



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

January 31, 1996

FILE NO. 96-010

FINANCE:

Unclaimed Property Act and ERISA

Mr. Frank C. Casillas  
Director  
Department of Financial Institutions  
100 West Randolph Street  
Suite 15-700  
Chicago, Illinois 60601

Dear Mr. Casillas:

I have your letter wherein you inquire whether, under section 514(a) of the Employee Retirement Income Security Act (ERISA) (29 U.S.C. § 1144(a)), the requirements of the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025/1 et seq. (West 1994)) that insurers report and remit benefit payments which are unclaimed by beneficiaries have been preempted by the Federal law. For the reasons hereinafter stated, it is my opinion that ERISA does not preempt the requirements of the Uniform Disposition of Unclaimed Property Act.

The purpose and nature of ERISA has been summarized as follows: "ERISA is a comprehensive statute designed to promote

Mr. Frank C. Casillas - 2.

the interests of employees and their beneficiaries in employee benefit plans. [Citation omitted.] The statute does not mandate that employers provide any particular benefits. But for employers that do provide certain pension and welfare benefits, ERISA imposes participation, funding, and vesting requirements, 29 U.S.C. §§ 1051-1086, and sets various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility. 29 U.S.C. §§ 1021-1031, 1104-1114. \* \* \* (Aetna Life Insurance Co. v. Borges (2d Cir. 1989), 869 F.2d 142, 144, cert. denied, 493 U.S. 811, 110 S. Ct. 57, 107 L. Ed. 2d 25 (1989).) Section 514(a) of ERISA provides as follows:

\* \* \* the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. \* \* \*

The Supreme Court has stated "\* \* \* that the express pre-emption provisions of ERISA are deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern'". (Pilot Life Insurance Co. v. Dedeaux (1987), 481 U.S. 41, 45-46, 107 S. Ct. 1549, 1552, 95 L. Ed. 2d 39.) Further, it has been stated that "[t]he words 'relate to' in section 514(a) are to be interpreted broadly; ERISA does not preempt only state laws specifically designed to affect employee benefit plans or dealing with the subject matters covered by

Mr. Frank C. Casillas - 3.

ERISA \* \* \*." Aetna Life Insurance Co. v. Borges (2d Cir. 1989), 869 F.2d at 144 (quoting Shaw v. Delta Air Lines, Inc. (1983), 463 U.S. 85, 98, 103 S. Ct. 2890, 2900, 77 L. Ed. 2d 490).

The Uniform Disposition of Unclaimed Property Act provides generally that after money has become due and payable, but is unclaimed for a period of at least five years (765 ILCS 1025/2-1025/10 (West 1994)), the holder thereof must make a report to the Department of Financial Institutions (765 ILCS 1025/11 (West 1994)) and deliver the funds to the Director (765 ILCS 1025/11 and 1025/13 (West 1994)). The Act provides that the money is to be deposited in the State Pensions Fund in the State Treasury (765 ILCS 1025/18 (West 1994)), and sets forth procedures for the processing of claims of interested persons (765 ILCS 1025/19-1025/21 (West 1994)). The Act does not limit the time during which an owner or an owner's successor in interest may file a claim with the Director, but the Act otherwise operates in much the same way as do escheat laws in States which have not adopted the Uniform Act.

In two cases, courts have held that State escheat laws were not preempted by ERISA. In Attorney General v. Blue Cross & Blue Shield (1988), 168 Mich. App. 372, 424 N.W.2d 54, it was held that ERISA did not preempt application of the Michigan escheat code to funds represented by un-negotiated medical benefits checks issued by a health insurer to its subscribers,

Mr. Frank C. Casillas - 4.

providers and suppliers under prepaid medical and hospital benefit contracts. In Aetna Life Insurance Co. v. Borges (2d Cir. 1989), 869 F.2d 142, 107 L. Ed. 2d 25, it was held that ERISA did not preempt Connecticut's escheat law as it applied to uncollected drafts for employee benefits. Both courts reasoned that escheat laws are laws of general application, which are not specifically targeted at employee benefit plans. Further, their impact on employee benefit plans is too tenuous, remote and peripheral to require preemption, since escheat laws do not impact "\* \* \* the primary administrative functions of benefit plans, such as determining an employee's eligibility for a benefit and the amount of that benefit. \* \* \*" Aetna Life Insurance Co. v. Borges (2d Cir. 1989), 869 F.2d at 146-47.

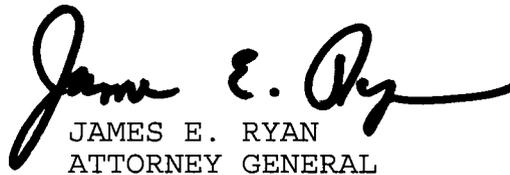
Like the escheat laws discussed in the cases cited above, the Illinois Uniform Unclaimed Property Act is a law of general applicability that does not focus on benefit plans. Its application to benefit checks or drafts which have been issued but not collected would have no effect on the primary administrative functions of benefit plans. Any effect which it may have on such plans would be too remote to require preemption.

Therefore, based upon the cases cited above, it is my opinion that the application of Illinois' Uniform Unclaimed

Mr. Frank C. Casillas - 5.

Property Act to funds represented by uncollected drafts or checks  
for employee benefits is not preempted by ERISA.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL