

**Minutes of the Meeting of
The Interim Management Committee of
The Interstate Insurance Product Regulation Commission**

**Wednesday, August 2, 2006
Conference call**

Interim Management Committee Members in attendance:

Commissioner Diane Koken, Chair (PA)
Margaret Witten (GA) as designated representative for Commissioner John Oxendine
Commissioner Jim Atterholt (IN)
Patrick Nelson (MN) as designated representative for Commissioner Glenn Wilson
Commissioner Jim Long (NC)
Director Ann Womer Benjamin (OH)
Commissioner Kim Holland (OK)
Sara Waitt (TX) as designated representative for Commissioner Mike Geeslin
Commissioner John Crowley (VT)
Van Tompkins (VA) as designated representative for Commissioner Alfred W. Gross
Commissioner Mike Kreidler (WA)
Commissioner Jane Cline (WV)

Other Commission Members in attendance

Shelley Santo (HI)
Commissioner Sandy Praeger (KS)
Superintendent Alessandro Iuppa (ME)
Director Tim Wagner (NE)
Commissioner Roger Sevigny (NH)
Commissioner Kent Michie (UT)
Commissioner Ken Vines (WY)
Paula Cisneros (CO) as designated representative for Commissioner David Rivera
Malinda Shepherd (KY) as designated representative for Director Julie Mix McPeak
James McMahan (MD) as designated representative for Commissioner Steven Orr
Solange Delahongrais (PR) as designated representative for Commissioner Dorelisse Juarbe Jimenez

1. Discussion of Interim Subcommittees

Commissioner Koken stated that at the Commission meeting in June, the Commission established interim subcommittees in different organizational areas for the purpose of bringing recommendations to the interim Management Committee for its discussion and action. Commissioner Koken said the work of the Commission could not be progressing without assistance and support of many people at state insurance departments and that if the Commission had staff, this work would have been done by such staff. Commissioner Koken indicated these groups are small in size and do not include all Commission members, but rather are intended to pool resources to conduct the internal work of the Commission. Commissioner Koken stated these subcommittees are not taking formal action on behalf of the Commission and are only preparing information and recommendations for consideration by the interim Management Committee in an open forum.

Commissioner Koken explained the proposed overall timeline was based on each subcommittee's estimated timeline for completion or adoption of action items by the Interim Management

Committee and Commission. She explained the timeline is preliminary and evolving as the Commission makes decisions that impact various areas, that is, for instance, decisions regarding the rulemaking rule will affect the timeline for adopting product standards and other rules. Director Womer Benjamin noted the Commission process is extremely important and should not be bypassed in the interest of time. The committee agreed when recommendations for draft products standards and draft rules were made by subcommittees, the committee would need to take formal action to publish them for notice and comment in accordance with the Commission's rulemaking rule.

2. Report of the Interim Bylaws Subcommittee

Commissioner Long stated the subcommittee was charged with reviewing the bylaws and preparing a recommendation and that the subcommittee started with the bylaws presented to the Commission by the NAIC's Interstate Compact Implementation Task Force. Commissioner Long explained the subcommittee spent at least three conference calls walking through proposed changes and issues, including proposed changes from states that were not on or participating in the subcommittee. Commissioner Long said the subcommittee made changes to the draft bylaws to tighten up or clarify provisions such as adding provisions to Management Committee and Commission sections that allowed for these bodies to take action in lieu of a meeting upon unanimous written consent.

Commissioner Long stated the subcommittee looked at all provisions but spent considerable time on a few such as succession and indemnification. One of the provisions that was the subject of further detailed review was the definition of Commission meetings and the scope of the open meetings requirements. Commissioner Long noted the subcommittee discussed the need to have flexibility in facilitating discussions for purposes of initial drafting without having to encounter the formal open meetings requirements. He said an appropriate example is if he is drafting legislation for introduction to the general assembly which would not trigger an open meetings requirement. Commissioner Long indicated there will be more than ample opportunity for the public to provide comment and input on Commission business. The rulemaking rule will build in sufficient opportunity for notice and comment on proposed rules, operating procedures and product standards. Commissioner Long said one of the concerns discussed was that if an open meetings requirement is triggered for drafting groups, it could seriously hinder the Commission's progress setting up its framework.

