintain the books and records of such fund in sufficient detail to permit a thorough examination of the operations of such fund by the commissioner of insurance for a period of 5 years after the close of the fiscal year of such fund in which the entries in such books or records are made. Such books and records shall include all journals, ledgers, checks, vouchers, invoices, receipts, bank statements, minutes, resolutions, agreements, contracts and other records of original or final entry. The preservation of photographic reproductions of such records shall constitute compliance with the requirements of this rule.

The rules contained herein shall take effect on August 1, 1962, as provided in section 227.026 (1), Wisconsin Statutes.

Department of Insurance


Charles Manson
Commissioner of Insurance

Dated: June 28, 1962