ORIGINAL

RECEIVED
AUG 11 2008
STATE BOARD OFFICE

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

MISSOURI COUNCIL OF SCHOOL ADMINISTRATORS
3550 AMAZONAS DRIVE
JEFFERSON CITY, MISSOURI 65109

JULY 15, 2008
9:40 A.M. - 4:30 P.M.

1 CHAIRMAN: I appreciate everybody
2 coming today, and I'm going to be introducing
3 a few people today. David Broeker, who is the
4 head of the Division of Professional
5 Registration, he is here with us today. We've
6 got Connie Clarkston, who is the head of --
7 she is in the Division and over legislation;
8 have I got that right this time? And Connie
9 is going to give us a brief overview, again,
10 of what we're doing today. I've got Kim
11 Grinston, the attorney; Becky Dunn, executive
12 secretary; Lori Hayes, our inspector; and I'm
13 going to give the roll call for the Board.
14 Todd Mahn?
15 MR. MAHN: Here.
16 CHAIRMAN: Gary Fraker?
17 MR. FRAKER: Here.
18 CHAIRMAN: John McCulloch?
19 MR. McCULLOCH: Here.
20 CHAIRMAN: Joy Gerstein?
21 MS. GERSTEIN: Present.
22 CHAIRMAN: Okay. And Vernon Martin
23 isn't here and present today. And, once
24 again, I want to thank you for all coming, you
25 know. We had -- this is round two. You can

1 see that there has been casualties because
2 there's not as many people here, so,
3 hopefully, you all can make it through today
4 and come up with a third meeting. Connie, I'm
5 going to let you go ahead and kind of give an
6 overview of what we're doing again.
7 MS. CLARKSTON: As you know, the joint
8 committee was established by the passage of
9 Senate Bill 788. In preparation for that
10 joint committee to meet, several of us were
11 called to Senator Scott's office with the
12 presence of Representative Wasson. They have
13 asked that this Board coordinate efforts to
14 bring to them a proposal that has things that
15 everyone can agree on in Chapter 436, and then
16 identify those areas that they will have to
17 pay special attention to. Given that charge,
18 the Board then went back to the Division and
19 we sat down together to come up with
20 membership and try to identify different areas
21 of representation being on this Board. Many
22 of you wear dual hats. Many of you have
23 various interests in the preneed industry and
24 the funeral industry, and we tried to identify
25 by entity individuals that should be here.

1 So, because someone is at the table may not
2 necessarily be that they're here for the
3 obvious reason. They're here for -- and I'm
4 going to use Darlene, in particular. She's
5 here representing a preneed seller. She has
6 had some experience with the Board because she
7 was previously Board staff, so she can bring a
8 lot to the table. State regulators are here,
9 obviously, for the various reasons that they
10 oversee the regulations of the statutes.
11 We've been very impressed with public
12 participation. We certainly encourage that
13 today. Again, we have comment sheets
14 available. As we go through items, we have
15 tried to limit the amount of dialogue from the
16 public, but certainly are very interested in
17 what you have to say. The comment sheets can
18 be used. My e-mail is available on those
19 sheets. There will a time later in the day
20 where public comments can be taken at greater
21 length versus topic discussions as we go. If
22 anyone has any questions about how we have
23 arrived where we're at today, we certainly
24 encourage those questions and we will try to
25 provide answers to you.

1 MS. DUNN: Thanks, Connie.
2 CHAIRMAN: Okay. And what we're going
3 to do is we're going to go around the
4 roundtable here and we're going to start with
5 Larry McCord, and he's going to introduce
6 himself, and then we'll just work our way
7 around the table. And state your name, what
8 part of, you know, the state you're from, and
9 who you represent, if you would, please.
10 (The members introduce themselves.)
11 CHAIRMAN: Now, folks, before we start
12 today, I want to identify Todd is a member of
13 the Board -- Todd Mahn, and John McCulloch is
14 a member of the Board, too. So, they've
15 represented themselves as funeral home or
16 American Prearranged. Now, there has been
17 some Board members that got on me for kind of
18 not conducting the meeting properly last time,
19 so if you, the public, will wait to make your
20 comments at the end, because I just kind of
21 let you -- I'm a nice guy, and I wanted you
22 -- you know. I'm running for coroner back
23 home, and I need the votes. So, anyway, the
24 committee will discuss the topic, then we will
25 ask for comments from the public, and then

1 we'll go from there. Also, the meeting is
2 recorded today with a court reporter, and when
3 the public comes up, identify yourself at the
4 podium, who you are, and then you may speak.
5 Oh, I've got a reminder here. Would you like
6 to start over here and we'll introduce
7 ourselves out in the public?
8 (Members of the public introduce
9 themselves.)
10 CHAIRMAN: Thank you. We've got
11 everybody. All right. Once again, I want to
12 tell you how much we appreciate you being
13 here, how much time you put in going through
14 the book, and you guys are great, and we do
15 appreciate it. So, I'm going to turn it over
16 to our mediator, Kim.
17 MS. GRINSTON: Good morning, everybody.
18 First, I do want to say thank you to everybody
19 who helped us last week and what we were able
20 to get done last week. I think you all
21 tackled a lot of information, a lot of
22 concepts, and I think all of the input was
23 very valuable, and I can tell you from the
24 Division level, from the Board level, we
25 really do appreciate everyone that helped

