

**The Maryland Insurance Administration's
Study of the Injured Workers' Insurance Fund**



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REPORT OF THE MARYLAND INSURANCE ADMINISTRATION ON THE STUDY OF THE INJURED WORKERS' INSURANCE FUND

I. PREFACE

Pursuant to Senate Bill 679 (Chapter 612, 2008 Session), the Maryland Insurance Administration ("the Administration") was charged with studying the Injured Workers' Insurance Fund ("the Fund" or "IWIF") and was specifically asked to study:

- The impact of subjecting the Fund to the provisions of law regarding ratemaking, rating, and rate review that are enforced by the Administration for other property and casualty insurers;
- The study was to include:
 - An analysis of whether the Fund's current ratemaking practices produce actuarially sound rates;
 - A determination of the cost impact to the Fund for the Fund to be required to file rates with a rating organization; and
 - A comparison of the experience rating plan used by the Fund for small employers as compared to the rating experience plan established by a rating organization for small employers.
- The Administration was also asked to identify those provisions of law relating to consumer protections and financial soundness that are enforced by the Administration and are applicable to other property and casualty insurers, but are not applicable to the Fund.
- Finally, in conducting its study, the Administration was required to seek input, as appropriate, from the Injured Workers' Insurance Fund, the National Council on Compensation Insurance, Inc., the Maryland Association of Counties, the Maryland Municipal League, representatives of small businesses, and any other person that the Administration considers appropriate.

II. EXECUTIVE SUMMARY

- Most of the controversy surrounding IWIF stems from the ambiguity and uncertainty as to IWIF's intended role and mission. There are widely differing views on this subject. IWIF believes that it is properly both the workers' compensation insurer of last resort and a competitive insurer and this is how, in fact, IWIF has operated. Others assert with equal fervor that IWIF was never intended to be a competitive insurer. Thus, the Maryland General Assembly should clarify, in statute, IWIF's intended purpose and mission in the Maryland workers' compensation insurance marketplace.
- The Administration recommends that, based on its historical and successful experience acting as the insurer of last resort and a competitive insurer, that IWIF be authorized to continue in this dual role, but that it be subject to all the laws governing other competitive insurers writing workers' compensation in the State.
- That IWIF be required to pay the premium tax.
- That IWIF be required to pay the annual assessment to the Insurance Regulation Fund.
- That IWIF be required to become an NCCI member using a 5 year transition period.
- IWIF's current rate making produces actuarially sound rates. However, the Maryland General Assembly should subject IWIF's rate making to the Commissioner's review and prior approval.
- The Maryland General Assembly should remove the statutory prohibition on the Commissioner's ability to order IWIF to increase its rates.
- The Maryland General Assembly should require IWIF to use only licensed producers that it appoints and make it responsible for the actions of its producers.
- Recognizing its role as the insurer of last resort, IWIF should be provided with an assessment mechanism (like the one available to the State's automobile insurer of last resort) to allow IWIF, in the event of financial distress, to assess all other competitive insurers writing workers' compensation insurance in the State for losses resulting from its residual business.

III. PRELIMINARY QUESTION

While undertaking the study of the Injured Workers' Insurance Fund, it became abundantly clear to the Administration that confusion abounds as to what is the proper role of the Fund. What exactly is the Fund and what is its proper and intended role in the Maryland workers' compensation insurance marketplace? Is it a competitive insurer? Is it the insurer of last resort for Maryland employers? Or is it both? IWIF, a state created insurance company, describes itself as both an insurer of last resort and a competitive insurer and this is how, in fact, IWIF has operated for many years. It is clear, however, that other interested parties do not believe IWIF should be a competitive insurer and thus, clarifying IWIF's role and mission is appropriate.

A. HISTORICAL BACKGROUND ON IWIF

IWIF, originally known as the State Accident Fund, was created by the legislature in 1914 for the purpose of insuring employers against liability under the Workmen's Compensation Act. Since the State compels employers to insure the payment of compensation to their injured workers, it was believed that the State needed to provide a way for employers to comply with this requirement that was wholly under the control of the State; hence, the creation of the State Accident Fund.¹ There was discussion of the State Accident Fund as being in competition with private companies, but only in a limited sense. In its First Report, the State Industrial Accident Commission, while discussing the State Accident Fund as a protection against excessive rates, states that:

“[It] can and does write policies at lower rates than private companies because of the elimination of commissions and the overhead cost; and, in the nature of things, this may in the course of time, lead to a monopoly of this form of insurance.”²

The idea of IWIF acting primarily as an insurer of last resort is further brought home more clearly in the Second Annual Report of State Industrial Accident Commission when it described the State Accident Fund as “in competition, nominally at least, with stock and mutual insurance companies” and went on to add that:

“it is very obvious that under a compulsory insurance law some form of State Insurance is a necessity, in order to provide a certain method for employers to accept; in as much as there might otherwise develop the rather

¹ See the First Annual Report of the State Industrial Accident Commission of Maryland, For the Year November 1, 1914 to October 31, 1915, pages 9 and 10, which is one of the documents contained within Appendix VIII.

² *Id* at page 5.

anomalous situation in which no company would offer to write insurance which the Law Requires.”³

While originally part of the State Industrial Commission which then became the Workmen’s Compensation Commission, State Accident Fund was established as a separate State agency in 1941.

In the Report of the Governor’s Commission to Study the Workers’ Compensation System submitted in January of 1987, the Commission addressed, as part of its study, the State Accident Fund. The Commission’s recommendation number 15 was that the Department of Economic and Community Development incorporate information on the State Accident Fund in all appropriate marketing efforts. In detailing its recommendation, the Commission stated that it had three recommendations regarding the Fund. First, that it should be exempt from the limitations on hiring so that it could be more “market sensitive” and hire as needed; second, a plan to reorganize and restructure the State Accident Fund to make it a more effective cost reduction mechanism; and third, that “the Department of Economic and Community Development should start to actively market the State Accident Fund as an appropriate alternative to employers experiencing workers’ compensation coverage problems.”⁴ Interestingly, the Commission, when discussing its recommendations referenced the Maryland Automobile Insurance Fund (“MAIF”), Maryland’s automobile liability insurer of last resort and not a competitor with the private automobile insurance marketplace, as an example to be reviewed.

As a direct result of the 1987 Report of the Governor’s Commission to Study the Workers’ Compensation System, the Maryland General Assembly enacted and the Governor signed into law Chapter 585, 1987 Laws of Maryland which made IWIF an independent State agency and the quasi-public entity that it is today. That legislation also directed the Governor to appoint a Task Force to study the State Accident Fund which was done and culminated in a 1988 Report entitled Report of the Governor’s Task Force to Study the State Accident Fund. It is in the introduction to this Report that the history of the State Accident Fund is set forth and it states:

“...[T]he State Accident Fund serves clients who have been unable to obtain private insurance because of risk factors, and clients who may never have sought private insurance. The Fund, now and for the last 73 years, is not just an insurer of last resort. It is a viable alternative to self insurance and the commercial insurance market.”⁵

³ See the Second Annual Report of the State Industrial Accident Commission of Maryland, For the Year November 1, 1915 to October 31, 1916, Inclusive, page 18, which is one of the documents contained within Appendix VIII.

⁴ See Report of the Governor’s Commission to Study the Workers’ Compensation System, January 1987, pages 70 – 74; one of the documents contained within Appendix VIII.

⁵ See Report of the Governor’s Task Force to Study the State Accident Fund, 1988, page 7, one of the documents contained within Appendix VIII.

The recommendations of the Task Force were considered by the legislature in 1999. Thereafter, the Governor issued an Executive Order creating a Task Force to Study the Injured Workers' Insurance Fund.⁶ Within that Executive Order, clause 6 states:

“WHEREAS, Periodically, issues are raised for consideration by the Legislature concerning regulatory oversight, the payment of premium taxes and the fact that the Fund is not an insurer of last resort but a competitor with the private market;”

As a result of that Executive Order and subsequent Task Force, legislation was enacted during the 2000 Session that made IWIF subject to partial regulation by the MIA; the focus of this new regulatory oversight being directed at maintaining IWIF's financial solvency. See Chapter 567, 2000 Laws of Maryland.

While IWIF argues that the language contained in these early reports establishes that it was created to be both a competitor and an insurer of last resort, careful reading does not necessarily dictate such a result. Rather, the language makes it clear that the State Accident Fund, now IWIF, was originally created to operate as the insurer of last resort for Maryland employers who are compelled to obtain workers' compensation insurance; any resulting competition with private insurers was to be “nominal”. Yet, it is clear that IWIF is, and has been for a significant period of time, a real competitor with private insurers writing workers' compensation insurance in Maryland. No clear answer as to what the legislature intended IWIF's purpose or mission to be can be found by reviewing its governing statute, codified at §10-101, *et seq.*, in the Labor and Employment Article. This is a distinct anomaly that IWIF, as a State created entity, would not have its purpose or mission set forth in its enabling legislation as is the case with the Maryland Insurance Fund (“MAIF”), the Joint Insurance Association (“JIA”), the Medical Mutual Liability Insurance Society of Maryland (“Medical Mutual”), or even the Maryland Health Insurance Plan (“MHIP”).⁷

IWIF is the State's largest provider of workers' compensation insurance and has been so for a very long period of time. In 2007, it had 28% of the Maryland market with more than 28,000 policyholders and net earned premium of \$290,000,000 (\$290 million dollars). The next largest competitor is Hartford Fire and Casualty Group which, with its 7 companies combined, has a market share of approximately 11% of the market.⁸

B. THE ROLE OF IWIF

⁶ See Executive Order 01.01.1999.16, one of the documents contained within Appendix VIII.