3. Discussion of Recommendation of the Interim Bylaws Subcommittee to Publish draft Bylaws for Notice and Comment

Commissioner Long made a motion, seconded by Commissioner Atterholt, to publish the bylaws for notice and written comment for a period of thirty days with an opportunity for comments at a public hearing of the Commission on September 12, 2006. (ATTACHMENT ONE). Kevin Moriarty (VT) stated there were three types of Commission meetings: (1) meetings not open for public participation; (2) meetings where the public is allowed to attend and listen but not make comments; and (3) meetings where the public attends and may make comment. Commissioner Koken stated that the bylaws provide that all Commission meetings are open to the public and gives the Commission the ability to set to reasonable parameters on public participation. Commissioner Koken confirmed that the bylaws did not allow subcommittees to act on behalf of the interim Management Committee or the Commission. Mr. Moriarty pointed out the changes made in Article VII, Section 3 of the bylaws raised the issue of whether a defect in any notice to the public could have an impact on the validity of the meeting and the actions taken during the meeting.

Director Womer Benjamin indicated Ohio has serious concerns about the openness provisions in the bylaws and feels strongly that not only the Management Committee meetings should be open to the public but also the meetings of the subcommittees except in the narrow circumstances where a closed meeting is appropriate. Director Womer Benjamin stated that with respect to the rules and product standards, substantive discussions will occur at the subcommittee level and it is important for the public to have their input. Director Womer Benjamin said that when it gets to the management committee, these matters are essentially concluded or decided. Director Womer Benjamin indicated the Commission is a public agency, not a private nonprofit, and openness of the process is essential to maintaining credibility and operating effectively with the support of those that the Commission will be regulating. Commissioner Kreidler stated the importance of the rulemaking process is to ensure input of all stakeholders and that when a rule gets to the Management Committee or Commission level, there is heavy pressure to accept the proposed draft. Commissioner Kreidler said the Commission would not be well-served if the openness of the process was questioned. Commissioner Crowley stated that substantive discussion will occur at the subcommittee level and he is opposed to having these meetings closed.

Birny Birnbaum (Center for Economic Justice) stated the interim Management Committee had not provided reasonable notice or opportunity for public comment on its proposed actions for this meeting and the draft bylaws include serious defects that should be addressed prior to public comment. Mr. Birnbaum stated the proposed bylaws should embrace public participation as a core virtue of democratic institutions. Mr. Birnbaum indicated procedural processes are an important part of public accountability. He said the purpose of public participation is to ensure the Commission receives broad information before making decisions on proposed action. Mr. Birnbaum stated that public participation is hindered by the absence of public notice of subcommittee meetings, conducting conference calls instead of face-to-face meetings, and failing to confer with the consumer advisory committee. Mr. Birnbaum suggested providing additional notice and opportunity for public comment before the committee adopts a motion to publish the bylaws for notice and comment.

Mr. Birnbaum stated that a meeting should be defined as a meeting of two or more committee members for purposes of discussing Commission business so that the public is on notice that decision makers are meeting to discuss Commission business. Mr. Birnbaum noted emergency meetings should be more restrictive and only allow for unforeseen circumstances. Mr. Birnbaum stated that the bylaws provision regarding waiver of defective notice is unconstitutional as a person must either choose not to attend a meeting because of defective notice or to waive notice by attending to address specific issues on the agenda. Commissioner Long asked Mr. Birnbaum for the underlying support for his points as many of the provisions in the bylaws are standard provisions of organizational bylaws.

Commissioner Koken asked Mr. Birnbaum if it would make a difference if the bylaws recommendation had been made by staff of the compact and not by a subcommittee comprised of regulators of various states. Commissioner Koken said her staff develops rules and legislative proposals internally for purposes of preparing them for a public comment period. Mr. Birnbaum said there is a difference in that it is a staff recommendation as opposed to a recommendation of decision makers. Ms. Waitt said the work of the subcommittees is analogous to work of department staff and not of decision makers and she also noted in Texas, once staff prepares rules, they are sent out for informal comment. Mr. Birnbaum stated an informal comment period prior to publication would minimize significant change which may trigger the need to republish. Commissioner Koken noted the proposed bylaws had been thoroughly discussed and drafted at the NAIC prior to presentation to the Commission.