1 participate in the process because I thought
2 we were able to do this in a very orderly
3 way. We are in the process of taking what
4 you all voted on as a consensus last week and
5 putting it into language that we hope to have
6 something available probably at the end of
7 this week, if not early next week, so that you
8 all can start looking at the language that we
9 have agreed on so far. I'm sorry. The
10 language that includes the concepts that we
11 have agreed on so far, and so, Connie and I
12 are going to be coordinating that probably
13 next week or later on this week and getting it
14 out for you all to review and to give comments
15 and suggestions. Having said that, as we talk
16 about the committee and something that I
17 talked to Connie about and wanted to echo is
18 that we understand that there are some
19 concerns about the makeup of the committee and
20 who is on the committee that's been expressed
21 to us this morning. Don expressed that to us.
22 And if anyone has any questions about, you
23 know, who is being represented on the
24 commission or anything else, I do want to say
25 for the record that we invited small funeral

1 directors, large funeral directors; we have
2 one person who is a representative from the
3 insurance side; we have regulators at the
4 table; we've got our consumer groups at the
5 table; we've got interested parties at the
6 table, parties who have just had a voice in
7 436 and who have helped and given the Board
8 some really good suggestions. Those people
9 are here. Now, last week I know some of our
10 smaller funeral directors that were -- and I
11 say smaller, I mean in terms of possibly
12 numbers -- that were invited, were unable to
13 attend. We are very glad that some of them
14 are here today. But if there are any
15 questions about the membership and/or the
16 makeup. Of course, we have all of our Board
17 members seated, and, excluding our public
18 member, all of them are funeral directors.
19 So, I think we've got a group that's probably
20 mostly funeral directors. How many funeral
21 directors -- just so we can do this -- how
22 many funeral directors are at the table -- at
23 the roundtable? Hi, Lori -- thank you, Lori
24 -- who is also our inspector. And insurance
25 people, how many people do we have

1 representing insurance people -- at the table?
2 I'm sorry; I'm joking. Thank you. At the
3 table, the roundtable, how many insurance
4 people, again, just by a show of hands. Thank
5 you. John is seated as a Board member, even
6 though we understand he's with APS and he also
7 has the insurance side. And I just wanted to
8 make sure that was clear and clarified because
9 we understand that there have been some
10 questions raised about persons and
11 invitations. I was telling Don this morning
12 that we've gotten criticized because the group
13 was too big, and then we were told this
14 morning that we needed to add people to make
15 it a bit larger. But we want to make sure if
16 there are any questions, comments, or
17 concerns, comment cards -- if you're a member
18 of the public, those comments will come back
19 and get circulated to everyone, as well. My
20 understanding is that the chairman will be
21 opening up the floor for public discussion so
22 that if you are a small funeral home or large
23 funeral home, an insurance person, a
24 regulator, anyone who would like to add
25 comments to the discussion, I think that the

1 floor is going to be opened for you to do
2 that. Having said that, I think we probably
3 need to start with a topic that may seem like
4 it should have been first, but I think we
5 needed to set the framework last week, and
6 this week, I think we're going to have to
7 tackle some of the more difficult issues.
8 Where I would like to start, and you guys know
9 I jumped around last week, is #41 in our
10 agenda.
11 MS. DUNN: From last week?
12 MS. GRINSTON: From this week, yes.
13 MS. DUNN: Okay. I was just trying to
14 clarify #41 was on the July 8th agenda.
15 MS. GRINSTON: I'm sorry. I'm sorry.
16 Let's look at #41 from the July 8th agenda --
17 I apologize -- which is the definition of a
18 preneed contract. In the room today is the
19 executive director for the Office of Endowed
20 Care Cemeteries. I understand that there are
21 some cemetery questions that may come up as we
22 discuss this topic. I am going to ask, and
23 we talked to the chairman about this, we are
24 going to have -- when we discuss some of the
25 cemetery issues, we are going to invite in

1 more of the cemetery people. And so, for
2 right now, I'd like to guide our discussion,
3 but we're sort of going to leave the cemetery
4 portions of this alone for just a minute --
5 for just a week or so to make sure that we
6 can get some of our cemetery people in to talk
7 to us about some of their thoughts from the
8 cemetery side, but, again, we do have the
9 executive director from the Office of Endowed
10 Care Cemeteries here, because I think this
11 conversation may be instructive for him, as
12 well. Right now, our definition of preneed
13 contract, if we can -- I think everyone has a
14 copy of 436. If we can look at 436.005 sub
15 5. I think I would like to suggest that this
16 committee look to see if this definition is
17 adequate. I know there were some suggestions
18 that were made last week about some of the
19 wording because we thought that it may -- it
20 needed to be clarified and, also, you all made
21 some decisions about insurance policies that
22 would be regulated, and I wanted to make sure
23 that this definition is in line with the
24 consensus of the group. So, if we could look
25 at the definition of preneed contract under

1 436.005 sub 5, and possibly take suggestions
2 on how that needs to be changed or if it
3 needs to be changed at all. Is it clear
4 enough, not clear enough? Is it confusing,
5 conflicting, and is it in line with the
6 insurance issues and other issues that we
7 talked about last week? Having said that, Mr.
8 Chairman, I would like to open it up to the
9 floor for discussion. It's on page -- well, I
10 don't know if you guys have the full rule
11 book, so I won't give a page number, but it
12 should be first page of 436 and it's in the
13 definition section and, again, it's
14 subparagraph 5 which defines preneed contract.
15 CHAIRMAN: And just a reminder, if you
16 hold your red card up or put it in front of
17 your name, you'll be acknowledged.
18 MS. DUNN: And, panel, you either have
19 a book like this or you have a copy of the
20 chapter that we can get for you.
21 CHAIRMAN: Don?
22 MR. OTTO: We talked about it briefly
23 last time, but one issue with the definition
24 is the phrase "current payment of money or
25 other property," particularly when you're

