P/OPINION 75-133

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October 15, 1975

Dear :

I am writing in reply to your letter of September 11, 1975, in which you requested the views of the Department of Labor with respect to a venue issue raised in the above captioned case, which was originally brought, in part, under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA). We understand that plaintiff has filed an amended complaint in an attempt to lay jurisdiction on the grounds of diversity of citizenship.

The question whether the venue of this action may be properly laid in the district of plaintiff's residence (assuming that this is not a district in which the plan is administered, where any defendant resides or may be found, or where the breach took place or the claim arose, as specified in 29 U.S.C. 1132 (e)(2) or 28 U.S.C. 1391 (b)) involves inquiries as to the source of the court's jurisdiction, the nature of the claim asserted by the plaintiff, and the extent to which federal law has preempted state law with respect to such a claim.

As you know, section 502(a) of ERISA provides a broad range of possible civil enforcement opportunities; and section 502(e) contains the special jurisdiction and venue provisions applicable to actions <u>under Title I</u> of the statute. With respect to such Title I actions, it is our view that the provisions of 28 U.S.C. 1391(a) have no application, since in such a case the court's jurisdiction could not be "found <u>only</u> on diversity of citizenship" (emphasis added). The use of the words "only" in section 1391 (a) and "solely" in 1391(b) imply to us that subsection (a) venue is limited to claims based, or which at least plaintiff would be free to base, upon State law. A pre-ERISA claim for benefits from an employee benefit plan by an alleged participant in the plan would no doubt be such a claim. A post-ERISA claim would not, in our opinion.

In enacting ERISA's section 514, Congress devised a system of federal preemption of State law which is, so far as we are aware, essentially without precedent. While the scope of the phrase "insofar as they may… relate to any employee benefit plan…" will no doubt provide continuing opportunities for judicial construction, we believe that federal preemption does extend to participant claims against plans, and thus we believe that any claim by a participant or alleged participant for benefits from a plan (except such claim arising before January 1, 1975) is now governed exclusively by federal law.

The legislative history of ERISA seems to make this conclusion unavoidable. In the Joint Explanatory Statement of the Conference Committee on ERISA, it is noted that although suits to "enforce benefit rights … or to recover benefits under" a plan may not involve application of the Title I provisions and may be brought either in federal or in State courts of competent jurisdiction, "all such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor-Management Relations Act of 1947." 3 U.S. Code Cong. and Adm. News 5107 (1974).

In light of the foregoing, we have concluded that an action to recover benefits or enforce benefit rights under a covered employee benefit plan must be regarded as arising under the laws of the United States and, accordingly, will not meet the requirements of 28 U.S.C. 1391 (a).

I hope that these comments will be helpful. They are intended to be in nature of an amicus curiae statement, and we would have no objection if the Court wished to transmit copies of this letter to the parties. If we may be of further assistance to the Court, please advise me.

Sincerely,