Director Wagner said the Compact is a quasi-legislative body and the legislators designated the members of the Commission as state representatives. Director Wagner stated the Commission cannot start with an empty page. The work of the subcommittees is simply a product to be exposed and debated and not cast in concrete. Brendan Bridgeland (Center for Insurance Research) stated that the summaries related to one subcommittee's budget considerations were helpful for others to keep track of the recommendations.

The motion to publish the bylaws for a thirty-day notice and comment period with an opportunity for comments at a public hearing of the Commission on September 12, 2006 passed by a majority vote with committee members from Ohio, Vermont, Washington, and Georgia voting in opposition to the motion. Commission Koken stated written comments would be due on September 2, 2006 and that in order to facilitate a streamlined consideration process, members are asked to file proposed amendments by September 8, 2006.

4. Report of the Interim Executive Director Subcommittee

Superintendent Iuppa stated that the Commission had retained Korn/Ferry International to conduct a search for the Executive Director position and that Korn/Ferry had an excellent reputation for recruitment of executive-level positions and familiarity with the regulatory environment. Superintendent Iuppa reported the subcommittee is working with Korn/Ferry to finalize the job description which will be posted on Korn/Ferry's website with a link on the NAIC's web site and the Commission's web site. Superintendent Iuppa outlined the timeline for consideration of candidates with the goal of providing a recommendation for either one or two final candidates by early October. Superintendent Iuppa stated the Commission will utilize the same type of benefits as provided to NAIC employees by adding the Commission as a separate employer to the NAIC plans similar to the way it is structured by the National Insurance Producer Registry. Superintendent Iuppa clarified this structure will not affect the Commission being a separate and independent employer from the NAIC, and the Commission will be able to take advantage of significant cost savings from being associated with a larger group.

5. Report of the Interim Rulemaking Subcommittee

Commissioner Cline stated that the subcommittee had been charged with: (1) formulating a plan for review and adoption of proposed rules and operating procedures for the Commission; (2) reviewing and finalizing recommended draft rules; (3) developing proposed rules for rulemaking procedures and procedures for utilizing an electronic rate and form filing system; and (4) developing other rules as deemed necessary. Commissioner Cline indicated the subcommittee divided the work of drafting proposed rules and operating procedures among six subgroups. These subgroups are in the process of drafting their respective rules and operating procedures, which will be presented to the subcommittee as a whole. After discussion and review, the subcommittee will present recommended drafts of rules and operating procedures to the Interim Management Committee.

Commissioner Cline said the subcommittee has prepared a recommended draft of the Rule for Adoption, Amendment and Repeal of Rules, or the "Rulemaking Rule." (ATTACHMENT TWO) Commissioner Cline explained the drafters prepared the Rulemaking Rule to conform to the Model State Administrative Procedures Act, tailored to the operations of the Commission as required under Article VII of the model Compact legislation. Commissioner Cline stated the recommended draft establishes a sound rulemaking procedure for the Commission providing ample time for notice and meaningful comment while allowing rules and operating procedures to

be approved and adopted in an efficient and timely manner. Commissioner Cline indicated the bylaws specifically provide the procedures for comment, consideration and adoption of the Rulemaking Rule.

Mr. Birnbaum stated the committee should not adopt the motion for lack of notice and opportunity for the members and interested parties to review the rule prior to publication. Mr. Birnbaum said that Section 104(b) was unduly restrictive of when a public meeting can be requested by the members of the public. Mr. Birnbaum indicated the general exemption is overly broad as the Commission can put aside its public rulemaking procedure upon a finding that it is unnecessary, impracticable or contrary to the public interest. Mr. Birnbaum also stated that the rule should include a requirement that the Commission respond to each comment submitted. Mr. Birnbaum said the Rulemaking Rule should be exposed for a 10-day informal comment period. Commissioner Cline said the sections that Mr. Birnbaum takes issue with are provisions in direct conformity with the Model State Administrative Procedures Act.

Commissioner Cline made a motion, seconded by Commissioner Long, to publish the Rulemaking Rule for notice and written comment for a period of thirty (30) days with an opportunity for comments at a public hearing of the Commission on September 12, 2006. The interim Management Committee adopted the motion.