1 dealing with an insurance assigning or a
2 conditional beneficiary. Is that the current
3 payment money or property? Arguably, no. And
4 whichever way you go on that, it would be nice
5 if it were clear. I can see arguments both
6 ways, but it would be nice if the definition
7 made it clear that an assignment that's not
8 irrevocable is not the current payment of
9 money or -- if you're -- because if you get
10 that later on, if the funeral home is the
11 beneficiary, it says if the funeral home is a
12 beneficiary, then that kicks in 436 on a
13 preneed contract. But what if the beneficiary
14 is not irrevocable in most cases -- you know,
15 the owner of the policy can change that
16 beneficiary at any time. Is that the current
17 payment of money or property?
18 CHAIRMAN: Bill?
19 MR. STALTER: Yes. We've kind of seen
20 how the preneed contract has evolved over the
21 last 20 years, and I think when this was
22 written, we were thinking that it was always
23 going to be a trust-funded contract. So, I
24 mean, one aspect of this is, you know, what
25 should trigger the regulation of the

1 transaction? Is it consideration in any form
2 to the funeral home or funeral director? And
3 that can take the form of an assignment or the
4 payment of commissions or the payment of
5 money. But at some point, it is, you know,
6 okay, we need to trigger when this transaction
7 should come under the scope of the regulation
8 by the Board or another agency, but, also, you
9 know, what is -- I mean, the preneed contract
10 and, you know, we kind of see this out in
11 play in the industry about guaranteed versus
12 nonguaranteed, you know. If you've got a
13 nonguarantee that's 100 percent and there's no
14 consideration paid to the funeral home, is
15 that, you know, a regulated transaction, as
16 well? But, you know, 436 was pretty much
17 written for a guaranteed funeral contract, and
18 it's really hard for a smaller funeral home to
19 do anything other than that; when we talk
20 about the joint contract, we'll have a problem
21 with that, as well. So, you know, there
22 should be some kind of -- I'm going to take a
23 few steps back from this and think, you know,
24 yes, the guaranteed contract, I mean, really
25 is a transaction that needs to be regulated.

1 If we talk about a nonguaranteed that's 100
2 percent, how do we -- you know, how do we
3 give more latitude in that and provide
4 safeguards? I don't know the answers yet, you
5 know, but it is -- you know, we've kind of
6 defined something here, but it's really
7 changed since then. So --
8 CHAIRMAN: Sharon?
9 MS. EULER: I'm just going to remind
10 the group that last week we talked about one
11 of the ways to define a preneed contract as by
12 its funding source, that it could have three
13 separate funding sources. One of the things
14 that I've encountered problems with this
15 particular version -- this particular language
16 is that it's confusing, it's hard to
17 understand, and I think a more simple,
18 straightforward definition of what a preneed
19 contract is is in order.
20 MR. WARREN: Mark Warren. We talked
21 about this a little last time about
22 clarification with respect to the fact that
23 the insurance industry is regulated by the
24 Department of Insurance with respect to the
25 sale of preneed policies or insurance-funded

1 preneed policies as opposed to the Board of
2 Embalmers and Funeral Directors. The language
3 in here now probably could be made a little
4 more clear.
5 CHAIRMAN: Go ahead.
6 MS. GRINSTON: That was going to be my
7 question. And maybe someone can help educate
8 me for purposes of my understanding. When you
9 are selling -- if you're an insurance company
10 and you're selling a "preneed policy," tell me
11 what documents you have. I know we've looked
12 at some policies. But is there an insurance
13 policy and a preneed contract that goes with
14 it? Are those two generally combined in one
15 document, or will we see two documents when we
16 have an insurance company who sells a preneed
17 contract through an insurance-funded mechanism.
18 MR. WARREN: If you don't mind, would
19 you mind if I had Gerry answer that question,
20 since he's involved with that every day?
21 CHAIRMAN: That would fine. Gerry?
22 MR. KRAUS: Gerry Kraus,
23 Homesteader's. The question, as I understood
24 it is, what are the documents that are
25 normally involved in the transaction on a

1 life-insurance-funded preneed? Typically, the
2 family goes to the funeral home, selects the
3 goods and services, and they complete, if
4 they're going to get a guaranteed contract, a
5 formal preneed contract that talks about that
6 guarantee. Then they go into the funding
7 phase, and if it's going to be funded by
8 insurance, then a life-insurance agent would
9 take out an application, and with that same
10 consumer, fill out a life-insurance
11 application. And then after that was sent to
12 the office, a life-insurance policy would
13 follow to that person. If it were a
14 nonguaranteed transaction, it would be about
15 the same thing, except there would be a
16 nonguaranteed contract.
17 MR. OTTO: And who would the owner and
18 beneficiaries be?
19 MR. KRAUS: If it were a noncontract
20 situation, as some funeral homes don't want a
21 contract at all, they could just fill out a
22 goods and services form, kind of an at-need
23 funeral services and merchandise form, and
24 could also sell the family a policy to help
25 them fund those wishes, and just put the

1 noncontract form in the file.
2 CHAIRMAN: Darlene? Thank you, Gerry.
3 MS. RUSSELL: I'll show my age and say
4 that probably when the preneed statute went
5 into effect, the Board took a position at that
6 time and sent out a memo saying that any
7 assignment or anything in consideration for
8 preneed became a contract -- needed a
9 contract. If you took an assignment, the
10 funeral home was named as the owner or
11 beneficiary, it became preneed. And in our
12 case with our company, we provide a contract
13 for the funeral home to use because they're
14 the seller. So, if it's insurance funded, you
15 still need a preneed contract, you need a
16 statement of funeral goods and services, and
17 you need an insurance application, you know.
18 And if the funeral home is the -- going to be
19 named the owner, you will have an assignment
20 of irrevocability sometimes. But I think if
21 you'll look in the files, you'll find a clear
22 letter from Sara Rittman, who used to be the
23 assistant attorney general, saying the Board
24 took the position regardless if it was an
25 assignment, or any time the funeral home was

1 named as the beneficiary or owner, it became
2 preneed and required a preneed contract.
3 CHAIRMAN: Well, let me point this out,
4 though, Darlene. That didn't get to be a rule
5 and we can't make rules under 436, so, you
6 know, how did anybody in the public or the
7 industry know? You don't, so --
8 MS. RUSSELL: Yeah. And that's sad
9 because that -- I think the Board was on the
10 right track in protecting the consumer, and I
11 know the issue of rule making, hopefully, will
12 go away now and you'll have that ability. But
13 to protect the consumer, if there's an
14 assignment, if you're assigned an insurance
15 policy, there should be something in writing
16 as to what that is for.
17 CHAIRMAN: For your funeral. Okay.
18 Anybody else? If you all in the public would
19 like to speak? Gerry?
20 MR. KRAUS: Gerry Kraus,
21 Homesteader's. A couple of comments about the
22 specific definition. I think in the
23 second-from-the-last line, there's a phrase in
24 the middle that says, "Including payment of
25 proceeds from contracts of insurance." I

1 think that's an attempt to sweep in final
2 expense and make it somehow a preneed
3 contract, and I don't think that clause fits
4 and it needs to come out because even if a
5 life-insurance policy is paid to a provider
6 doesn't make it a preneed contract. So, I
7 think that is an ill-fitting piece there. And
8 in the last -- more toward the end, it says,
9 "Making the provider the owner or
10 beneficiary." There are a lot of regulators
11 that are banning funeral-home ownership of
12 policies, and, similarly, a lot of regulators
13 are banning funeral-home beneficiary
14 designations. Those have been trends for 20
15 years. So, I urge you not to go in those
16 directions and limit the funeral-home interest
17 in the life-insurance policy to the assignment.
18 CHAIRMAN: Why are they banning that,
19 Gerry?
20 MR. KRAUS: Well, arguably, some
21 regulators feel that funeral directors are
22 better off if their clients are dead, so,
23 let's not have any -- and valid or not, let's
24 not have any inducement for the funeral home
25 to make the policy good. I know it's a wild

1 outside argument, but there is just no reason
2 for anyone to come in between the consumer on
3 the ownership of a policy, so let's not let
4 the funeral home go there. If we have to
5 have that policy removed for some type of
6 public-assistance program like Medicaid --
7 removed from the consumer, that's where a
8 trust comes into play. We use a dry trust
9 that holds the consumers' rights. It's a
10 simple trust that any company can -- any
11 insurance company can devise fairly simply
12 with an attorney. They just designate a
13 couple of employees that will hold the rights
14 until death. It works for Medicaid purposes.
15 We've worked with Health Care Financing
16 Administration in Washington to kind of grease
17 this track, so they are pretty much nationwide
18 accepting of this irrevocable assignment into
19 a trust through a funeral home, so the funeral
20 home's interest and the preneed transaction
21 can be secured, so we have a solution for that
22 instance in which will let someone else other
23 than the policy owner step in and own the
24 rights. But even in those transactions, the
25 policy owner still has control -- still owns

1 the policy.
2 MR. STALTER: I might take this even
3 -- I mean, talk about what Gerry -- take it
4 from a context of insurance over the trust and
5 talk about financial situations. Over the
6 years, some of them looked at trying to create
7 what they'd say a small type of trust that
8 would be used for final expenses or for the
9 funeral. The problem that we have with the
10 IRS and the SEC is that there has to be kind
11 of a contract or a nexus between the fund and
12 its purpose or what it's going to be used for,
13 in terms like -- in other words, what the --
14 let's just say what the Securities Exchange
15 looks at. When you pull these funds and
16 you're going to use it for this purpose, they
17 want to make sure it's not an investment
18 vehicle, but, rather, that it's going to be
19 used for funeral expenses. And so, they look
20 for a contract. Within the NPS, oh, I guess,
21 program, it is an associate agreement. In
22 other words, not only the preneed contract,
23 but some kind of guarantee that that fund is
24 going to be used for that purpose. So, we're
25 always kind of -- when we talk about

1 portability or what this fund is going to be
2 used for, in a sense, to satisfy the federal
3 regulators, we have to tie that -- the purpose
4 of that down. At the same time, we have to
5 look at, you know, in terms of limiting the
6 funeral-director's control of the fund. And
7 in a sense, what we look at -- I mean, what
8 the insurance companies do is we found a way
9 to dedicate the fund for its purpose, but we
10 have to give the funeral director so much
11 control -- in other words, to be able to
12 access the fund at the proper time. And
13 whether -- at some point when the funeral
14 director has control of the trust to withdraw
15 it, then it becomes a preneed contract. But
16 if it's a fund that's just dedicated for that
17 purpose that can't be used until at-need
18 services, then we would say it's probably not
19 a preneed contract.
20 CHAIRMAN: Okay. Sharon. Thank you.
21 MS. EULER: Because the world is
22 constantly changing, it seems to me like the
23 best way to define preneed contract would be
24 not defining it by its funding mechanism and
25 handle the funding mechanism in another

1 section so that that's easy to change in the
2 future, and, rather, we define a preneed
3 contract by what it is.
4 MS. GRINSTON: I was just going to say
5 the exact same thing. Would it be possible,
6 since the concern appears to be what I'm
7 hearing is how do we protect the consumer, you
8 know, once -- if you have an insurance policy
9 assigned or something of the sort? What if
10 preneed contract was just defined as what a
11 preneed contract is, and this is just not a
12 suggestion, but a thought. Maybe removing
13 this language that says except for contracts
14 and, you know, all of that, because it is very
15 confusing. Having some language that says
16 that if an insurance policy is assigned or,
17 you know, a funeral home or a provider is
18 named as beneficiary, it shall comply with the
19 following, and pull that out from the
20 definition of what a preneed contract is. And
21 then I think with -- consistent with what you
22 talked about last week, to clarify in 436 that
23 insurance contracts are regulated by
24 insurance; however, if you assign it, there
25 must be a contract that has the following

