



**JOINT MEETING OF THE MANAGEMENT COMMITTEE AND THE
INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION**

Tuesday, January 26, 2021

2:00 pm ET / 1:00 pm CT / 12:00 pm MT / 11:00 pm PT
(3:00 pm PRT / 10:00 am AKT / 9:00 am HIT)

1. Roll Call
2. Presentation of the Independent Governance Review Report - Continued
3. Review Written Comments and Receive Oral Comments on the Recommendations of the Governance Review and the Business Assessment Reports
4. Discuss the Recommendations of the Governance Review and the Business Assessment Reports and Determine Next Steps
5. Any Other Matters
6. Adjourn

Members of the Commission and Department Staff in Attendance:

Superintendent Elizabeth Kelleher Dwyer, Chair, Rhode Island
Commissioner Mark Afable, Vice Chair, Wisconsin
Commissioner Jim Dodrill, Treasurer, West Virginia
Steve Ostlund as a designated representative for Commissioner Jim Ridling, Alabama
Jimmy Gunn, Alabama
Yada Horace, Alabama
Anthony Williams, Alabama
Sarah Bailey as a designated representative for Director Lori K. Wing-Heier, Alaska
Sharon Comstock, Alaska
Director Evan Daniels, Arizona
Erin Klug, Arizona
Jimmy Harris as a designated representative for Commissioner Alan McClain, Arkansas
Jason Lapham as a designated representative for Commissioner Michael Conway, Colorado.
Eric Unger, Colorado
Howard Liebers, District of Columbia
Steve Manders as a designated representative for Commissioner John King, Georgia
Teresa Winer, Georgia
Kathleen Nakasone as a designated representative for Commissioner Colin Hayashida, Hawaii
Martha Im, Hawaii
Weston Trexler as a designated representative for Director Dean Cameron, Idaho
Alexandria Peck as a designated representative for Commissioner Stephen W. Robertson, Indiana
Mihir Nag, Indiana
Andria Seip as a designated representative for Commissioner Doug Ommen, Iowa
Commissioner Vicki Schmidt, Kansas
Julie Holmes, Kansas
Shannon Lloyd, Kansas
Craig Van Aalst, Kansas
Commissioner Sharon P. Clark, Kentucky
Malinda Shepherd, Kentucky
Tom Travis as a designated representative for Commissioner James Donelon, Louisiana
Frank Opelka, Louisiana
Tim Schott as a designated representative for Superintendent Eric A. Cioppa, Maine
Nour Benchaaboun as a designated representative for Commissioner Kathleen A. Birrane, Maryland
Karen Dennis as a designated representative for Director Anita G. Fox, Michigan
Tammy Lohmann as a designated representative for Temporary Commissioner Grace Arnold, Minnesota
Bob Williams as a designated representative for Commissioner Mike Chaney, Mississippi
Judy Newton, Mississippi
Director Chlora Lindley-Myers, Missouri
Camille Anderson-Weddle, Missouri
Tiffany Caverhill as a designated representative for Commissioner Matthew Rosendale, Montana
Director Bruce R. Ramge, Nebraska
Laura Arp, Nebraska
Martin Swanson, Nebraska
Director Barbara Richardson, Nevada
Jack Childress, Nevada

Jason Dexter, New Hampshire
Philip Gennace as a designated representative for Commissioner Marlene Caride, New Jersey
Jennifer Catechis as a designated representative for Superintendent Russell Toal, New Mexico
Ted Hamby as a designated representative for Commissioner Mike Causey, North Carolina
Director Tynesia Dorsey, Ohio
Theresa Schaefer, Ohio
Cuc Nguyen as a designated representative for Commissioner Glen Mulready, Oklahoma
Gayle Woods as a designated representative for Director Andrew Stolfi, Oregon
Tracie Gray as a designated representative for Commissioner Jessica K. Altman, Pennsylvania
Lars Thorne, Pennsylvania
Matthew Gendron, Rhode Island
Sarah Neil, Rhode Island
Shari Miles as a designated representative for Director Raymond Farmer, South Carolina
Kendall Buchanan, South Carolina
Andrew Dvorine, South Carolina
Commissioner Carter Lawrence, Tennessee
Toby Compton, Tennessee
Brian Hoffmeister, Tennessee
Chief Deputy Commissioner Doug Slape, Texas
David Bolduc, Texas
John Carter, Texas
Sandra Dodson, Texas
Richard Gober, Texas
Michael Markham, Texas
Barbara Snyder, Texas
Commissioner Jon Pike, Utah
Heidi Clausen, Utah
Tanji Northrup, Utah
Shelley Wiseman, Utah
Kevin Gaffney as a designated representative for Commissioner Michael Pieciak, Vermont
Emily Brown, Vermont
Don Beatty as a designated representative for Commissioner Scott A. White, Virginia
Molly Nollette as a designated representative for Commissioner Mike Kreidler, Washington
Mike Bryant, Washington
Erin Hunter, West Virginia
Commissioner Jeff Rude, Wyoming
Tana Howard, Wyoming
Amanda Tarr, Wyoming