6. Report of the Interim Products Standards Subcommittee

Commissioner Sevigny stated the subcommittee had been charged with delivering recommended Product Standards to the committee for notice, comment and adoption. Commissioner Sevigny said the subcommittee was fortunate to have the high-quality work product of the NAIC's Interstate Compact National Standards Working Group. Commissioner Sevigny indicated that based on the subcommittee's review of the filing frequency and volume on SERFF, the subcommittee has prepared a timeline for its recommendations to the committee beginning with the adjustable life product standards, then moving to the necessary application and rider standards, followed by variable annuity, individual term life, individual non-variable annuity, whole life, disability and long-term care. Commissioner Sevigny noted the timeline denotes when the recommendations will be ready for the committee. (ATTACHMENT THREE).

7. Report of the Interim Technology Implementation Subcommittee

Director Womer Benjamin said the subcommittee had been charged with identifying compact issues that may have an impact on the System for Electronic Rate and Form Filing (SERFF), the electronic rate and form filing software adopted by the Commission. Director Womer Benjamin said the following subject areas require consideration: (1) the applicability of previously approved filings to new states that join the compact; (2) whether to treat multiple filings as filings for a single company or multi-company filings; (3) the manner of public access; (4) whether the SERFF system will collect fees for states that bill in arrears or just states requiring fee payment in advance; (5) whether to require EFT payments for the remittance of state fees collected by the Commission; and (6) the structure of Commission fees. Director Womer Benjamin stated these issues could necessitate changes to SERFF and the subcommittee is awaiting recommendations from other subcommittees before making further recommendations for SERFF.

8. Report of the Interim Website/Communications Subcommittee

Mr. McMahan provided the report of the subcommittee on behalf of Commissioner Steven Orr and explained the purpose of the subcommittee is to recommend a proposed structure for

handling all aspects of Commission communications including press releases, inquiries from and communication with the media, and web site design and implementation. Mr. McMahan stated the subcommittee recommended that the Commission utilize the NAIC's media staff as the point of contact to direct media inquiries, provide background information, obtain quotes and handle news releases and press kits.

Mr. McMahan stated the Commission had obtained a domain name, www.insurancecompact.org and the subcommittee recommended a design of the website for the committee's consideration, along with a recommendation that the NAIC maintain the website pursuant to a services agreement. Upon motion by Commissioner Long, seconded by Commissioner Crowley, the Commission adopted the recommendation to use the proposed design and make the Compact website operational as soon as possible as a means to communicate the work of the Compact.

9. Report of the Interim Audit Subcommittee

Commissioner Michie said the subcommittee was charged with providing recommendations to the committee with regards to establishment of the books, accounts and financial systems of the Commission. Commissioner Michie stated the subcommittee's recommendation is for the Commission to establish bank accounts with UMB Bank, the same bank utilized by the NAIC. Commissioner Michie explained the Commission would benefit from the fee structure in place for the NAIC and the ease of set up and administration in light of NAIC's provision of accounting services to the Commission. Upon motion of Ms. Waitt, and second by Commissioner Long, the committee adopted a motion to authorize the Commission to set up bank accounts at UMB Bank. Commissioner Michie indicated the subcommittee recommended the Commission utilize the same format for the chart of accounts as utilized in the preliminary budget.

Commissioner Michie stated the recommendation of the subcommittee with regards to auditing services was to appoint BKD LLP to perform the Commission's 2006 audit. Commissioner Crowley moved, with a second by Commissioner Long, to utilize BKD LLP for the Commission's 2006 independent audit. Commissioner Michie explained BKD LLP is the seventh largest public accounting and advisory firm in the country, with revenues in excess of \$200 million and 1,500 employees located in 26 offices in 11 states. He said the NAIC has utilized BKD LLP as its internal audit firm for the past three years and that fees would be much lower by utilizing BKD as they are familiar with NAIC's internal controls, procedures and accounts. Commissioner Crowley noted there may be concern with regards to independence of the firm if they are also performing auditing services for the NAIC. Ms. Waitt asked if the Commission could have separate teams of auditors in BKD perform the Commission's audit and the NAIC's audit. Commissioner Michie indicated the subcommittee did not feel it was practical to bid these services for 2006 as the books of the first audit will not be complicated and the Commission will realize significant cost savings by being charged under the fee structure for the NAIC, a much larger organization. Commissioner Michie said all accounting firms have a professional duty of independence and asked the NAIC staff to determine the implications on the audit fee if the Commission requested a separate team of auditors. The motion to utilize BKD, LLP for the 2006 independent internal audit was adopted with Vermont voting in opposition.

