

IN THE SUPREME COURT OF THE  
STATE OF FLORIDA

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CASE NO. 74,479

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FILED  
SID J. WHITE

OCT 4 1989

IN RE: FAO NO. 89001  
NONLAWYER PREPARATION OF  
PENSION PLANS

CLERK, SUPREME COURT  
Deputy Clerk

THE FLORIDA BAR STANDING COMMITTEE  
ON THE UNLICENSED PRACTICE OF LAW

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SUPPLEMENTAL STATEMENT OF  
TOWERS PERRIN FORSTER & CROSBY, INC.

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STATEMENT OF THE CASE AND OF THE FACTS

A. Interest Of Towers Perrin Forster & Crosby, Inc.

Towers Perrin Forster & Crosby, Inc. ("Towers Perrin") is a Pennsylvania corporation doing business in Florida, as well as in all fifty States and many foreign countries. Towers Perrin is a management consulting firm with extensive activities in the areas of advising clients on compensation and employee benefit plans. It is among the largest private employers of actuaries in the world, and has been serving clients since 1934. Towers Perrin has about 5,000 employees working in over 50 locations worldwide. Towers Perrin has an office in Tampa, Florida, and serves many clients in Florida.

B. Issue Presented and Summary of Proposed Opinion

Towers Perrin herewith submits this Supplemental Statement regarding the Proposed Advisory Opinion ("Proposed Opinion")<sup>1</sup> issued by the Standing Committee on the Unlicensed Practice of Law ("UPL Committee"), dated July **28**, 1989. Towers Perrin submits this Supplemental Statement in further support of the arguments set forth in its joint brief submitted with William M. Mercer-Meidinger-Hansen, Inc. ("Mercer"). Towers Perrin incorporates herein by reference the Issue Presented and

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<sup>1</sup> A copy of the Proposed Opinion is attached hereto as Appendix 1.

Summary of the Proposed Opinion as presented in its joint brief with Mercer.

As set forth in that brief, serious legal issues surround the adoption of the Proposed Opinion. This Supplemental Statement provides additional support for Petitioners' arguments in the form of an explication of the standards employed by Towers Perrin on a daily basis that may prove useful in the Court's deliberations. This supplemental information is particularly useful as the Record is devoid of testimony by a representative of a national benefits consulting firm.

#### SUMMARY OF ARGUMENT

Towers Perrin believes that the Proposed Opinion goes well beyond the Court's decision in The Florida Bar v. Turner, 355 So.2d 766 (Fla. 1978), and fails to recognize the important role that nonlawyers play in the design and administration of employee benefit plans. The Proposed Opinion also fails to recognize the changes in the employee benefit area, the goals of the federal government in encouraging the private provision of employee benefits, and the federal regulatory guidelines already in place.

ARGUMENT

THE ABA OPINION PROVIDES THE PROPER BALANCE TO  
PROTECT THE PUBLIC INTEREST.

In May of 1977, the American Bar Association's Standing Committee on the Unauthorized Practice of Law issued Informative Opinion A of 1977 concerning pension, profit-sharing and other compensation arrangements.<sup>2</sup> The ABA Opinion revised a 1961 opinion to reflect increased activity in the employee benefit area following passage of the Employee Retirement Income Security Act of 1974 ("ERISA").

The ABA Opinion is based on Canon 3 of the ABA Code of Professional Responsibility and sets forth the Standing Committee's interpretation of professional guidelines in a series of areas of concern to Towers Perrin. Accordingly, Towers Perrin has adopted a specific set of guidelines under its official Policies, Procedures and Guidelines Manual for its managers.

Under these guidelines, Towers Perrin instructs all its consultants not to represent themselves as lawyers or act as substitutes for lawyers by offering to perform legal services such as final legal drafting, representing employers in court or before government agencies (except to the extent permitted to practice before the IRS), or interpreting

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<sup>2</sup> A copy of the ABA Opinion is attached hereto as Appendix 2. The ABA Opinion, although issued as "final" by the Standing Committee on May 1, 1977, was not submitted to or approved by the ABA House of Delegates, as is customary for such opinions.

statutes, regulations or rulings. The consultants may, of course, offer actuarial, plan design and plan administration consulting services, and help a client's legal counsel draft documents or prepare legal filings. When a Towers Perrin consultant is assisting with the preparation of legal documents, the materials are addressed to the attorney or the client's inside counsel. In some cases, counsel will ask Towers Perrin to draft summaries of key plan provisions and/or initial drafts of appropriate documents. Such items are labeled clearly: "Draft for Review of Counsel."

The Towers Perrin manual goes on to explain that if a consultant is asked to represent the client before the IRS or other government agencies and the possibility exists that Towers Perrin could become involved in matters of a legal nature, the consultant should make certain the client's attorney is at the meeting. It should be noted, however, that in addition to lawyers and certified public accounts, who are authorized to practice before the IRS on all tax matters, enrolled actuaries may practice before the IRS with respect to:

- o 401 (qualifications of employee plans),
- o 403(a) (relating to whether an annuity plan meets the requirements of section **404(a)(2)**),
- o 404 (deductibility of employer contributions),
- o 405 (qualification of bond purchase plans),
- o 412 (funding requirements for certain employee plans),

- 413 (application of qualification requirements to collectively bargained plans and to plans maintained by more than one employer,
- 414 (containing definitions and special rules relating to the employee plan area),
- 4971 (relating to excise taxes payable as a result of an accumulated funding deficiency under section 412),
- 6057 (annual registration plans),
- 6058 (information required in connection with certain plans of deferred compensation),
- 6059 (periodic report of actuary),
- 6652(e) (failure to file annual registration and other notifications by pension plan),
- 6652(f) (failure to file information required in connection with certain plans of deferred compensation), and
- 6692 (failure to file actuarial report).

Towers Perrin believes that under the **ABA** Opinion, it may advise employers with respect to the various types of employee benefit plans that are available, which employees should contribute, retirement dates, death benefits, funding and other factors of a financial and economic nature. Towers Perrin, however, maintains that under this same standard, it should not:

- advise an employer with respect to fiduciary obligations created by the plan,
- undertake to resolve legal issues with respect to the employer's specific circumstances,



- o offer an opinion on or interpretation of the legal consequences of existing trust instruments, contracts or other agreements,
- advise the employer on the specific legal consequences of financial transactions, forms of property ownership, etc.,
- provide legal memoranda for the employer.

Obviously, it is difficult to draw precise boundaries for each profession's proper sphere of activity. The public interest is best served if each profession recognizes the unique capabilities of each of the other professions involved in our service areas, each member of each profession uses good judgment in not arrogating to himself authorities or responsibilities which are beyond his own profession's acknowledged area of competence, and all professionals promote full cooperation among the professions on behalf of their clients.

#### CONCLUSION

Towers Perrin respectfully requests that this Court reject the Proposed Opinion. In the alternative, this issue should be sent to a special ad hoc committee to study the matter further and make recommendations to the Court.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing SUPPLEMENTAL STATEMENT OF TOWERS PERRIN FORSTER & CROSBY, INC. has been furnished to the following attorneys of record by U.S. Mail, first class postage prepaid, this 2d day of October, 1989.

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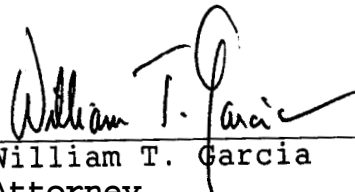
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