⁷ While there may be arguments made as to whether these State created insurance entities are operating in accordance with their intended purpose or mission, there is no argument as to what that purpose or mission is supposed to be.

⁸ See the Maryland Insurance Administration's 2008 Report on Workers' Compensation Insurance filed in October of 2008.

The Administration strongly recommends that the Maryland General Assembly clarify the exact role of IWIF in the State's workers' compensation marketplace. If the Maryland General Assembly desires the Fund to operate as a competitive insurer, then there is little doubt that it should be required to compete on a level playing field; that is it should be required to become a member of the National Council on Compensation Insurance, Inc. ("NCCI"). If, on the other hand, the Maryland General Assembly desires the Fund to operate as the insurer of last resort for Maryland employers who are required to obtain workers' compensation insurance in order to operate a business in the State and not as a competitive insurer, then there would be no need for the Fund to become an NCCI member. However, additional safeguards would have to be enacted to protect IWIF and its policyholders. If, however, the Maryland General Assembly desires IWIF to operate as both a competitive insurer and the insurer of last resort, then some additional balancing of the equities should be considered.

As a competitive insurer, IWIF should be required to become an NCCI member. As previously stated, every other insurer writing workers' compensation insurance in the State is required by statute⁹ to be a member of a workers' compensation rating organization (NCCI is that rating organization) and to report its data, policyholder information as well as detailed claim information, and to follow the rules and procedures of the rating organization. As a member of NCCI, all insurers are required to use the same classifications, the same experience rating modification factors and the same pure premium loss costs. If, in fact, IWIF is to be considered a competitive insurer, then it should be required to compete as one and that would include removing its exemption from NCCI membership. However, as will be discussed in the section on NCCI and the costs of IWIF becoming a member, such membership should be phased in over a five (5) year period which would allow for a more orderly transition. In addition, IWIF should be required to pay the to the annual insurance regulation assessment fee in Title 2, Subtitle 5 which funds the operations of the MIA and, as a competitive insurer, IWIF would be required to pay the premium tax as set forth in Title 6, Subtitles 1 and 2. Based on its filings with the Administration, for calendar year 2007 if IWIF had paid the premium tax this would have been in the neighborhood of \$6.3 million.¹⁰

As an insurer of last resort, IWIF would not need to become a member of NCCI. Rather, it should be structured to operate as an insurer of last resort and be limited to accepting policyholders who are unable to obtain workers' compensation insurance through the private market. One way to ensure that IWIF would operate as the insurer of last resort would be to enact eligibility requirements similar to those required for MAIF. Specifically, that an applicant would be eligible for workers compensation insurance coverage with IWIF if it is a Maryland employer required to provide workers' compensation insurance coverage to its employees; does not owe any outstanding monies to IWIF with respect to a policy that has expired unless it is undergoing an audit and the

⁹ Insurance Article, §§11-329 and 11-330.

¹⁰ The administration does not have IWIF's final numbers for calendar year 2008 yet. However, its premiums for the first three quarters of 2008 are down slightly from its 2007 numbers, so it is estimated that had IWIF paid premium taxes in 2008, it would have paid approximately \$5.7 million.

insured agrees to pay the additional monies; and has attempted in good faith to obtain a policy of workers compensation insurance from at least two private insurers writing workers compensation in the State and has been rejected or refused the coverage by two insurers for a reason other than non-payment of premium; or has had its workers' compensation insurance policy cancelled or non-renewed by a private insurer writing workers compensation in the State for a reason other than non-payment of premium.

In addition, if IWIF were restricted to operating as an insurer of last resort, the Legislature should consider enacting some type of industry assessment mechanism to protect IWIF, its policyholders, and any injured workers to whom it is providing coverage. The MIA would suggest that looking at the assessment mechanisms provided to MAIF and the Joint Insurance Association, Maryland's property insurer of last resort, would provide guidance for creating such an assessment mechanism for IWIF.

Finally, should the Legislature decide that IWIF should remain as both a competitive insurer and the insurer of last resort, which is what IWIF believes itself to be, then the General Assembly should amend the IWIF statute to state this. In addition, the General Assembly should require IWIF to become, over a five (5) year transition period, an NCCI member.

Regardless of what its ultimate role is determined to be, the MIA would recommend that IWIF, as the largest writer of workers' compensation insurance in the State, be made subject to the MIA's rate making review and that IWIF be required to obtain the MIA's prior approval of its rates. While IWIF's rates appear to be actuarially sound, as is more fully discussed in Section III below, greater transparency with regard to IWIF's rate making is appropriate and a review of same can only benefit all the stakeholders. In these uncertain economic times, Maryland employers insured by IWIF and the injured workers receiving benefits from IWIF should be afforded the additional financial protection of having the company's rates reviewed and approved by the Insurance Commissioner prior to their use to ensure that the company's rates remain actuarially sound, thus securing the financial stability of the company.

IV. THE FUND'S RATEMAKING PRACTICES

One of the charges given to the Administration was to perform an analysis of the Fund's rate making practices in order to determine whether the Fund's current ratemaking practices produce actuarially sound rates. The MIA did this analysis by obtaining information from IWIF directly and by having its rate making process reviewed by its outside consulting actuarial firm, Merlino & Associates, Inc.¹¹ This analysis and review concluded that IWIF rates are developed using accepted actuarial principles that produce actuarially sound rates.

¹¹ For purposes of this study, all the actuaries referred to are "fully credentialed" meaning that they are Fellows of the Casualty Actuarial Society and Members of the American Academy of Actuaries which are the highest designations that an accredited actuary can obtain.

IWIF has retained a fully credentialed actuary who is associated with an independent actuarial consulting firm of Deloitte Consulting LLP. The independent actuary annually reviews IWIF's workers' compensation base rate levels for overall rate level adequacy and to develop any base rate changes that may be warranted based on IWIF's detailed loss cost data. In addition, the independent actuary also develops classification rates by tier and performs a classification analysis of the selected base rate changes. Once the outside actuary has performed its review and analysis, its report is forwarded to IWIF's in-house Chief Actuary and its Pricing Committee¹² for review and to make recommendations to the Board of Directors as to what the appropriate rate selection should be for the overall base rate as well as classification relativity changes.¹³ IWIF's independent consulting actuary, Jan Lommele of Deloitte Consulting LLP, testified at the public hearing and he opined that IWIF's rates are actuarially sound as they provide sufficient funds to pay expected losses and expenses, allows it to maintain an adequate margin for contingencies, and supports the maintenance of sufficient surplus for IWIF.

The MIA received a written report from Merlinos & Associates, Inc.¹⁴ as well as having the oral testimony at the public hearing from one of its principals, David Shepherd. Merlinos & Associates reviewed the overall base rate changes and changes by classification for IWIF's rates that were effective January 1, 2008 as well as IWIF's classification system and experience rating plan. It concluded that while it may have selected different expense factors¹⁵ or alternative trends, overall the rates were actuarially sound and in accordance with Maryland rating law.

In contrast to IWIF, other insurers writing workers' compensation in the State are required by statute to be members of NCCI, a licensed rating and advisory organization.¹⁶ NCCI collects data from its members with regard to payroll and experience which is used to develop the "pure premium loss cost" rates. The pure premium loss cost rates reflect the actual loss costs associated with providing workers' compensation coverage such as cost of medical care, the frequency and severity of injury, and the indemnity benefits that are tied to wages and economic cycles. The pure premium loss cost does not, however, include other costs associated with writing workers' compensation coverage, such as profit, commissioner, taxes or the costs associated with providing benefits to the injured worker (known as the loss adjustment expenses). NCCI then files its pure premium loss

¹² According to IWIF, its Pricing Committee is comprised of executives and senior staff from the company's finance, underwriting and claims departments.

¹³ Appendix VIII contains the information submitted to the MIA by IWIF's and it has detailed explanations of its rate making process contained therein.

¹⁴ The written report from Merlinos & Associates, Inc. is attached hereto as Appendix X.

¹⁵ Specifically, Merlinos & Associates took issue with the Guaranty Fund Assessment which the actuary selected to be 2%, the maximum, as opposed to .5% based on the actual experience; IWIF's selected claims adjustment expense of 12% as opposed to a 10.5% based on the past three calendar years; IWIF's selected general expenses of 18.5% as opposed to 18% based on the last three calendar years; IWIF's selected loss frequency trend of -2% as opposed to -3% based on declining losses; and consideration of the merit rating which results in a billed premium of approximately 10% less than the manual premium.