Commissioner Michie stated the committee reviewed the detailed procedures for NAIC's internal controls and recommended the Commission adopt the NAIC internal controls manual. The committee agreed the internal controls in place by the NAIC would apply to the accounts of the Commission through the use of NAIC's services under the services agreement.

10. Report of the interim Budget/Staffing/Services Agreement Subcommittee

Director Wagner reviewed the recommendations of the budget/staffing/services agreement subcommittee. (ATTACHMENT FOUR). Director Wagner said the subcommittee reviewed the Commission's staffing requirements for the next eighteen months and recommended following the suggestion in the proposed plan of action to have an Executive Director and two staff analysts. Director Wagner stated the subcommittee could not obtain a solid, reliable estimate for filing usage even though it surveyed the Association of Insurance Compliance Professionals ("AICP"). Director Wagner indicated that based on this uncertainty, the subcommittee recommended the Executive Director be given the authority to enter agreements with selected compacting states, from time to time, to utilize department staff in reviewing product filings as needed. Director Wagner said the subcommittee has recommended different options for a filing fee structure and that the proposal is based on a per company, per form charge assuming no mixing or matching of Commission and state forms. Director Wagner said the subcommittee reviewed the proposed budget for 2006 and 2007 and only had one change in 2007 with regards to adding the annual maintenance fee of \$25,000 for the SERFF system. The committee agreed to publish the 2007 budget for comments.

Director Wagner indicated the Commission asked he and his staff to work with the NAIC in drafting and negotiating a services agreement. Director Wagner stated the parties are close to agreeing upon a draft agreement that will be forwarded to the committee for further review. Mr. Birnbaum asked whether the services agreement is limited to administrative and computer support. Director Wagner said the agreement is an arms-length agreement and does not delegate decision making functions to the NAIC and that the budget includes a provision for legal fees allowing the Executive Director to hire outside counsel for the Commission.

11. Report of the interim Legislative Committee

Cheyne Calvo (NAIC) stated that the members of the interim legislative committee consist of two legislators appointed by the National Conference of State Legislatures, Senator Ruth Teichman of Kansas and Senator Delores Kelley of Maryland, and two legislators appointed by the National Conference of Insurance Legislators, Representative Larry Taylor of Texas and Representative Robert Dameron of Kentucky. Commissioner Koken said she looked forward to the participation and input of these legislators in the start-up process of the Compact.

12. Report of the interim Consumer Advisory Committee

Mr. Birnbaum stated the consumer advisory committee submitted a request for financial assistance and that it quickly needs resources to obtain legal expertise on the review of the draft bylaws and Rulemaking Rule. (ATTACHMENT FIVE). Mr. Bridgeland stated the consumer advisory committee suggested better coordination and having a master calendar showing all committee meetings. Bonnie Burns (California Health Advocates) stated she is concerned around the openness of the Commission's processes and believes the Commission should lean over backwards to ensure people have an opportunity to review and comment. Ms. Burns said the consumer advisory committee needs financial assistance in terms of travel and also in terms of helping it digest what is happening. Commissioner Koken stated there is already money in the budget to cover travel-related costs of consumer advisory committee members. Commissioner Koken asked the members of the interim Management Committee if there was any desire to have Mr. Birnbaum's request for additional financial assistance reviewed by the subcommittee. There was no motion or further discussion on Mr. Birnbaum's request.

13. Report of the interim Industry Advisory Committee

Michael Lovendusky (American Council of Life Insurers – ACLI) stated the industry advisory committee felt there would be adequate time after this conference call to review and comment on the bylaws and Rulemaking Rule. Mr. Lovendusky stated its committee would be available to provide technical assistance and information to the interim Management Committee and that it is comfortable with the Commission's work.

Having no further business, the interim Management Committee adjourned.