1 protections and, again, removing that from the
2 general definition. I still think we have to
3 address Don's issue on current payment, but
4 I'm wondering if we could separate those two.
5 CHAIRMAN: Sharon?
6 MS. EULER: I agree. I think the
7 definition of a preneed contract in the
8 definition section should simply say it's a
9 contract to provide for funeral goods and
10 services, however we want to define that,
11 before the time of need. Make it a very
12 short and sweet, simple definition, and all of
13 the funding aspects and all of the
14 requirements can be dealt with in a separate
15 section.
16 MS. GRINSTON: So -- and I don't know
17 if that goes to Don's issue about current
18 payment of money.
19 MR. OTTO: Well, and that's another --
20 that's something that, you know, you just --
21 for that issue, you just flat out say that an
22 assignment triggers 436. You don't -- you
23 know, you don't have to worry about the
24 language of current payment of money. I mean,
25 that begs the question of what's the current

1 payment of money. You can just say if you've
2 got an insurance policy where the funeral home
3 is the owner or the beneficiary of the policy,
4 whether or not that's contingent or whether or
5 not that's irrevocable, that triggers Section
6 436.035 through .036 or whatever it is.
7 MS. GRINSTON: And are you saying
8 keeping the language that we don't regulate
9 insurance contracts, that insurance contracts
10 -- having some provisions in 436 that would
11 relate to the preneed portion of it, but that
12 insurance is regulated by insurance?
13 MR. OTTO: Well, yeah. And it's
14 accompanied -- I can't let a statement that
15 went by just a little bit earlier as to a
16 rationale for not having this regulated
17 because the implication the funeral directors
18 might go out and start killing people to get
19 their business. I can't let that go without
20 saying that that's pretty repugnant. And if
21 we're going to base any rules on that kind of
22 rationale, we might as well just get rid of
23 life insurance all together. The problem that
24 I've seen on a fairly regular basis from
25 people calling me -- attorneys calling me up

1 and saying what are we supposed to do is where
2 a consumer has made a funeral home a
3 beneficiary of a life-insurance policy, in
4 some instances, unbeknownst to the funeral
5 home; okay? They didn't know they were the
6 beneficiary of this insurance policy. So, you
7 know, whether or not this was appropriate with
8 the insurance regulations or not is a whole
9 other matter, but an insurance policy pops up
10 and, you know, final-need expenses is life
11 insurance, which it is. And so, what do you
12 do there? There is no preneed contract.
13 MR. MEIERHOFFER: With the knowledge
14 of the funeral home?
15 MR. OTTO: Yeah, with the knowledge of
16 the funeral home is one thing to perhaps stick
17 in there is with the knowledge of the funeral
18 home because, you know, was this just a gift
19 to the funeral director, you know? You helped
20 me across the street 20 years ago and now I
21 just want to give you $5,000 for the heck of
22 it and you don't have to give me anything or
23 not?
24 MS. GRINSTON: Can I add something
25 that's slightly related? I'm going to pull on

1 my insurance hat. I know when I was with the
2 insurance division of the department that one
3 of the things that we saw is what happens when
4 you assign or you make a funeral home a
5 beneficiary, the life-insurance policy is
6 $20,000, the funeral is $7,000; who gets the
7 rest of that money? And, of course, the
8 insurance company said, "I don't have
9 authority to pay anyone else," and, you know,
10 insurance didn't have the ability to tell, you
11 know, a funeral home you've got to give that
12 money back because this funeral home was the
13 duly assigned beneficiary. Not that that came
14 up when I was there incredibly often, but we
15 did get phone calls on that, and it was a bit
16 confusing as to what we do. But going back
17 -- I'm sorry.
18 MS. EULER: No. You can finish. I
19 was going to echo.
20 CHAIRMAN: Yeah. Finish your
21 statement.
22 MS. GRINSTON: But going back to this
23 definition to pull in what I'm hearing, would
24 we do better, and, of course, we would have to
25 address the -- you know, what happens when

1 you've got, you know, an insurance contract
2 being assigned or something else, address that
3 separately. But for definition purposes,
4 would we be better just defining a preneed
5 contract as any contract or other arrangement
6 for the final disposition of a dead human body
7 with such services that are not immediately
8 required, remove the current payment of money
9 and that whole discussion, remove the whole
10 except for contracts of insurance and
11 assignments, and address those issues
12 somewhere else and getting down to just a
13 solid definition that's limited to preneed.
14 Would that address concerns?
15 CHAIRMAN: Sharon?
16 MS. EULER: Yes. Because a preneed
17 contract is a preneed contract regardless of
18 its source of funding. And we can address how
19 you fund a preneed contract in a separate
20 statute that keeps our definition pure, and it
21 will be easier to deal with on a future --
22 and if I can address another question about
23 when insurance pays out to a funeral home
24 $10,000 for a $5,000 policy, if that person
25 was on Medicaid, that money is properly