¹⁶ See §11-329 of the Insurance Article.

cost with the MIA for its review and prior approval. No insurer may use the NCCI pure premium loss cost until after it is approved by the MIA.

Once the MIA approves the NCCI pure premium loss cost, insurers then submit rate filings to adopt the pure premium loss cost and the carrier's expense multiplier. The expense multiplier covers the insurer's profit, administrative expenses and loss adjustment expenses. The insurer's rate is derived by using the NCCI's pure premium loss cost and multiplying it by the expense multiplier.

The MIA would note that an insurer's rates are directly tied to its solvency. Thus, while this brief study found that IWIF's 2008 rates and ratemaking appear to be actuarially sound, there is no good reason that IWIF is exempted from the MIA's rate review. Thus, IWIF, like NCCI on behalf of its members, should be required to submit its proposed rates to the MIA for its review and prior approval. Transparency with regard to IWIF's rate making is appropriate and warranted. In these uncertain economic times, Maryland employers insured by IWIF should be afforded the additional financial protection of having the company's rates reviewed and approved by the Insurance Commissioner prior to their use to ensure that they remain actuarially sound thus securing the financial stability of the company.

V. NCCI AND THE COSTS OF THE FUND BECOMING A MEMBER

IWIF has opined that it will cost "in excess of \$1 million" for it to become a member of NCCI. This is based, in large part, on the NCCI estimate of \$700,000 per year upon full membership and then adding in the costs associated with reporting its data which require having the appropriate systems and personnel in place.

According to NCCI, IWIF currently pays NCCI approximately \$230,000 per year for the various services it uses, including a license for the NCCI classification plan, secondary experience modification sales and proof of coverage services. Using IWIF 2007 written premium as a basis and a 5 year transitioned phase in plan, NCCI estimates that IWIF's cost to affiliate in year 1 (2010) would be \$297,000 or an additional cost of \$67,020 over what it is currently paying. At the end of the 5 year transition period, in 2014, NCCI estimates that IWIF's cost to be a NCCI member would be \$683,496 or an additional cost of \$453,496 compared to what it is currently paying.

A. HISTORICAL BACKGROUND ON NCCI

NCCI is a licensed advisory organization operating in 40 states, including Maryland. It operates as a statistical agent and collects loss data from all carriers writing workers' compensation insurance in Maryland, except IWIF and group or self-insured funds. As an advisory organization, it files rates for its member companies.¹⁷ In 2007,

¹⁷ NCCI is has been hired as the vendor providing proof of coverage services to the Maryland Worker's Compensation Commission and IWIF, like all other insurers writing workers' compensation in the State of Maryland are required to use its services for this purpose. However, NCCI's role in that area is not part of the study being undertaken.

NCCI received data from 286 private insurers writing workers' compensation insurance in Maryland and reporting premium earned; that data represented 72% of the market.

NCCI collects 5 basic types of data from its insurer members in the form of policy information (coverage data from the declaration page including schedules and endorsements), unit statistical information (audited exposure, premium and loss experience by class code), financial call (on insurers' financial performance and for rate making information), detailed claim information (the insured, the claimant, claim characteristics, benefits and payments made), and medical call (information regarding policies and claims and linking medical procedures and diagnostic testing). It collects and validates the data which is then used in rating, developing experience rating and classification systems.

It should be noted that there are 18 states in which NCCI does business that have state funds such as IWIF writing workers' compensation insurance. 16 of those 18 states with state funds require that the state fund report its data to NCCI and are required to use NCCI experience rating. 16 of the 18 have the right to use NCCI rates/loss costs while 11 of the 18 are required to do so. The only two states that do not require their state funds to report losses to and to use NCCI experience rating factors are South Carolina and Maryland. South Carolina's state fund is vastly different from Maryland's in that it insures only the State.

B. AFFILIATION OF IWIF WITH NCCI

When an insurer, such as IWIF, first affiliates with NCCI the first 3 types of data collection (policy information, unit statistical and financial call data) are NCCI's initial focus as they are critical to rate making and experience rating. The last two data types (the detailed claim information and medical call data) are required if the carrier meets certain eligibility requirements. However, NCCI has stated that IWIF would not have to report these last two data types for the first five years.

There are two types of reporting that can be undertaken when a carrier becomes a NCCI member: Historical Reporting or Point-Forward Reporting. Historical Reporting requires the insurer to go back to its prior policy years, extract the required data elements and report the data using NCCI standardized formats. Point-Forward Reporting conversely does not require extracting information from old policy years, but rather provides the insurer with the programming in advance so it will capture the required data elements in the NCCI standardized formats. Then policy data reporting begins for all policies on a selected going forward policy effective date. Once the policy data is reported, the unit statistical data would be due 20 months later.

NCCI has recommended, and the MIA sees no reason to disagree with this recommendation, that if IWIF were required to become an NCCI member, it do so on a "Point-Forward Reporting" basis.¹⁸ Clearly, using a Point-Forward Reporting would be less burdensome, less time consuming and less costly for IWIF. In addition, it lessens the

¹⁸ IWIF did not provide any information or testimony on this point as it opposes NCCI affiliation.

opportunity for bad data from being entered. Such reporting would allow a transition period and the costs associated with IWIF's affiliation would grow gradually as opposed to immediately.

Under a Point-Forward Reporting plan, NCCI has recommended a 5 year plan with the first year beginning in 2010 with those policies having effective dates in 2010 being reported. That would mean that the first unit statistical data and financial calls would be due in year 2 or 2011 and by year 5, 2014, IWIF would be fully affiliated and its data would be used in rate making and experience rating. Thus, the costs of becoming a NCCI member would be phased in over this 5 year period.

VI. COMPARISON OF EXPERIENCE RATING PLANS: THE FUND v. NCCI

NCCI's experience rating plan is a uniform and mandatory plan used by its members and their insureds. The overall objective of the plan is to utilize an individual employer's past claims experience to more accurately predict its future claims experience. IWIF currently uses its own experience rating plan.¹⁹ The most notable differences between the two plans is that IWIF provides an experience rating factor to its insureds at a significantly lower threshold; that is an employer who has an annual premium of \$3,000 over the last 3 years whereas NCCI requires a premium of \$10,000 over the last 2 years or an average of \$5,000 for more than 2 years. Thus, using the NCCI threshold, which would be mandatory if IWIF were required to become a NCCI member, would mean that fewer IWIF insureds would qualify for an experience rating factor. This could, in turn, result in a higher rate as those insureds would not qualify for rating to modify its rate. IWIF has stated that, using 2008 statistics, if it were no longer allowed to use its experience rating plan, 3,863 policyholders with a 3 year premium average of between \$800 and \$3,000 would lose their 5% discount and 9,231 small businesses with a premium average between the IWIF and NCCI threshold would lose their experience rating resulting for a net loss to over 13,000 policyholders. It did note that 684 of its policyholders would experience a rate decrease. This is out of a total of approximately 27,800 policyholders that IWIF insures. Finally, any IWIF policyholder returned to the private market for its workers' compensation insurance, would have an experience rating in accordance with the NCCI guidelines.

NCCI has pointed out²⁰ that if IWIF were to be required to use NCCI's experience rating plan, it does not necessarily follow that all of its insured would be financially harmed. While IWIF would be unable to use its own experience rating plan, IWIF could none the less use other rating options to remain competitive such as merit rating, schedule rating, etc. These rating options, like experience rating, can still provide an incentive for an employer to maintain a safe workplace as it will transfer to credits or discounts and thus offer the same benefit as the experience rating plan does.

¹⁹ A comparison of the NCCI Experience Rating Plan as compared to IWIF's Experience Rating Plan as analyzed by NCCI is attached at Exhibit 4 to NCCI's December 5, 2008 letter which is contained in Appendix IX.

²⁰ See email from NCCI to the Administration dated December 16, 2008 which is contained in Appendix IX.

The experience rating plans are related to the classification plans as well. IWIF currently pays NCCI for a license to use its classification plan which contains approximately 600 different classifications. In addition to the NCCI classes, IWIF also uses some of its own classifications. According to NCCI, IWIF uses 98 non-NCCI codes and does not use 17 of the NCCI codes. In particular, IWIF does not classify municipalities and governmental entities by payroll, but rather creates a blended rate for them as was discussed in the rate making section of this study. IWIF has opined that these entities would experience rate increases should it be required to become a NCCI member. However, such an impact would be lessened by the 5 year phase in period for membership and could also be lessened by the filing of a transition rule which would phase in any increases over a period of time. IWIF's use of non-NCCI classifications virtually ensures that those policyholders with such classifications will remain IWIF policyholders because the experience modification for those insureds cannot be transferred to NCCI member insurers.

VII. OTHER PROVISIONS OF THE INSURANCE ARTICLE THAT ARE AND ARE NOT APPLICABLE TO THE FUND

As part of this study, the MIA was asked to "identify those provisions of law relating to consumer protections and financial soundness that are enforced by the Administration and are applicable to other property and casualty insurers, but are not applicable to the Fund." Since the language was not limited to other property and casualty insurers writing workers' compensation insurance in the State, the MIA conducted a thorough review of each Title of the Insurance Article in connection with IWIF's enabling legislation to determine which provisions are applicable to IWIF and which are not.²¹

IWIF's governing statute is codified in Title 10 of the Labor and Employment Article ("LE") of the Maryland Code Annotated. IWIF is statutorily created as an independent unit of the State. LE § 10-105(a). By subjecting IWIF to various statutes that apply only to State agencies or instrumentalities, the General Assembly has implicitly acknowledged that IWIF is an agency of instrumentality of the State. *See Central Collection Unit v. DLD Associates*, 112 Md.App. 502, 685 A.2d 873 (1996). That being said, the General Assembly expressly exempted IWIF from most State laws, and intended that IWIF operate independently of all other agencies, except as provided in § 10-105(b). *Id.*

IWIF is not subject to additional regulatory oversight which is not specifically outlined in Title 10 of the Labor and Employment Article. Prior to 2000, oversight of

²¹ The MIA conducted its own review and study of the Insurance Article in connection with IWIF's enabling statute and created a chart identifying those provisions of the Insurance Article which are not applicable to IWIF. This chart is attached as Appendix XVIII. Please be advised that IWIF also submitted a chart to identify those sections of the Labor and Employment article and the Insurance Article that either applies specifically to IWIF, from which IWIF is specifically exempted or which applies to insurers generally, but not IWIF. That chart is Exhibit 4 to Statement of IWIF and is contained in Appendix VIII.

IWIF in terms of fiscal examinations, audits, and market conduct examinations was performed by the Legislative Auditors. That changed in 2000, with the enactment of legislation which gave the Insurance Commissioner specific authority and oversight over certain areas of IWIF's business. The legislation made IWIF a member of the Property and Casualty Guarantee Corporation and authorized the Commissioner to examine the financial condition of IWIF to ensure its solvency and that it meets the minimum risk based capital requirements to be a member of the Guaranty Corporation. Since 2000, the regulatory authority given to the Insurance Commissioner with respect to IWIF has continued to expand; most recently with the enactment of Senate Bill 679 (Chapter 612, 2008 Session).

A. LAWS APPLICABLE TO IWIF

Pursuant to §10-125 of the Labor and Employment Article, the Fund is subject to examination by the Commissioner in accordance with Title 2, Subtitle 2 of the Insurance Article (Enforcement) and is subject to the following sections of the Insurance Article as well: Title 4, Subtitle 3 (Risk Based Capital Standards for Insurers), Title 5, Subtitles 1, 2, 4, and 9 (Assets and Liabilities, Reserves, Valuation of Assets and Reinsurance), Title 9 (Impaired Entities), and §§ 3-124 (Bulk Reinsurance – Stock Insurers), 4-115 (Home Office – Location of Accounting Records and Assets), 4-116 (Annual and Interim Statements; Audited Financial Reports), and 4-118 (Qualified Independent Certified Public Accountants).

The Commissioner is also authorized to examine or review the Fund for compliance with Title 12, Subtitle 1 of the Insurance Article (Policy Forms and Provisions); Title 19, Subtitle 4 (Workers' Compensation Insurance), with the exception of §19-403 (Setting Premium Rates); and Title 27 (Unfair Trade Practices and Other Prohibited Practices). In addition, pursuant to §10-122 of the Labor and Employment Article, the Fund's investments are limited to those authorized under Title 5, Subtitle 6 of the Insurance Article.

In addition to financial oversight, the Commissioner has been granted authority to examine and enforce the required policy provisions under Title 12, Subtitle 1, and the workers' compensation provisions found in Title 19, subtitle 4, with the exception of provisions relating to rate setting. The Commissioner may also regulate the business practices of IWIF under Title 27 of the Insurance Article, which governs unfair trade practices. Note however, that the provisions of Title 27, Subtitle 3 of the Insurance Article (Unfair Claims Settlement Practices), are not applicable to workers' compensation insurers. *See* Ins. § 27-302(b). This is appropriate as disputes involving injured workers and their workers' compensation claims properly fall within the jurisdiction of the Maryland Workers' Compensation Commission.

Title 19, Subtitle 4 of the Insurance Article specifically relates to workers' compensation insurers. By virtue of LE § 10-125(b)(1) and (c)(ii), not only does the Commissioner have authority to conduct an examination of IWIF to determine compliance with all provisions of Title 19, Subtitle 4 (except for 19-403 which addresses

setting premium rates), but the Commissioner now may enforce these provisions, including those governing cancellations.

To the extent that IWIF may issue workers' compensation insurance policies that are the subject of a premium finance agreement, those portions of Title 23 of the Insurance Article that impose obligations on insurers whose policies are premium financed would be is applicable to IWIF.

The Commissioner's authority under Title 27 of the Insurance Article authorizes him to issue cease and desist orders if the Commissioner finds that IWIF is engaging in an act or practice prohibited by Title 27. Ins. § 27-103. Title 27, Subtitle 2 also prohibits certain "unfair methods of competition" including the making of misrepresentations about policies, making statements and advertisements about insurance business (Ins. §§ 27-203, 27-204), rebating (Ins. § 27-212), twisting (Ins. § 27-213), and coerced sale or tie-ins (Ins. § 27-214). Included in unfair or deceptive practices are "improper premiums and charges." Ins. § 27-216(b) provides that:

A person may not willfully collect a premium or charge for insurance that:

- (i) exceeds or is less than the premium or charge applicable to that insurance under the applicable classifications and rates and filed with and approved by the Commissioner; or
- (ii) if classifications, premiums, or rates are not required by this article to be filed with and approved by the Commissioner, exceeds or is less than the premium or charge specified in the policy and set by the insurer.

Thus, while the Commissioner does not regulate the actual rate setting, he is authorized to enforce the Insurance Article with respect to IWIF's application of its rating plans. If there is a dispute as to the correct amount of the premium, the Commissioner now has authority to find that the premium charged was improper. Arguably, that statute implies authority to require the insurer to return the unlawful premium, because collection of such a premium is prohibited. However, note that generally in such cases, when the Commissioner finds a violation of a statute such as Ins. § 27-212 in which an improper premium has been paid, he will order restitution in the form of a refund of the unlawful premium by authority of § 4-113. However, because § 4-113 is not applicable to IWIF, the authority to remedy a statutory violation is less clear.

As previously discussed, Title 27, Subtitle 3 (Unfair Trade Practices and Other Prohibited Practices) that applies generally to insurers providing property and casualty coverage, specifically excluded workers' compensation insurers. *See* Ins. § 27-302(b)(2).

With respect to Title 27, Subtitle 4 (Fraudulent Insurance Acts), Ins. § 27-408 specifies penalties for violations of the subtitle, which may include ordering the violator

to "restor[e] to the victim the property taken or the value of the property taken" (Ins. § 27-408(A)(i)) and a fine (Ins. § 27-408(ii)).

Title 27, Subtitle 5 is concerned with discrimination in underwriting. The MIA historically has held that an insurer may not cancel or refuse to underwrite or renew a particular insurance risk or class of risk except by application of standards which actually exist, which are not discriminatory, and which are reasonably related to the insurer's economic and business purposes. In addition, if the insurer has a rate which will accommodate the specific risk factor for which the insurance policy was cancelled or refused, the insurer may not refuse the risk. IWIF will now be subject to this provision, just as other insurers are.

Title 27, Subtitle 6 governs cancellations, nonrenewals, premium increases and reductions in coverage. However, most provisions in this subtitle do not apply to workers' compensation insurance, because that line of insurance is not included in the definition of "commercial insurance" (Ins. § 27-601(b)) and also is not "personal insurance." (Ins. § 27-601(c)). Therefore, the provisions of §§ 27-601.1, 27-602, 27-603, 27-604, 27-605, 27-607, 27-609, 27-610, and 27-611 do would not apply to IWIF or any other workers' compensation carrier. Section 27-606, which concerns plans of withdrawal from a line of business would apply, as would Ins. § 27-608, which sets forth requirements for notice to policyholders in the event of a premium increase of 20% or more. The requirements in Ins. § 27-608 are virtually identical to those of LE § 10-130.

B. LAWS AS TO WHICH IWIF IS EXEMPT

Despite the expanded scope of the Commissioner's regulatory authority over IWIF, there still are areas of regulation applicable to other insurers to which IWIF is not subject. Perhaps the most significant limitation on the Commissioner's authority arises from the fact that most provisions of Title 4, Subtitle 1 do not apply to IWIF. IWIF is not required to obtain a certificate of authority (Ins. § 4-101), and is therefore not subject to having its certificate of authority suspended, revoked, or non-renewed. (Ins. § 4-113). Likewise, the Commissioner may not order IWIF to pay restitution as a result of a statutory violation and the Commissioner may not impose administrative penalties upon IWIF, which are authorized by Ins. § 4-113.²²

Other provisions of Title 4, Subtitle 1 which do not apply to IWIF include Ins. § 4-117, which requires an insurer to give notice to a claimant when a payment is made to the claimants' attorney.

Despite the inapplicability of Title 4, Subtitle 1 to IWIF, the Commissioner still may issue orders to enforce the provisions of the Insurance Article. (Ins. § 2-204) and he may enforce his orders by filing an action in circuit court. Ins. § 2-201(a). Moreover, most of the conditions which would support suspension or revocation of an insurer's certificate of authority may be corrected and/or pursued through a proceeding under Title

²² The MIA is not seeking such authority as the notion of one State agency fining another State agency is a highly dubious proposition both as a matter of law and as a matter of public policy.

9. The primary difference between IWIF and other insurers is that because Title 4, Subtitle 1 is not applicable to IWIF, the Commissioner has fewer tools at the administrative level to force compliance. Essentially, to the extent that IWIF fails to comply with administrative orders, the Commissioner must enforce his orders through judicial proceedings.

IWIF is not subject to either Title 2, Subtitle 5, which requires insurers to pay assessment fees. Because the MIA is funded by the Insurance Regulation Fund, which consists of revenue collected by the MIA and the MIA has responsibilities with respect to regulation of IWIF (and those responsibilities may increase), serious consideration should be given to having IWIF contribute to the MIA's budget.

Most notably, however, is the fact that IWIF is not subject to Title 6, governing the mandatory 2% premium tax while all other property and casualty insurers doing business in the State are required to pay this tax. It should be noted that while MIAF is subject to the premium tax, the Maryland Health Insurance Plan, the health insurer of last resort, is not. *See* Ins. § 6-101. While there may be legitimate policy reasons for exempting a recently created health insurer of last resort, in light of IWIF's large market share and its healthy financial condition, exempting it from the premium tax seems unwarranted.

IWIF is not subject to Title 7 of the Insurance Article, which applies to most property and casualty insurers. Title 7 sets forth standards for reasonableness of assets and surplus as regards policy holders and is concerned with disclosure of changes in control of an insurer and acquisitions made by insurance companies. The purposes of Title 7 "... include promoting the public interest by:

- (1) requiring disclosures in acquisitions and mergers;
- (2) requiring disclosures of material transactions, relationships between an insurer and its affiliates, and dividends to stockholders paid by insurers;
- (3) requiring disclosures of relevant information about changes in control of insurers; and
- (4) establishing penalties for failure to disclose and provision for the disapproval of certain transactions.

Ins. § 7-102(b).

The provisions of Title 7 most likely would not be of concern in regulating IWIF, which does not have affiliated entities or stockholders. In addition, because IWIF is controlled by a Board of 9 members appointed by the Governor, it is unlikely that there would be a "change of control" of IWIF about which the Commissioner would not be aware.

IWIF is not subject to Title 10 of the Insurance Article, which provides for the licensing of insurance professionals. This may well impact consumer protection as Title 10 imposes certain requirements on insurers with respect to their appointed agents. For

example, Ins. § 10-118 requires insurers to maintain a producer registry of all appointed producers and also requires the insurer to notify the Commissioner upon termination of an appointment. Ins. § 10-127, which provides that an insurer may not cancel a policy for nonpayment of premium due on the policy has been paid to the insurance producer also would not apply to IWIF, nor would Ins. § 10-130, which governs payment of commission by insurers to licensed insurance producers. While the representatives of IWIF testified at the public hearing that it would be bound by its agents actions, the MIA would recommend that IWIF be made subject to Title 10. The IWIF representatives indicated at the public hearing that they would have no objection to such legislation.

IWIF is not subject to Title 11 of the Insurance Article, which governs ratemaking and which is applicable to other property and casualty insurers. Further, under LE §10-125(b)(2), the Commissioner's enforcement actions may not include a requirement that the Fund increase rates. As previously discussed, since rate making goes hand in hand with solvency and for reasons of transparency, the MIA would recommend that IWIF be subject to rate review by the Commissioner and be required to obtain prior approval of its rates. In addition, the MIA would recommend that LE §10-125(b)(2) be stricken from the statute.

C. MISCELLANEOUS PROVISIONS OF THE INSURANCE ARTICLE APPLICABLE TO PROPERTY AND CASUALTY INSURERS GENERALLY, BUT NOT IWIF

There are other provisions of the Insurance Article which are applicable to property and casualty insurers generally, but which do not apply to IWIF. Although these cannot be easily categorized, such provisions do implicate consumer protections, including laws restricting disclosure of medical records. These include:

§ 4-117 - Notice to third party claimant of payment to attorney. This provision requires that at the time an insurer makes a payment authorized by a claimant's attorney of \$2000 or more, the insurer must provide written notice of the payment to the claimant by regular mail; § 4-403 -Disclosure of insureds' medical records. Prohibits disclosure of insured's medical records as it prohibits an insurer or an insurance service organization whose functions include the collection of medical data from disclosure of medical records except under certain circumstances; § 19-107 - Refusals to issue or renew insurance because of location. Applies to all motor vehicle, property, and casualty insurance and requires, if the insurer plans to refuse to underwrite based upon the location of a risk, that the insurer file a geographic designation of the area where business will be refused to be issued. The designation must have an objective basis and not be arbitrary or unreasonable); § 19-110 - Disclaimers of coverage on liability policies. Prohibits an insurer from disclaiming coverage based upon the insured's failure to cooperate or to give notice only if the insurer establishes by a preponderance of the evidence that the lack of cooperation resulted in actual prejudice to the insurer; § 19-112 - Request by bulletin. This provision allows the Commissioner to request data from property and casualty insurers by issuing a bulletin; § 19-113 - Settlement of claims. This applies to settlement of claims under a liability insurance policy for minors or persons in loco

parentis – this would apply to property & casualty insurers, including workers' compensation insurers; § 27-903 - Premium notice to indicate kind of coverage. Requires that an insurer that submits to its policyholder a notice of initial or renewal premium due shall indicate the kind of insurance coverage for which the policyholder is being charged; § 27-909 - Use of genetic tests. This provision seems primarily focused on health insurers; however, workers' compensation insurers are not expressly excluded. In pertinent part, this provision prohibits an insurer from releasing identifiable genetic information or the results of any genetic test to any person who is not an employee of the insurer or a participating health care provider without prior written authorization; § 27-911 - Change of insurance producer of record. Governs changes to insurance producers of record and requires an insurer to accept and honor a request by a policyholder for a change of insurance producer of record within 30 working days after receipt of the request; § 27-912 - Transfer of policies. Provides that an insurer that accepts a transfer of insurance business of a group of policyholders from an independent insurance producer may treat the policies transferred as renewals and not new policies for underwriting purposes; and finally, Title 28 - Holocaust Victims Insurance Act which applies to any form of life, accident, health, annuities, property, casualty, education or dowry insurance authorized in Maryland between 1929 and 1945, and provides for the claims of Holocaust victims to be documented and reviewed in a special way. Also authorizes the insurer to report to the Governor or General Assembly regarding claims filed by Holocaust victims.

VIII. VIEWS EXPRESSED AT PUBLIC HEARING

In order to fulfill its charge to have input from the IWIF, NCCI, the Maryland Association of Counties ("MACO"), the Maryland Municipal League ("MML"), representatives of small businesses, and any other person that the Administration considers appropriate, the MIA held a Public Hearing on December 10, 2008 in Annapolis. Notice of this Public Hearing was disseminated by way of posting on the MIA's website, by sending out a blast email notification, by placing notice of the hearing on the hearing schedule and by issuing personal invitations to interested parties to participate in this hearing.²³ Not surprisingly, at the Public Hearing on the Injured Workers' Insurance Fund Study, the opinions as to what, if anything, should be done varied depending on the perspective of the person or entity for whom he or she was testifying.

Producers²⁴ expressed the sentiment that IWIF offers a viable alternative to obtaining workers' compensation insurance from private insurers and, further, that in this economy there would be no compelling reason to alter the existing system which seems to be operating well. They argued that making IWIF a NCCI member would only result in additional costs that would then be passed along to Maryland employers without any benefits to off set those costs. When asked about an employer's experience modification

²³ See Appendix I and II.

²⁴ Written testimony was provided by way of letters from some producers (See Appendix III, IV and V for copies of these letters) and oral testimony at the time of the hearing was provided by Paul Troeschel, John Dozier and Tom Lowe.

factor, the producers advised that even though IWIF and NCCI use different experience modification factors, it would be easy to move from IWIF to NCCI since one could simply reclassify the payroll for the past five years and then get a loss run to calculate the experience modification factor. One producer suggested that moving from IWIF to NCCI was a good thing for some Maryland employers since they could avoid their bad experience and simply get the 1.0 experience modification factor offered by an NCCI member which would result in an improved rate in the private market place. Another producer suggested that employers with good safety records get a better benefit from being with IWIF.²⁵

The Producers' views were echoed by representatives of the MML, the Maryland Retailers Association ("MRA"), National Federation of Independent Business ("NFIB"), and MMACO.²⁶ Not surprisingly, these entities were all concerned with the niche that IWIF fills for their members, be they counties, small governmental entities or small businesses. MRA and NFIB were concerned that the costs associated with NCCI membership would result in increased workers' compensation insurance costs for its members. NFIB did note the importance of IWIF's solvency, but did not believe that would be addressed by NCCI membership. MML, on behalf of its members which are small cities and towns, stated that IWIF offers what it described as "a stable blended rate" for these small governmental entities. MACO, while taking no position on NCCI membership for IWIF, raised the concern that there should be no unintended consequences that would be detrimental to their members if NCCI membership were to be imposed upon IWIF. These groups repeated refrain was "If it ain't broke, why fix it?" In other words, since the Maryland workers' compensation insurance marketplace is stable, they did not believe any changes are warranted.

