U.S. Department of Labor Pension and Welfare Benefits Administration
Washington, D.C. 20210

DEC 19 1988

88-16A
Sec. 403(c), 404(a)(1)

Mr. Gregory Ridella
Chrysler Corporation
P.O. Box 1919
Detroit, MI 48288

Re: Chrysler Corporation and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
Identification Number: F-3674A

Dear Mr. Ridella:

This is in response to your letter of July 7, 1986, in which you request, on behalf of the Chrysler Corporation (Chrysler) and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), an advisory opinion under the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an opinion that a certain understanding contained in a Letter Agreement between Chrysler and the UAW with respect to Chrysler's Pension Fund (the Plan) does not violate the aforementioned provisions of ERISA. The Letter Agreement is substantially similar to one entered into in 1979 by Chrysler and the UAW.

You have represented that the Plan's assets are held in trust and that its investments are exclusively managed by investment managers. In order to assist the investment managers by providing an expanded range of information concerning investment opportunities, Chrysler and the UAW agreed to establish an Investment Advisory Committee (the Committee) consisting of three members appointed by Chrysler and three members appointed by the UAW. The powers and authority of the Committee are limited to (1) selecting and recommending to the Plan's investment managers communities in which residential mortgage financing could be made available by the Plan, and (2) annually recommending to the investment managers opportunities for investments in debt obligations of nonprofit nursing homes, nursery schools, federally qualified health maintenance organizations, hospitals or similar nonprofit institutions.

At least two members of the Committee appointed by Chrysler and two appointed by the UAW shall be required to constitute a quorum for any Committee meeting. Decisions of the Committee shall be by a majority of votes cast. In the event of a tie vote, the matter shall be referred to the Impartial Chairman of the Appeal Board under the collective bargaining agreement applicable to

production and maintenance employees of Chrysler, who shall cast the deciding vote. In addition, the Committee members serve without compensation.

The new Letter Agreement is substantially the same as its predecessor. The understanding between Chrysler and the UAW is that up to 5% (as opposed to 10% under the old agreement) of Chrysler's annual contribution to the Plan that is available for investment after deducting the portion of the benefits payable under the Plan for the year which is in excess of the investment income earned by the Plan may be invested in (1) residential mortgages in communities where there are substantial numbers of UAW members, and (2) debt obligations of nonprofit institutions described above located in communities where there are large concentrations of UAW members. As mortgages and debt obligations are amortized, the principal portion of such payments to the Plan will be considered as amounts available for further investment in such mortgages and debt obligations.

Under the Letter Agreement, it was also agreed that the UAW may submit to the investment managers of the Plan annually a list of not more than ten companies (increased from five under the old agreement) which conduct business in South Africa but which have not supported the elimination of racial discrimination in South Africa through their endorsement of Leon H. Sullivan's "Amplified Guidelines to South African Statement of Principles" dated May 1, 1979, with the recommendation that the investment managers refrain from investing any of the funds of the Plan in the securities of such companies. Such recommendation shall not apply with respect to any assets of the Plan that are invested in interests in a common or collective trust fund or pooled investment fund maintained by any of the investment managers or to any insurance contract constituting an asset of the Plan.

Under the Agreement, the investment managers of the Plan shall exercise investment judgment with respect to recommendations received by them from the Committee and the UAW. The investment managers have the responsibility to secure, over the long term, the maximum attainable total return on investment consistent with the principles of sound, prudent pension fund management. They are expected to discharge their duties solely in the interest of Plan participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries, to avoid prohibited transactions, and to meet all other fiduciary responsibilities imposed by ERISA or other applicable law. Also, they are expected to discharge their duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in a conduct of an enterprise of a like character and with like aims. It is intended that the investment managers of the Plan shall continue to have full investment discretion. Accordingly, if, in the judgment of the investment managers, any recommendation of the Committee or the UAW should not be implemented because in the exercise of their investment responsibilities they conclude that the recommended action is not appropriate or it otherwise does not meet the

standards of prudence required or is not consistent with the fiduciary obligations and responsibilities of the investment managers, they shall not implement the request and shall so inform the Committee or the UAW.