1 payable back to the State as reimbursement for
2 Medicaid. In other circumstances, we have
3 been successful in a 407 action to order the
4 funeral home pay that money back to the family.
5 MS. GRINSTON: (Inaudible) -- 407
6 written.
7 MR. OTTO: Yeah. You left out our
8 funeral merchandise in your --
9 MS. GRINSTON: Yes.
10 MS. EULER: Yes.
11 MR. OTTO: All right. Is that on
12 purpose?
13 MS. GRINSTON: Okay. Sure. Yeah.
14 No. No, not at all. I just sort of skipped
15 over it, but leaving -- I would suggest --
16 because in my -- I was surprised and realized
17 that this language is actually in a lot of
18 states with very few variations, you know.
19 Some of them don't have the "except for
20 contracts" issue, but the crux of the
21 definition is the same. What I'm thinking is
22 for the final disposition of a dead human body
23 or for funeral burial services or facilities
24 or funeral merchandise where it's just not
25 immediately required, not period, but, you

1 know, including the membership fees and
2 everything else, and ending that before we do
3 this whole assignment beneficiary deal and
4 addressing those issues somewhere else and
5 just cleaning up the definition. Mr.
6 Chairman, I'm seeing a lot of nods. Is it
7 possible that we could take a vote on whether
8 that may be a good way for us to start with
9 the draft. And, of course, we're going to
10 bring this back to you all to look at to see
11 if we've goofed it or if there is something
12 else we need to do. Bill?
13 MR. STALTER: Before you do, I mean,
14 let's talk about this funeral merchandise if
15 that's part of the definition.
16 MS. EULER: That's a separate
17 definition.
18 MR. STALTER: This is why you're here.
19 Part of this -- you know, when we talk about
20 funeral merchandise, there's an overlapping --
21 we talk about vaults basically being a big
22 issue about either being sold by the cemetery
23 or by the funeral home. So, I mean, that's --
24 CHAIRMAN: The Federal Trade
25 Commission says that anybody can sell them, so

1 it doesn't have to be a funeral home, it
2 doesn't have to be -- Federal Trade Commission.
3 MR. STALTER: I know. But it is --
4 no, keep it. Then we talk about how is it
5 going to be regulated under 214, and, you
6 know, it is -- this is -- it's going to be an
7 issue.
8 MS. GRINSTON: And this is what -- I
9 think you're right. And Tom and I have had
10 some discussion about this. I think Sharon
11 and I have had some discussion about this, as
12 well. For those who don't know, there is
13 going to be a working group for 214, as well.
14 That is being handled by the executive
15 director of Endowed Care Cemeteries. I'll be
16 working on that side. It is going to begin
17 after we pretty much finish the 436 process
18 because I think we do need to make sure we're
19 consistent. What I would suggest we do is
20 when we look at the definition of funeral
21 merchandise, that we do that at a later date
22 when we have some more of our cemetery people
23 in because I think it's going to probably
24 affect them more than anything else, because I
25 agree 100 percent, Bill. I think we do need

1 to coordinate with Tom's office under 214, and
2 I think we probably need to look at that
3 definition, as well, to see if we need to make
4 any changes.
5 MR. OTTO: Well, my only comment to
6 that is I can see why you're doing them
7 separately like that, but I hope everybody is
8 treated the same.
9 MS. GRINSTON: Sure.
10 MR. STALTER: And, basically, there's
11 -- we talk about the consumer, you know. It
12 shouldn't make any difference whether it's
13 bought from a funeral home or a cemetery, you
14 get the same safeguards, basically.
15 MR. OTTO: Well, it also matters, you
16 know, if a cemetery can keep 40 percent, I
17 want a funeral home to keep 40 percent. If a
18 funeral home can only keep 20 percent, the
19 cemetery should only keep 20 percent, you
20 know. If we're selling the same exact thing
21 on a preneed basis, the key rules ought to
22 apply to everybody. And if you're not going
23 to regulate the cemeteries on the presale --
24 or anybody else other than funeral directors
25 on preselling funeral merchandise, I think

1 you've got a problem.
2 MS. GRINSTON: I think that's a good
3 point, Don. And, Tom, who is in the back, I
4 think I'm going to -- he wants to speak. Is
5 Tom here? Tom? I can't see him. He's
6 hiding. I can tell that, and maybe Tom can
7 speak to this, as well, that he also had a
8 goal and a concern of making sure those two
9 things are being treated consistently, as
10 well. And I think when we open up to the
11 funeral-merchandise side, I think it would
12 help to have some more of the cemetery people
13 here so that we can really have the benefit of
14 a full discussion, you know, with Tom and
15 everyone else here. But for that definition
16 of preneed contract, can I get a consensus if
17 it's okay for me to try to pull that language
18 together and clean that up, just on those
19 issues, addressing, you know, what happens
20 when you have an insurance-funded preneed
21 contract, and what that contract needs to look
22 like?
23 CHAIRMAN: All in favor, Committee,
24 aye? All those opposed, nay?
25 (Unanimous voice vote for approval.)

1 MS. GRINSTON: Okay. Having said
2 that, and we'll -- again, we'll bring that
3 back for you to look at. Okay. Next, I
4 think that was one of the other preliminary
5 things that I wanted to get to before we go
6 to our next big issue, and we might as well
7 tackle the monster head-on. I'd like to do --
8 this is going to be so much fun -- #5 on the
9 July 15th agenda. Now that I think we've
10 gotten a little bit more definition of what a
11 preneed contract is, I think we cannot
12 organize this discussion properly without
13 talking about the amount of funds required to
14 be trusted. As we do this, I think that it
15 is probably good to say that I am not
16 expecting that everybody here will be of the
17 same opinion. What I think we'd like to do,
18 and I think when we talked to Representative
19 Wasson in Senator Scott's office, that they
20 understood that they may be in a position
21 where the general assembly has to make the
22 final decision. What we would like to do,
23 with your permission, is just gather what the
24 positions are on what amount should be trusted
25 when I am buying a trust-funded preneed

1 contract. Again, we are not going to be
2 talking about insurance right now, we're not
3 talking about joint accounts, but when I have
4 a trust-funded preneed contract, how much of
5 that amount should be trusted? And what I
6 think we may need to do is possibly just
7 submit a list of where -- of who was
8 represented at whatever level. So, if you add
9 100 percent, 85 percent, 90 percent, 20
10 percent, whatever your percentage is, it may
11 be a good idea, instead of trying to -- I
12 don't know that we'll convince anybody or
13 everybody at the table, just allow us to do a
14 report of what the recommendations were
15 because I really do believe that this may be
16 an issue that the general assembly may have to
17 -- will be making a decision on, and we'd just
18 like to provide the consensus of what you
19 believe. When we talk about the amount that
20 needs to be trusted, one of the things that
21 came up in my mind as I was going through the
22 state laws was that, a lot of times, I think
23 we use numbers on the percentage amount, but
24 we don't address the second component. When
25 you talk about how much needs to be trusted, I

1 think we also have to talk about how much is
2 the preneed seller allowed to retain, if any.
3 If you say -- and I'm just using this as a
4 number. If you say 100 percent, does that
5 mean 100 percent and then you can submit a
6 bill to the trustee for your commission at a
7 certain set amount? Does it mean 100 percent
8 and there are no administrative costs or
9 expenses allowed? If you say 80 percent, does
10 that mean 80 percent plus administrative --
11 and everything else is retained as an
12 administrative expense? I'd like to possibly
13 poll the table and open the floor for
14 discussion. I think it may be better if we
15 probably went around the table to see where
16 people may be or what your thoughts are on how
17 much needs to be trusted when you're assigning
18 a trust-funded account, and whether that
19 amount that you believe needs to be trusted,
20 what amount of expenses do you think a seller
21 should be able to retain from that contract?
22 So -- and I know that this is probably the
23 hot-buzz issue today, so, Mr. Chairman, if you
24 could possible start at whichever end of the
25 table.

1 CHAIRMAN: Mark?
2 MR. WARREN: Why don't you start on
3 that side?
4 CHAIRMAN: We'll come back to him.
5 Ms. Brown, do you want to --
6 MR. MAHN: Does the Board have to
7 speak? I mean, we've already --
8 MS. EULER: Yes. I think the Board
9 members should speak.
10 CHAIRMAN: Should the Board members
11 speak individually or as a group?
12 MS. EULER: Individually.
13 MS. GRINSTON: Individually.
14 MS. EULER: As a part of the group.
15 MS. GRINSTON: And just as we clarify
16 this, the Board member -- and we said this
17 last week. Everyone knows that last year, the
18 Board went on record at 100 percent. I think
19 the Board members who are participating today
20 will be giving you their personal opinions.
21 They are Board members, but they will not be
22 speaking on behalf of the entire Board right
23 now because this -- again, this issue will
24 probably be on their August agenda, again, for
25 the Board to make an official decision. Right

1 now, they are participating as members of the
2 group, so please don't bind the Board with
3 anything that may be said by a Board member.
4 CHAIRMAN: And that's our disclaimer.
5 Mark?
6 MR. WARREN: Eighty percent or 100,
7 we're not really -- 80 percent is fine with
8 us. I mean, that's --
9 MS. GRINSTON: Is that 80 percent
10 trusted and 20 percent for expenses and/or
11 commissions?
12 MR. WARREN: That's fine. We have no
13 problem with that.
14 MS. GRINSTON: Okay.
15 MS. BROWN: Eighty percent and the 20
16 percent commission and expenses.
17 MR. MEIERHOFFER: Before I give you a
18 number, let me give you a little history.
19 Trust was the only vehicle we had in this
20 state for years and years. That's changed a
21 bunch, and so, I don't know that when we make
22 this change, it's going to be as impactful as
23 it may have been a few years ago, like 20
24 years ago. So, I say 80 percent, but realize
25 that insurance, if you would poll this group

1 again, you would find a number of people are
2 using insurance as their primary vehicle. So,
3 it's not going to be as impactful, I think, to
4 the numbers of people providing this as it
5 would have been when it was the only vehicle.
6 CHAIRMAN: Don?
7 MR. OTTO: Oh, yeah. A little
8 background, too. A couple things to keep in
9 mind before you spit out a number. I think
10 probably in a perfect world, if there was no
11 such thing as preneed, we just thought it up
12 today -- hey, let's do preneed -- we'd
13 probably come to -- 100 percent would probably
14 be a very likely number. That, unfortunately,
15 again, in our current environment, causes a
16 lot of problems, so I don't think it's
17 probably realistic over at the legislature,
18 for one thing. So, one thing is to keep in
19 mind what is realistic over at the capitol,
20 and I don't perceive that 100 percent is
21 realistic. Also, 100 percent would probably
22 put some people who have done absolutely
23 nothing wrong out of business, which is
24 another issue. Another thing to keep in mind
25 is a lot of times -- and I'm guilty of this,

1 as well, sometimes in talking about this -- is
2 sometimes we focus on an individual contract.
3 Mrs. Jones come in and paid $7,000 for her
4 contract and this and that. What you really
5 need to look at in many -- when you're talking
6 about 436 globally is the entire book of
7 business that a funeral home or a seller has
8 because the funeral home is taking a lot of
9 risks, particularly when they guarantee a
10 contract. They may be paying the taxes on
11 that, they're doing all the administrative
12 costs, they are risking whether or not
13 inflation beats out the guarantee. And so, on
14 one contract, perhaps they make 100 bucks more
15 than what the funeral actually cost them. On
16 another funeral, maybe they lost 200 bucks on
17 what the funeral cost them. So, it's
18 important to draft a number that is good for a
19 funeral home's entire book of business. If
20 you go to 100 percent, it also makes other
21 things in 436 difficult, like the portability
22 issue and the cancellation issue. If you have
23 some sort of number retainage, whether it's 20
24 percent, 15 percent, or 10 percent, that makes
25 writing the other parts of 436 easier because