The American Insurance Association ("AIA"), an insurance industry trade association that represents private insurers writing workers' compensation insurance in Maryland, was of the opinion that if IWIF is competing with the private marketplace in Maryland, it should be required to do so in the same manner as a private insurer. Specifically, the AIA stated that IWIF should be subject to Maryland rating laws applicable to those insurers writing workers' compensation in the state; should be required to become an NCCI member; should be required to report its data to NCCI; and should be required to pay the 2% premium tax to the State. The AIA noted that making IWIF subject to the same rating, regulatory oversight and premium tax provisions applicable to other private insurers serves to protect IWIF, the private marketplace and, ultimately, Maryland businesses.²⁷

Property Casualty Insurers Association of America ("PCI"), another insurance industry trade association whose members write 38% of the workers' compensation

²⁵ It should be noted that the MIA is in no way suggesting that insurers not be allowed to offer safety credits to those employers who have demonstrated an active safety program. Indeed, credits and the size of same given by a carrier to an insured are often a very real way in which insurers compete for business.

²⁶ The written statements of these entities are attached as Appendix VI, XI, XIII, and XVI respectively.

²⁷ A copy of AIA's written testimony can be found in Appendix XIV.

insurance in the State, was concerned that the private market be maintained.²⁸ It opined that IWIF was the insurer of last resort and, as such, should not be competing with the private marketplace.

IX. RECOMMENDATIONS

In making its recommendations, the Administration wishes to emphasize that it is in no way suggesting that IWIF is being mismanaged or is in imminent need of regulatory intervention; rather, the Administration is looking to improve the operation of IWIF, to bring greater transparency to its rate making process, and to provide greater protection for its solvency, thereby acting in the best interests of Maryland employers, injured workers, the industry writing workers compensation insurance and the State. Working from this premise, we are recommending that the Maryland General Assembly consider the following:

1. Clarify, in statute, the intended role of the Fund in the Maryland workers' compensation insurance marketplace.
2. Make the Fund subject to Title 11, Subtitles 1, 2, and §§11-329 and 11-330, the Administration's ratemaking authority and require that it obtain prior approval of its rates;
3. Strike the language in LE §10-125(b) that prohibits the Insurance Commissioner from requiring the Fund to increase its rates; and
4. Make the Fund subject to Title 10, Subtitle 1 of the Insurance Article (Insurance Producers).

While it is ultimately a policy decision for the General Assembly to make regarding what the proper purpose or mission is for the Fund, the Administration's recommendation is included for the Legislature's consideration. Once the legislature has determined the proper role for the Fund, it should take action to ensure that the Fund and the Administration have the proper legislative tools to operate as desired.

Based on the fact that IWIF has historically operated as both the insurer of last resort and as a competitive insurer and done so successfully, as evidenced by its large market share, the fact that its rates are actuarially sound and competitive and that it is financially solvent, the Administration recommends that it be authorized by statute to operate as both the insurer of last resort, providing Maryland employers with a safety net to obtain the mandated coverage they need to operate their businesses, and as a competitive insurer, with all the rights and obligations that are applicable to other competitive insurers. In addition, its governing statute should be amended to include an assessment mechanism that would allow IWIF to assess all other competitive insurers writing workers' compensation insurance in the State for losses directly resulting from its residual business. Specifically, IWIF would be made subject to the annual assessment fee in Title 2, Subtitle 5; would be made subject to payment of the premium tax in Title 6, Subtitles 1 and 2; would be required to become an NCCI member as per Title 11, Subtitle

²⁸ A copy of PCI's written testimony can be found in Appendix XII.

3, Part V, albeit subject to a 5 year transition period; and other sections of the Insurance Article that are applicable to the competitive workers' compensation insurance market.

APPENDIX

- I. Notice of Public Hearing addressed to All Interested Parties dated November 26, 2008, blast fax with Notice of Public Hearing and 2008 Hearing Schedule reflecting the Public Hearing to be held on December 10, 2008.
- II. Invitation to Public Hearing addressed to Maryland Municipal League, Maryland Association of Counties, Maryland Chamber of Commerce, National Federation of Independent Business, Maryland Chapter, and Maryland Retailers Association.
- III. Letter dated November 21, 2008 from Bruce Talbot, CPCU, a producer with The Advantage Group Inc. in Westminster, Maryland.
- IV. Letter dated December 1, 2008 from Edward L. Sanders, III, CIC, President of Edward L. Sanders Insurance Agency, Inc. with offices in LaPlata and Prince Frederick, Maryland.
- V. Letter dated December 4, 2008 from Charles A. McClenahan, Chairman and CEO of Landmark Insurance and Financial Group with offices in Princess Anne and Middle River, Maryland.
- VI. Letter dated December 4, 2008 from Scott A. Hancock, Executive Director of the Maryland Municipal League.
- VII. Witness List from Public Hearing on December 10, 2008.
- VIII. Information submitted by IWIF: Statement dated December 10, 2008; PowerPoint presentation dated December 10, 2008; PowerPoint of IWIF's Consulting Actuary – Jan Lommele with Deloitte Consulting LLP – dated December 10, 2008; and Memo from IWIF's General Counsel supporting its position that the Fund is both a competitive insurer and the insurer of last resort dated December 12, 2008 with 4 attachments .
- IX. Information submitted by NCCI: Letter dated December 5, 2008 with 7 Exhibits attached; PowerPoint presentation dated December 10, 2008; and email from NCCI dated December 16, 2008 responding to IWIF's written and oral testimony.
- X. Report of Merlinos & Associates, Inc., Consulting Actuaries to the Maryland Insurance Administration, dated December 8, 2008.
- XI. Written statement of the Maryland Retailers Association dated December 10, 2008.

- XII. Written statement of the Property Casualty Insurers Association of America dated December 9, 2008.
- XIII. Written statement of the National Federation of Independent Business, Maryland Chapter, dated December 10, 2008.
- XIV. Written statement of the American Insurance Association dated December 10, 2008.
- XV. Written statement of the Property & Casualty Insurance Guaranty Corporation dated December 10, 2008.
- XVI. Letter from Michael Sanderson, Legislative Director of the Maryland Association of Counties dated December 9, 2008.
- XVII. Letter from Mark Brevan, Regional Vice President, Mid Atlantic Operations of Nationwide Insurance, dated December 9, 2008.
- XVIII. MIA's Chart Identifying those sections of the Insurance Article that are inapplicable to IWIF.

APPENDIX I

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
Commissioner

BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property & Casualty

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Direct Dial: 410-468-2301 Fax: 410-468-2306
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www.mdinsurance.state.md.us

NOTICE OF PUBLIC HEARING

TO: ALL INTERESTED PARTIES

**RE: PUBLIC HEARING TO STUDY THE
INJURED WORKERS' INSURANCE FUND**

DATE: November 26, 2008

Pursuant to Senate Bill 679 (Chapter 612, 2008 Session), the Maryland Insurance Administration is to study:

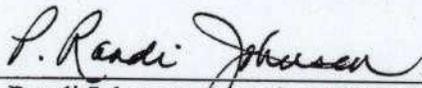
- (1) the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.
- (2) The study shall include:
 - (i) an analysis of whether the Fund's current rate making practices produce actuarially sound rates;
 - (ii) a determination of the cost impact to the Fund for the Fund to be required to file rates with a rating organization; and
 - (iii) a comparison of the experience rating plan used by the Fund for small employers as compared to the experience rating plan established by a rating organization for small employers.
- (b) The Administration shall identify other provisions of law relating to consumer protections and financial soundness that are enforced by the Administration and are applicable to other property and casualty insurers, but are not applicable to the Fund.
- (c) In conducting its study and identification of other provisions of law under subsections (a) and (b) of this section, the

Administration shall seek input, as appropriate, from the Injured Workers' Insurance Fund, the National Council on Compensation Insurance, Inc., the Maryland Association of Counties, the Maryland Municipal League, representatives of small businesses, and any other person that the Administration considers appropriate.

The Public Hearing will commence at **9:30 am on Wednesday, December 10, 2008** in the Economic Matters Committee Room, House Office Building, 6 Bladen Street, Annapolis, Maryland 21401. Interested parties are invited to attend the hearing and testify on this public hearing. Interested parties may also submit written comments at or before the time of the hearing.

Written comments and any questions regarding this matter should be directed to P. Randi Johnson, Associate Commissioner for Property & Casualty and may be transmitted by mail to 525 St. Paul Place, Baltimore, Maryland 21202, by phone 410-468-2301, by fax to 410-468-2306, or by email to prjohnson@mdinsurance.state.md.us.

Ralph S. Tyler, Insurance Commissioner

By: 
P. Randi Johnson, Associate Commissioner

Pamela Randi Johnson - Notice of Public Hearing to Study the Injured Workers Insurance Fund

From: Dave Diehl
To: P&C Comm. from Maryland Ins. Admin.
Date: 11/26/2008 9:40 AM
Subject: Notice of Public Hearing to Study the Injured Workers Insurance Fund
Attachments: Notice of Public Hearing 11262008.pdf

Good Morning,

I am forwarding the attached Notice of Public Hearing because of your request to receive P&C Related Communications. If you no longer wish to receive these communications or if others within your organization should be added, please let me know.

The attached Notice contains all relevant information regarding the hearing and/or the submission of comments.

*Dave Diehl, ARM, AAI, AAM
Chief Administrator, P&C
Maryland Insurance Administration
Tel: 410-468-2320
Fax: 410-468-2306
Email: ddiehl@mdinsurance.state.md.us*

	2008 Regular Session hearing information current as of November 26, 2008 - 1:41 p.m.	<u>Hearing Schedule</u> <u>Index</u>
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COMMITTEES HOLDING HEARINGS ON DECEMBER 10, 2008

<u>HOUSE ENVIRONMENTAL MATTERS - HOUSING AND REAL PROPERTY SUBCOMMITTEE</u>	<u>FAIR PRACTICES, JOINT COMMITTEE ON</u>
<u>MARYLAND MODEL FOR FUNDNG HIGHER ED, COMM TO DEV THE</u>	<u>HUMAN RELATIONS COMMISSION LAW ARTICLE REVIEW CMTE</u>
<u>MD INS ADMIN - PUBLIC HEARING UNDER SENATE BILL 679</u>	

DECEMBER 10, 2008

**HOUSE ENVIRONMENTAL MATTERS - HOUSING AND REAL PROPERTY
SUBCOMMITTEE**

1:00 P.M.

Room 250
House Office Building
Annapolis, MD

Subject: Briefing: Common Ownership Communities

FAIR PRACTICES, JOINT COMMITTEE ON

10:00 A.M.

3 East
Miller Senate Building
Annapolis, MD

Subject: Briefing on the State's Equal Employment Opportunity Prog

MARYLAND MODEL FOR FUNDNG HIGHER ED, COMM TO DEV THE

1:30 P.M.

Room 120
House Office Building
Annapolis, MD

Subject: Review Draft Final Report

HUMAN RELATIONS COMMISSION LAW ARTICLE REVIEW CMTE

4:00 P.M.

State Highway
Administration Hanover
Building #1
7491 Connelly Drive
Hanover, MD

Subject: Review of:

- (1) Second drafts of the following subtitles of Title 20 Relations) of the State Government Article:
Subtitle 1. Definitions; and
Subtitle 10. Enforcement; and
- (2) Proposed substantive legislation

MD INS ADMIN - PUBLIC HEARING UNDER SENATE BILL 679

9:30 A.M.

to
11:30 A.M.

Economic Matters
Committee Room
House Office Building
6 Bladen Street
Annapolis, MD

Subject: The Administration is seeking input from the Injured Work Insurance Fund, the National Council on Compensation In Inc., the Maryland Association of Counties, the Maryland Municipal League, representatives of small businesses, other person as part of its study under Senate Bill 679 which includes:

- (i) an analysis of whether the Fund's current ratemak practices produce actuarially sound rates;
- (ii) a determination of the cost impact to the Fund f Fund to be required to file rates with a rating organization; and
- (iii) a comparison of the experience rating plan used Fund for small employers as compared to the experie rating plan established by a rating organization fo employers



APPENDIX II

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
Commissioner

BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property & Casualty

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Email: prjohnson@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

December 1, 2008

Via Email and First Class Mail

Mr. Scott Hancock
Executive Director
Maryland Municipal League
1212 West Street
Annapolis, Maryland 21401

RE: Study of Injured Workers Insurance Fund

Dear Mr. Hancock:

As you are aware, SB 679 was enacted during the 2008 Legislative Session and it requires the Maryland Insurance Administration to study:

(1) the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.

(2) The study shall include:

- (i) an analysis of whether the Fund's current rate making practices produce actuarially sound rates;
- (ii) a determination of the cost impact to the Fund for the Fund to be required to file rates with a rating organization; and
- (iii) a comparison of the experience rating plan used by the Fund for small employers as compared to the experience rating plan established by a rating organization for small employers.

(b) The Administration shall identify other provisions of law relating to consumer protections and financial soundness that are

Mr. Scott Hancock
Executive Director
Maryland Municipal League
December 1, 2008
Page 2 of 2

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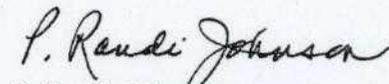
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Please be advised that the Insurance Administration has scheduled a Public Hearing on this Study to take place on Wednesday, December 10, 2008 beginning at 9:30 am in the Economic Matters Hearing Room located in the House Office Building, 6 Bladen Street, Annapolis, Maryland 21401. You and your members are invited to attend this hearing and testify should you so desire. You and your members may also submit written comments at or before the time of the hearing. We would request that you provide a minimum of 25 copies of any such testimony so that others may review same.

If you wish to submit written comments in advance, these should be directed to P. Randi Johnson, Associate Commissioner for Property & Casualty and may be transmitted by mail to 525 St. Paul Place, Baltimore, Maryland 21202, by phone 410-468-2301, by fax to 410-468-2306, or by email to prjohnson@mdinsurance.state.md.us.

Thank you for your attention to these matters.

Very truly yours,


P. Randi Johnson

PRJ/kos

cc: Ralph S. Tyler, Commissioner
Kimberly Robinson, Director of Government Relations
Dave Diehl, Chief Administrator, Property & Casualty

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



INSURANCE
ADMINISTRATION

525 St. Paul Place, Baltimore, Maryland 21202-2272
Direct Dial: 410-468-2301 Fax: 410-468-2306
Email: prjohnson@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

RALPH S. TYLER
Commissioner

BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property & Casualty

December 1, 2008

Via Email and First Class Mail

Mr. David Bliden
Executive Director
Maryland Association of Counties
169 Conduit Street
Annapolis, Maryland 21401

RE: Study of Injured Workers Insurance Fund

Dear Mr. Bliden:

As you are aware, SB 679 was enacted during the 2008 Legislative Session and it requires the Maryland Insurance Administration to study:

(1) the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.

(2) The study shall include:

- (i) an analysis of whether the Fund's current rate making practices produce actuarially sound rates;
- (ii) a determination of the cost impact to the Fund for the Fund to be required to file rates with a rating organization; and
- (iii) a comparison of the experience rating plan used by the Fund for small employers as compared to the experience rating plan established by a rating organization for small employers.

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Mr. David Bliden
Executive Director
Maryland Association of Counties
December 1, 2008
Page 2 of 2

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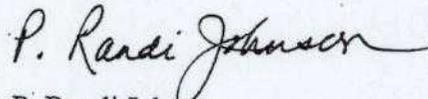
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Thank you for your attention to these matters.

Very truly yours,



P. Randi Johnson

PRJ/kos

cc: Ralph S. Tyler, Commissioner
Kimberly Robinson, Director of Government Relations
Dave Diehl, Chief Administrator, Property & Casualty

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
Commissioner

BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
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Email: prjohnson@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

December 1, 2008

Via Email and First Class Mail

Ms. Kathleen T. Snyder
President/Chief Executive Officer
Maryland Chamber of Commerce
60 West Street, Suite 100
Annapolis, Maryland 21401

RE: Study of Injured Workers Insurance Fund

Dear Ms. Snyder:

As you are aware, SB 679 was enacted during the 2008 Legislative Session and it requires the Maryland Insurance Administration to study:

(1) the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.

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(b) The Administration shall identify other provisions of law relating to consumer protections and financial soundness that are

Ms. Kathleen T. Snyder
President/Chief Executive Officer
Maryland Chamber of Commerce
December 1, 2008
Page 2 of 2

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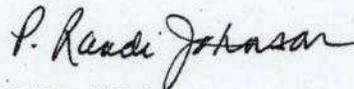
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Thank you for your attention to these matters.

Very truly yours,



P. Randi Johnson

PRJ/kos

cc: Ralph S. Tyler, Commissioner
Kimberly Robinson, Director of Government Relations
Dave Diehl, Chief Administrator, Property & Casualty

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
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BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property & Casualty

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www.mdinsurance.state.md.us

December 1, 2008

Via Email and First Class Mail

Ms. Ellen Valentino
Maryland State Director
National Federation of Independent Business
3 Church Circle, Suite #201
Annapolis, Maryland 21401

RE: Study of Injured Workers Insurance Fund

Dear Ms. Valentino:

As you are aware, SB 679 was enacted during the 2008 Legislative Session and it requires the Maryland Insurance Administration to study:

- (1) the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.
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Ms. Ellen Valentino
Maryland State Director
National Federation of Independent Business
December 1, 2008
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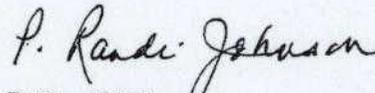
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Thank you for your attention to these matters.