Members of the Industry Advisory Committee in Attendance:

Amanda Herrington, AHIP
Anne Correia, Allianz
Andrea Davey, Athene
Wayne Mehlman, American Council of Life Insurers
Shawn Pollock, Mutual of Omaha
Liz Pujolas, Insured Retirement Institute

Joseph Muratore, New York Life

Members of the Consumer Advisory Committee in Attendance:

Fred Nepple

Andrew Sperling, NAMI

Interested Parties:

James Eklund, Eklund Hanlon

Stacey Grundman, Squire Patton Boggs

Pat Hatler, Squire Patton Boggs

Mary Jo Hudson, Squire Patton Boggs

Michael Mullaly, Squire Patton Boggs

Neil Rector, Rector & Associates

Meghna Roa, Squire Patton Boggs

Sarah Schroeder, Rector & Associates

Insurance Compact Staff in Attendance:

Karen Schutter, Executive Director

Becky McElduff, Director of Product Operations & Chief Counsel

Sara Dubsky, Assistant Director of Administrative Operations

Mindy Bradford, Product Reviewer

Ed Charbonnier, Product Reviewer

Jeanne Daharsh, Actuary

Sue Ezalarab, Regulatory Coordinator Consultant

Karen Givens, Senior Product Reviewer

Naomi Kloeppersmith, Actuary

Maureen Perry, Product Review Consultant

Hanna Steen, Administrative Assistant

Jalaire Kose, Administrative Assistant

Superintendent Dwyer called to order the meeting of the Interstate Insurance Product Regulation Commission (Insurance Compact or Commission). Ms. Schutter took the roll call of the: Commission, Legislative Committee, and Industry and Consumer Advisory Committees.

Superintendent Dwyer explained the reason for this call was to focus on the recommendations from the independent governance review and business assessment performed in 2020. Superintendent Dwyer noted the consultants began their presentations during the December 4, 2020 joint meeting and had to stop due to time constraints. She stated that Squire Patton Boggs was going to complete their presentation regarding their findings on the tax status and the consultants from Rector & Associates were going to provide a brief summary on their report as a refresher. At the conclusion of the summaries, Superintendent Dwyer noted she would take any questions any member or interested party had for the consultants.

Superintendent Dwyer asked Ms. Hudson with Squire Patton Boggs to present their findings on the Insurance Compact's tax status. Ms. Grundman summarized their findings. The tax position of the Commission is an instrumentality of the states and is tax exempt pursuant to Internal Revenue Code Section 115. The Compact does file annual tax filings. Ms Grundman provided options to respond the

absence of a formal ruling to the Insurance Compact's Private Letter Ruling a few years ago. Squire Patton Boggs recommends as a minimum that the Commission take steps to strengthen the Compact's tax position through amendments to its Bylaws in case there is ever a challenge. Squire Patton Boggs does not recommend taking any steps that would require legislative action.

Superintendent Dwyer noted that the report does not provide a compelling reason to make a follow-up request to the IRS. She asked what the disadvantage of not going back to the IRS would be for the Commission. Ms. Grundman noted that there is a unlikely chance the tax-exempt status could be challenged. Should the IRS challenge ultimately prevail then the Commission would be required to pay taxes due on the earned revenue.

Mr. Beatty asked for additional information pertaining to the comments regarding the relationship with the NAIC. Ms. Grundman noted the distinguishing fact, that the Insurance Compact is a government entity and not representatives of the industry, could be strengthened. Superintendent Dwyer asked if this aspect needed further clarification for the tax ruling. Ms. Grundman explained there may be a confusion is due to a lack of understanding the benefits for the states versus the industry. Director Ramage asked if there was any analysis conducted on the tax implications for state taxes where the Compact legislation is in place. Ms. Grundman noted that they did not do this analysis. Ms. Grundman explained that the way the funds flow, there is no money flowing from the states to the Commission, and that is part of the confusion even though the Commission is an instrumentality of each states by the terms of the Compact statute. Ms. Grundman replied that a small amount of dues paid to the Commission would make a difference with this aspect. Commissioner Clark noted that the states were members of several other compacts and asked if any other state compacts have had IRS challenges. Ms. Grundman noted many of them have IRS rulings and was not aware of any challenges.

Ms. Hudson reviewed additional governance suggestions that were included in the report. Ms. Hudson explained that their review was one of best practices for non-profit as well as for profit organizations. Ms. Hudson noted that there were several recommendations in the report and the largest takeaway of note is that each state by statute is the representative to the Compact. There is authority to designate in the statute, but the Commissioner serves as the Commission member. Ms. Hudson noted the practices recommended are to provide the necessary communication, training, and procedure to help all parties understand their roles.

