U.S. Department of Labor Pension and Welfare Benefits Administration
Washington DC 20210

March 8, 1993

Mr. Paul M. Hamburger
Lee, Toomey & Kent
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

93-04A
ERISA SECTION
514(a)

Dear Mr. Hamburger:

This is in response to your firm's request concerning the application of section 514(a) of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have inquired whether a State may interpret section 514(a) to permit it to apply its laws to an employee benefit plan until the plan obtains an advisory opinion from the Department of Labor (the Department) that establishes that section 514(a) preempts the operation of the state law with respect to the plan.

You advise that the State of New Jersey has enacted a no- fault insurance law, the Fair Automobile Insurance Reform Act of 1990 (the FAIR Act). The FAIR Act provides for the coordination of medical benefit payments between no-fault automobile insurance policies and various types of other health benefit arrangements, including employee benefit plans covered by ERISA. You further advise that the New Jersey Department of Insurance has taken the position that any welfare benefit plan located in New Jersey must comply with the FAIR Act, regardless of the operation of section 514(a), until the plan presents to it an advisory opinion obtained from the Department stating that the plan is exempt from the FAIR Act. This view was formally expressed by the New Jersey Department of Insurance in a comment and response published in the New Jersey Register, 22 N.J.R. 3777, 3779, on December 17, 1990, in connection with the adoption of rules under the FAIR Act.

Section 514(a) of ERISA broadly preempts all state laws insofar as they relate to employee benefit plans covered by Title I of ERISA, subject only to certain exceptions expressly provided in section 514(b) of ERISA. The wide breadth of the preemption afforded by section 514(a) is well established. See, e.g., District of Columbia v. Greater Washington Board of Trade, 61 U.S.L.W. 4039 (U.S. Dec. 14,1992); Shaw v. Delta Air Lines, 463 U.S. 85 (1983); FMC Corp. v. Holliday, 111 S.Ct. 403 (1990). Section 514(a) "establishes as an area of exclusive federal concern the subject of every state law that 'relate[s] to' an employee benefit plan governed by ERISA." FMC Corp., 111 S.Ct. at 407.

Section 514(a) is, by its own terms, self-executing. It contains no provision that conditions its effect on any action to be taken by the Department or any other governmental body. Any attempt by a State, through legislation, regulatory action, or otherwise, to alter or limit the scope of the preemption afforded by section 514(a) would itself be subject to the preemption provided by section 514(a).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Section 10 of the Procedure explains the effect of advisory opinions.

Sincerely yours,

ROBERT J. DOYLE
Director of Regulations
and Interpretations