

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Administration of Pension and Welfare Benefit Programs
Washington, D.C. 20216



JAN 16 1979

Mr. Robert L. Kelley
Monsanto Company
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166

OPINION 79-6 A

514
3(1)

Dear Mr. Kelley:

This is in response to your letter of August 9, 1978, regarding section 514 of the Employee Retirement Income Security Act (ERISA). Specifically, you ask whether section 514 preempts the application of General Statutes of Connecticut sections 38-3876 and 12-212c as those provisions relate to three employee welfare benefit plans which provide medical, hospital, surgical and other benefits to employees of the Monsanto Company and certain of its subsidiaries. You point out that although the plans are self-insured, they have entered into an excess risk contract with an insurance company to provide umbrella coverage should claims exceed certain annual maximum limits.

The Department of Labor (the Department) is of the opinion that both sections 38-3876 and 12-212c of the General Statutes of Connecticut insofar as they relate to employee benefit plans covered by Title I of ERISA are preempted by section 514 of ERISA. You have not asked, and the Department has not considered, what, if any, effect section 514 of ERISA would have on any state law regulating insurance which might relate to the reinsuring by insurance companies of the benefits provided by employee welfare benefit plans.

Conn. Gen. Stat. section 38-3876

You state that Conn. Gen. Stat. §38-3876 (Supp. 1978) creates a nonprofit entity known as the Health Reinsurance Association (HRA). Under this section, all insurers and self-insurers doing business in Connecticut are required to become members of the HRA as a condition to their authority to transact the kinds of health insurance defined in section 38-371 of the General Statutes of Connecticut. That section defines health insurance to

include "self-insured or self-funded employee health benefit plans." It defines a self-insurer as "an employer or an employee welfare benefit fund or plan which provides payment for or reimbursement of the whole or any part of the cost of covered hospital or medical expenses for covered individuals." You state that the HRA is intended to establish a reinsurance pool and that through its administrator it is empowered to assess a premium tax on the total amount of benefits paid by insurers and self-insurers in Connecticut each year.

Section 514(a) of ERISA provides in part:

Except as provided in subsection (b) of this section, the provisions of [Titles I and IV of ERISA] shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b).

Thus, section 514(a) generally preempts all state laws which relate to employee benefit plans subject to the coverage of Title I of ERISA, whether such state laws conflict with specific provisions of ERISA or merely supplement the federal scheme of regulating employee benefit plans. The coverage of ERISA under section 4(a) extends to employee benefit plans established or maintained by employers engaged in commerce or in any industry or activity affecting commerce or by employee organizations representing employees so engaged or by both. The term "employee benefit plan" encompasses both employee pension benefit plans and employee welfare benefit plans. Included in the definition of employee welfare benefit plans found in section 3(1) of ERISA are plans established or maintained by employers, employee organizations, or both, for the purpose of providing "medical, surgical, or hospital care or benefits" to those plans' participants or beneficiaries.

It would appear that the three plans you describe fall within the definition of an employee welfare benefit plan contained in section 3(1) of ERISA and that, under section 4(a), they are subject to the coverage of Title

I of ERISA. Accordingly, Conn. Gen. Stat. §38-376 (Supp. 1978) insofar as it relates to the three plans you describe, is preempted under section 514(a) of ERISA unless an exception to section 514(a) is applicable.

Section 514(b) (2) of ERISA provides:

(A) Except as provided in subparagraph (B), nothing in this title shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 4(a), which is not exempt under 4(b) . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

Although state insurance laws are excepted from preemption by section 514(b) (2) (A), section 514(b) (2) (B), in effect, prevents a state from regulating an employee benefit plan simply because the plan self-insures its benefits. Thus, Conn. Gen. Stat. §38-376 (Supp. 1978) is not excepted from preemption by section 514(b) (2) of ERISA.

Conn. Gen. Stat. Section 12-212c

Section 12-212c of the General Statutes of Connecticut imposes on an individual, partnership, association, corporation, trustee, legal representative, employer, employee organization or any other organized group maintaining an employee welfare benefit plan, a tax on the amounts paid as benefits to, or on behalf of, residents of Connecticut during the preceeding calendar year. Conn. Gen. Stat. §12-212b (Supp. 1978) defines "employee welfare benefit plan" for purposes of section 12-212c to include any plan established by any corporation which is communicated or its benefits described in writing to employees and which has the purpose of providing for employees or their beneficiaries, service and supplies or other benefits in the event of sickness, accident, disability or death.

Assuming that the three Monsanto plans would be deemed to be employee welfare benefit plans within the meaning of both Conn. Gen. Stat. §12-212b (Supp. 1978) and section 3(1) of ERISA, the Department has concluded that section 12-212c of the General Statutes of Connecticut insofar as it relates to the three plans is preempted by section 514(a) of ERISA. This conclusion is in accord with National Carriers Conference Committee v. Heffernan, No. 77-191 (D. Conn. Aug. 1, 1978) in which the court held that the tax imposed by Conn. Gen. Stat. §12-212c is void and unenforceable insofar as it applies to employee welfare benefit plans covered by ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 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,

Ian D. Lanoff
Administrator

cc: Mr. Eugene J. Ziurys, Jr.
Health Reinsurance Association
(Connecticut)