Very truly yours,


P. Randi Johnson

PRJ/kos

cc: Ralph S. Tyler, Commissioner
Kimberly Robinson, Director of Government Relations
Dave Diehl, Chief Administrator, Property & Casualty

MARTIN O'MALLEY
Governor

ANTHONY G. BROWN
Lt. Governor



RALPH S. TYLER
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BETH SAMMIS
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
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1-800-492-6116 TTY: 1-800-735-2258
www.mdinsurance.state.md.us

December 1, 2008

Via Email and First Class Mail

Mr. Tom S. Saquella
President
Maryland Retailers Association
171 Conduit Street
Annapolis, Maryland 21401

RE: Study of Injured Workers Insurance Fund

Dear Mr. Saquella:

As you are aware, SB 679 was enacted during the 2008 Legislative Session and it requires the Maryland Insurance Administration to study:

(1) the impact of subjecting the Injured Workers' Insurance Fund to the provisions of law regarding rate making, rating, and rate review that are enforced by the Administration for other property and casualty insurers.

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Mr. Tom S. Saquella
President
Maryland Association of Retailers
December 1, 2008
Page 2 of 2

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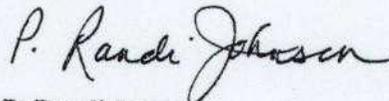
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Thank you for your attention to these matters.

Very truly yours,



P. Randi Johnson

PRJ/kos

cc: Ralph S. Tyler, Commissioner
Kimberly Robinson, Director of Government Relations
Dave Diehl, Chief Administrator, Property & Casualty

APPENDIX III

RECEIVED

NOV 24 2008

MARYLAND INSURANCE
ADMINISTRATION

November 21, 2008

Randi Johnson, Associate Insurance Commissioner
Maryland Insurance Administration
525 Saint Paul Place
Baltimore, MD. 21202-2272

RE: Hearing – SB 679 Study

Dear Commissioner Johnson:

I am writing to voice my opposition to the proposed changes that will require IWIF to follow NCCI rules and rates. Having been in the insurance business on both the company and agency sides, I have experienced many changes and market cycles. Representing IWIF from day one as a broker, and serving on their advisory board for the past 4 years, I have found their current structure to be very beneficial and a competitive alternative for many of my Maryland based customers.

I'm sure you have heard many reasons why changes are not needed (IWIF specific class codes, lower experience rating thresholds, small employer discounts) to name a few.

When considering these changes, please take these factors into consideration:

- Past market cycles have left many Maryland businesses without affordable worker's compensation except for IWIF.
- Through their ability to set their own proprietary rates and experience rating plans, IWIF has been able to be more responsive to Maryland's needs.
- NCCI rating will add administrative costs which invariably get passed on to policy holders.

IWIF continues to perform well in both hard and soft market cycles. They are truly the carrier of choice for many insured's. Let's not fix something that is not broken and is working very well.

Sincerely,


Bruce Talbot, CPCU

APPENDIX IV

Edward L. Sanders Insurance Agency, Inc.

Quality Insurance Service Since 1908



December 1, 2008

Randi Johnson
Associate Insurance Commissioner
Maryland Insurance Administration
525 Saint Paul Place, Baltimore
MD. 21202-2272

RECEIVED

DEC 02 2008

MARYLAND INSURANCE
ADMINISTRATION

Dear Associate Commissioner Johnson,

Pursuant to Senate Bill 679, it is my understanding the Maryland Insurance Administration is studying the Injured Workers Insurance Funds (IWIF) rate making soundness and a possible requirement to affiliate with the National Council on Compensation Insurance (NCCI), among other topics.

Given IWIF's extensive positive history in the Maryland Workers Compensation market, a change to NCCI standards would have many detrimental effects in my opinion.

The following are a few reasons:

- 1) IWIF has a more small business friendly experience modification calculation than NCCI.
- 2) IWIF provides a composite rate for municipalities, counties and cities; NCCI does not.
- 3) Since IWIF's rates do not follow NCCI's rates, a change to NCCI affiliation would reduce workers compensation options for business, effectively restricting competition.

I represent many NCCI affiliated insurance companies, as well as IWIF, and workers compensation is placed where it best suits the business owner. The vast majority of my NCCI affiliated insurance companies are satisfied with IWIF's current operating status.

Given IWIF's history, stabilizing presence for Maryland businesses, and their strong leadership, I do not see the need nor benefit of changing them to NCCI affiliates.

Sincerely,

Edward L. Sanders III, CIC
President

Post Office Box 2828
10 Washington Avenue
La Plata, Maryland 20646-2828
(301) 934-9521 • (301) 870-3233 • (301) 884-4342

205 West Dares Beach Road
Prince Frederick, Maryland 20678
(410) 535-2512 • (301) 855-9073

APPENDIX V



CHARLES A. McCLENAHAN - CHAIRMAN
AL REDMER, JR. - PRESIDENT
K. JILL HALL - VICE PRESIDENT

December 4, 2008

Dear Commissioner:

As a former member of the Economic Matters Committee of the Maryland Legislature, I am writing to share my views regarding the potential changes to Maryland's workers' compensation system. Our system is regarded as one of the most *stable* in our country - there is not and has not been an issue with accessibility or affordability since reforms enacted by the legislature in 1988.

Since then, the combination of Maryland's high benefit levels and the low costs compares favorably to any workers' compensation program in our country. Part of the reason for our success is a viable State Fund that operates with a public purpose that is often not shared by private carriers.

As an insurance agent, I don't understand what the issue is that we are trying to fix. We have a competitive marketplace that generates affordable rates and quality service. When placing my clients business insurance, I sometimes use private carriers and sometimes IWIF. My fear is that if IWIF has to incur more costs to do business my clients will suffer. Additionally, IWIF's experience modification program encourages small business owners to practice safety in the workplace and sound claims management.

Many of the clients that I place with IWIF are small businesses or businesses that private carriers are not interested in insuring because of the risky nature of their operations. I like the opportunity to quote competitive rates - I think it keeps everyone honest.

In short, I am at a loss as to why we are tinkering with a model workers' compensation system that has proven to be successful, especially in the midst of an economic recession.

Sincerely,

A handwritten signature in black ink that reads "Charles McClenahan".

Charles McClenahan

Chairman/CEO

APPENDIX VI



MARYLAND MUNICIPAL LEAGUE

The Association of Cities and Towns

December 4, 2008

RECEIVED
DEC 08 2008
MARYLAND INSURANCE
ADMINISTRATION

Ms. P. Randi Johnson
Associate Commissioner
Property and Casualty
Maryland Insurance Administration
525 St. Paul Place
Baltimore, MD 21202

RE: Study of Injured Workers Insurance Fund (IWIF)

Dear Ms. Johnson:

I am responding to your letter of December 1, 2008 regarding the enactment of SB 679 during the 2008 Maryland General Assembly session and the upcoming public hearing scheduled for Wednesday, December 10, 2008. Although we appreciate the personal invitation to offer oral testimony at the hearing, we will not be able to attend. However, we would like to have the following written comments as part of the record:

The Maryland Municipal League would urge the Administration not to make alterations to the existing structure of IWIF's program. Currently 117 municipalities choose to be insured by IWIF's worker's compensation program. Many of these cities and towns are small with very little staff. IWIF's program offers stable blended rates, a separate rate structure for public safety employees and reasonable administrative costs; all of which are very important for our jurisdictions.

As we continue to grapple with the difficult task of balancing municipal budgets during these challenging fiscal times, MML would respectfully recommend that, absent a compelling reason to change the current IWIF structure which could result in additional costs being passed on to our municipal policyholders, the status quo be maintained.

On behalf of the Maryland Municipal League, I appreciate the opportunity to comment. Please let me know if you have any questions.

Sincerely,

Scott A. Hancock
Executive Director

1212 West Street, Annapolis, Maryland 21401

APPENDIX VII

STUDY OF IWIF
 PUBLIC HEARING
 DECEMBER 10, 2008
 WITNESS LIST

Name	Company/Affiliation
✓ 1. Paul Troeschel	Resident / Indep Agent
✓ 2. IWIF/Carroll/Phelan	
✓ 3. David Shepherd	Merlinos + Assoc. (MIA)
✓ 4. Tom Saquella	Md. Retailers Assoc
✓ 5. BOB ENIGEN	PCIA
✓ 6. Ellen Valentin	NFTB
✓ 7. John Doerzer	Consolidated Insurance
✓ 8. JACK ANDRYSZAK	AMERICAN INSURANCE ASSOCIATION
✓ 9. KEN STOLLER	
✓ 10. LORI LOVREN	NCCI
✓ 11. Minor Carter	
✓ 12. Tom Lowe	
13.	
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