Ms. Hudson noted that there was analysis conducted regarding *Amica v. Wertz*. She noted the Compact does have state constitutional issues raised through the case and there were suggestions made as to how to remediate. Ms. Hudson explained the options to what the Compact can do to prevent further decisions like *Amica v. Wertz*. The analysis conducted uncovered that the Compact was granted implied Congressional consent when in 2006 the District of Columbia was permitted to enter the Compact through a Congressional enactment Ms. Hudson remarked that this consent does the strengthen the Compact's uniformity.

Superintendent Dwyer asked Ms. Schroeder to provide a brief summary of the business assessment. Ms. Schroeder noted that the business assessment was a look at the financials and operations of the Compact. With respect to the financial overview, the Compact is operating in a manner that allows for positive growth and the financial controls are strong. With regard to the operations, the Compact is meeting its goal of speed to market. Ms. Schroeder noted the Compact needed to focus on strategic planning especially

with respect to the risks associated with the *Amica v. Wertz* opinion. Ms. Schroeder explained clearer demarcation between the Compact and the NAIC was a recommendation in order to make it clearer to the public and in operations. The final recommendation was to improve communications between the Compact and Commissioners and their staff, especially regarding the impact of the Uniform Standards on the state consumers.

Superintendent Dwyer asked if implied consent has been asserted by a Compact and upheld by a court. Mr. Ekland advised that *Green v. Biddle* found Congress' affirmative act on behalf of the District of Columbia is sufficient to indicate implied consent. It was further noted that there is not recent case law on this specific issue.

Director Rameg asked what the risk was of courts of other states using the narrow ruling. Ms. Hudson replied that the Colorado State Supreme Court did not ask for the Congressional consent to be briefed. She stated that the Insurance Compact should issue an advisory opinion to stand up for the various state legislatures and include scholarly analysis too. It was noted that the Compact could also amend the Uniform Standards and include language that should an issue leads to a court case arise, then the Compact was would be added as a party. It was noted that other compacts have done this. Ms. Hudson remarked that training and discussion for the Commissioner and their staff was important in this matter to help make sure all parties understand the underpinnings of the law to better support the efforts of the Compact.

Superintendent Dwyer noted that Squire Patton Boggs is suggesting the Compact formalize implied consent, but that it is not known what a court would do until the next challenge. Ms. Hudson replied affirmatively, and stated groundwork needed to be laid to support the legislative action that enabled the Compact. Mr. Mullaly noted that both parties in *Amica v. Wertz* took the position that there was no Congressional consent and therefore the court did not ask for it. He further noted had implied consent been mentioned, it would have meant the decision could have gone the other way as the state concerns would have been resolved in a way that favors enforceability of the compact as it was written.

Superintendent Dwyer remarked that both parties argued McCarran-Ferguson and that is not relevant based on the analysis. Mr. Mullaly confirmed and noted there are specific circumstances where a compact needs Congressional consent. He further noted that McCarran-Ferguson represents a policy judgment that Congress would abstain from legislation that would regulate insurance. McCarran-Ferguson addresses the balance of power between the states and the federal government. Mr. Mullaly concluded and noted that McCarran-Ferguson does not speak to the states' ability to create compacts.

Superintendent Dwyer asked regardless of the implied Congressional consent argument, the Compact can make structural changes to its processes and address duties and the obligations of its members. Ms. Hudson answered affirmatively.

Director Rameg noted that so many of the Commission's product standards exceed the various state laws. Superintendent Dwyer agreed with the observation and explained that was the intent of the Commission.

Superintendent Dwyer noted that the Compact is working to bring forward a lot of the recommendations from the business assessment. It was noted that the Strategic Plan and the reports suggest more changes to processes and procedures. It was noted that the Compact Office would bring forward recommendations forward to the Commission to make changes recommended in the reports.

Superintendent Dwyer noted there was a recommendation to create a formal Governance Committee. It was explained that there is a need to formalize the Governance Committee to oversee the good governance practices. Superintendent Dwyer remarked that Commissioner Afable has agreed to chair the Committee. Commissioner Afable noted that every organization should be looking at its governance practices on a routine basis. This is a good practice recommendation to have a Governance Committee in place to monitor governance practices. No other comments were made. Mr. Slape made the motion to establish a standing Governance Committee under Article 8, Section 4 of the Bylaws; and Director Lindley-Myers seconded the motion. The motion was adopted by unanimous voice vote.

Ms. Schutter conducted another Roll Call to confirm additional states had joined the call throughout the call. It was confirmed that a quorum of Commission Members was present.

As there were no other matters, the joint meeting of the Management Committee and Commission adjourned. Director Lindley-Myers moved to adjourn, and Mr. Beatty seconded the motion.