Chrysler and the UAW have agreed not to attempt to influence the investment managers regarding any specific recommendations of the Committee or the UAW.

Section 406(a)(1)(A) and (B) of ERISA prohibits a fiduciary with respect to a plan from causing the plan to engage in a transaction, if he or she knows or should know that such transaction constitutes a direct or indirect sale or exchange, or leasing, of any property, or lending of money or other extension of credit between the plan and a party in interest with respect to the plan. Section 406(a)(1)(D) prohibits a transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

Section 406(b)(1) and (2) of ERISA prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his or her own interest or for his or her own account, or acting in his or her individual or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or its participants or beneficiaries.

Section 3(14) of ERISA defines a party in interest with respect to a plan to include a fiduciary and an employee of an employer any of whose employees are covered by the plan.

Sections 403(c) and 404(a)(1) of ERISA require, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries.

We have stated that, to act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his or her plan. Because the investments you propose to recommend for the Plan would, if implemented, cause the Plan to forego other investment opportunities, such investments would not be prudent if they provided a plan with less return, in comparison to risk, than comparable investments available to the plan, or if they involved a greater risk to the security of plan assets than other investments offering a similar return.

We have construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in a particular investment, a fiduciary must ordinarily consider only factors relating to the interests of

plan participants and beneficiaries in their retirement income. A decision to make an investment may not be influenced by non-economic factors unless the investment, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan.

You have represented that, pursuant to the Letter Agreement concerning investment in certain mortgages and non-profit entities, the recommendations of the Committee and the UAW are advisory only, and that the investment managers retain exclusive discretion with respect to investment decisions. To the extent that the Committee merely brings investment opportunities to the attention of the investment managers which, although perhaps not generally explored by certain traditional investment managers, may nonetheless be prudent and potentially profitable, it appears to the Department that the use of the Committee concept contained in the Letter Agreement would not be inconsistent with the requirements of sections 403(c) and 404(a)(1) of ERISA.

Similarly, it appears that the recommendations of the UAW regarding companies which conduct business in South Africa and which have not endorsed the so-called "Sullivan Principles" are merely advisory in nature and, thus, will not inappropriately limit the investment alternatives available to the Plan's investment managers. Accordingly, it is the Department's opinion that such recommendations made in accordance with the Letter Agreement would not be inconsistent with the requirements of section 403(c) and 404(a)(1) of ERISA. However, the Department emphasizes that it is not expressing an opinion as to how the understanding contained in the Letter Agreement will, in fact, operate; nor are we expressing an opinion concerning whether specific transactions undertaken in accordance with the Letter Agreement would be consistent with the requirements of sections 403(c)(1) and 404(a)(1) of ERISA.

With regard to the application of the prohibited transaction provisions to the understanding contained in the Letter Agreement, the Department notes that your request has not identified any specific transactions that will be undertaken in accordance with the Agreement.[1] Accordingly, we are unable to determine if any violations of section 406 would occur. The determination of

[1] We note that the Letter Agreement indicates that loans may be made to UAW members. In the absence of a statutory or administrative exemption, loans to parties in interest including employees of the plan sponsor would be prohibited under section 406 of ERISA. We note, however, that section 408(b)(1) exempts from the prohibitions of section 406 loans made by the plan to parties in interest who are participants or beneficiaries of the plan if all of the conditions of that section are met. We further note that certain arrangements may involve a use of plan assets for the benefit of a party interest in violation of section 406(a)(1)(D) of ERISA. In this regard, See Advisory Opinion 85-36 (October 23, 1985).

whether a particular transaction is prohibited by the provisions of sections 406(a) and 406(b) must be made by the appropriate plan fiduciaries.

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

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations