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November 19, 2020

Honorable Eugene Scalia

Secretary, we are writing to

memberships LP v. DOL, which could

employee benefit plan.” NAIC

and we urge you to appeal this

Columbia, and the five United States

delegated to the States the authority

responsibility for ensuring that

commitment to keep its promises to its

and stringent financial and market

in compliance.

the Social Security Act of 1974

insurance regulation. There is a long

exemption and the Department of

has done. The latest attempt, by

coverage to the general public by

to pay for membership in the

“working owners,” their limited

“work” they perform is to install

data to third parties.

U.S. Secretary of Labor

November 19, 2020

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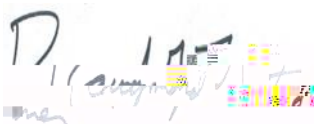
Amendment to expand and clarify the power of states to establish, apply and enforce state insurance laws with respect to MEWAs. Some promoters of fraudulent MEWAs responded by reconfiguring their plans as sham “collective bargaining agreements” to take advantage of an exemption in the Erlenborn-Burton amendment. The results were predictable, and the Department of Labor responded by issuing regulation setting standards for bona fide labor union plans.

As the Department recognized in Advisory Opinion 2020-01A, DMP is not a bona fide ERISA plan, but simply a scheme to try to avoid regulatory oversight of “the commercial sale of insurance outside the context of employment-based relationships.” However, DMP and its parent company brought suit to challenge the opinion in the U.S. District Court for the Northern District of Texas,<sup>2</sup> which ruled on September 28 that the Department’s opinion was arbitrary and capricious and that the Department had no authority to consider whether the customers’ purported ownership interests are “nominal” or “material,” whether or not the customers engaged in “meaningful” work, or whether they had any realistic expectation of earning income from that work. Indeed, the court ruled that it did not matter whether or not Data Marketing Partners is a “legitimate business enterprise” at all.

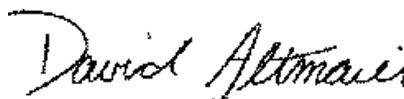
If schemes like this are allowed to proliferate consumers will again be at serious risk, as they have been in the past. We have the legal framework in place to protect consumers, but only if the courts understand and interpret these laws correctly. This decision strikes a blow both to your Department’s efforts to enforce ERISA and to our efforts to enforce state insurance laws. While the court’s opinion that state law is preempted is not legally binding on the states, none of which were parties to the case, it acts as both a powerful marketing tool for insurance schemes that can cite it as “proof” that they have no obligation to comply with laws requiring them to have the funds necessary to pay claims, to charge fair premiums and pay adequate benefits, and to market their plans honestly to consumers. The ability to cite this decision as a defense to state enforcement actions will complicate our ability to prosecute such cases effectively, even though the dicta purporting to preempt state regulation were beyond the court’s jurisdiction.

We deeply appreciate the long history of cooperation between our respective agencies and stand ready to provide whatever assistance you might need in the areas where we have shared or complementary responsibilities.

Sincerely,



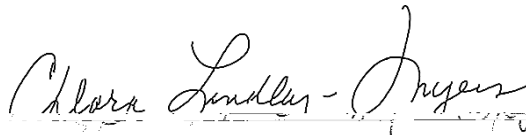
Raymond G. Farmer  
NAIC President  
Director  
South Carolina Department of Insurance



David Altmaier  
NAIC President-Elect  
Commissioner  
Florida Office of insurance Regulation



Dean L. Cameron  
NAIC Vice President  
Director  
Idaho Department of Insurance



Chlora Lindley-Myers  
NAIC Secretary-Treasurer  
Director  
Missouri Department of Commerce and Insurance

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The enterprise has its principal offices in Atlanta.