1 you've already got a number there that can be
2 retained by the first funeral home or the
3 first seller if a person moves or transfers or
4 something like that. If you do 100 percent,
5 writing the other parts of 436 are possible,
6 but it's more complicated. That being said,
7 we -- 20 percent also has problems. Frankly,
8 NPS probably could not have existed if it
9 weren't for the 20 percent. And the fact that
10 they're out of business now and, to my
11 knowledge, no one else out there is abusing
12 that 20 percent, doesn't mean that if we leave
13 20 percent in there, in 15 years, there won't
14 be another NPS that comes along and figures
15 out how to do the same thing. Also, apart
16 from NPS, if you take NPS out of the equation,
17 to my knowledge, all of the problems that we
18 had in preneed were with funeral homes --
19 individual funeral homes, and I'm talking
20 about the last several years -- where,
21 frankly, as I like to put it, the 20 percent
22 led them unto temptation. A funeral home had
23 their own trust and was keeping that 20
24 percent and using that 20 percent for whatever
25 -- a new car, a new house, whatever. And

1 then when five funerals come due in one week
2 -- and you can't really divorce this
3 completely from also the interest of what
4 you're doing with the income off of the trust.
5 But if they have taken that 20 percent and
6 they sloughed off the interest and they've got
7 five funerals that cost them $7,000, but
8 they've only got $5,000 in the trust, then
9 they start looking around, where am I going to
10 make that up, and I think that's where we've
11 had some problems. So, the 20 percent, I
12 think, is a problem because both it allows the
13 NPSs of the world to exist. It, at least on
14 its face, appears very anticonsumer the way we
15 do it right now, and so, there's going to be
16 pressure at the legislature to do something
17 about that. It's relatively on the high side
18 compared to most of the other states now,
19 particularly most of our surrounding states
20 who are 5 or 10 or 100 percent. And like I
21 said, it leads funeral homes unto temptation,
22 which has been a problem that we've had. I'd
23 say having polled our membership, the
24 overwhelming majority favors moving off of 20
25 percent. I'd say it's a split between those

1 who their instant reaction is 100 percent and
2 those that think it should go to 90 percent
3 with still a large percentage that believe it
4 should stay at 20. Now, was that a lawyer
5 that just said that, because I probably didn't
6 give you an answer. But I think if you take
7 a look at all of our comments that we had at
8 our meetings and and our district meetings,
9 moving to something less than 20 percent,
10 perhaps 10 percent, is the best compromise of
11 all of those different positions.
12 MS. GRINSTON: Don, can I clarify
13 that? So, would we be correct to say that
14 the association -- that the majority consensus
15 may be that 90-10 may be a compromise -- well,
16 I'm sorry. The majority of your people
17 probably may still be at 80-20, but 90-10,
18 they believe, is a workable compromise?
19 MR. OTTO: The majority of those who
20 responded to both per our request for input
21 have suggested moving off of 80 percent.
22 MS. GRINSTON: Okay.
23 MR. OTTO: Moving to something more
24 trusting than 80 percent. I would say others
25 are very -- between those who say 100 percent

1 and those who say 90 percent, I would say that
2 is the overwhelming majority of those who have
3 responded.
4 MS. GRINSTON: Okay.
5 MR. OTTO: I'm not sure that all of
6 those who have said 100 percent, that's a very
7 good knee-jerk morally, I think, good position
8 to make, but I'm not sure that everyone who
9 says 100 percent right off the bat has thought
10 everything through, like what do you do if
11 there's a cancellation, what do you do if we
12 create portability and all of these -- what do
13 you do about the expenses and things like that
14 -- and commissions.
15 MS. GRINSTON: Okay.
16 MR. OTTO: So, I think that's the best
17 our -- but I don't think you can also divorce
18 this completely from the income -- what you're
19 doing with the income, as well, because if --
20 because that's tied with it very closely.
21 CHAIRMAN: John?
22 MR. McCULLOCH: As a funeral owner and
23 as having a preneed company, I would
24 definitely be for the 80-20.
25 MR. WEAVER: I have very limited

1 knowledge, I guess, of the funeral-business
2 preneed business, but, I guess, financially
3 speaking, if we were starting from the scratch
4 of paper, then our office would say 100
5 percent would be ultimate consumer protection.
6 MS. GRINSTON: Rich, can I just
7 qualify? Would that be 100 percent plus an
8 allowance for expenses or just 100 percent
9 trusted?
10 MR. WEAVER: Well, allowance for
11 expenses, and I'm not sure what -- you know,
12 if you said 5 percent. That's what I say; I
13 have limited knowledge as far as what those
14 costs would be. But like I said, if we were
15 going to recommend -- because the other part
16 that Don mentioned, it doesn't make sense to
17 me when you look at it and say 80 percent,
18 and then the seller is also entitled to all
19 the interest income off the fund. So, from
20 square one, if you started off, you
21 fundamentally don't have enough in there. If
22 you chopped it up after day one and it's sold,
23 you don't have enough money. So, that's, I
24 guess, our perspective is coming from 100
25 percent and allowing a reasonable amount for

1 administrative expenses.
2 MR. STUHLHUTH: I think I would defer
3 to Larry, although I add that you really have
4 to bring in the income off the trust in the
5 discussion, whatever the figure is.
6 MR. McCORD: On behalf of the
7 department -- Larry McCord, deputy director.
8 Having no knowledge about insurance -- or,
9 excuse me, about insurance. Hopefully,
10 something about insurance -- about a funeral
11 business or cemeteries, I do understand the
12 need to have some type of income and I
13 appreciate Mr. Otto's comments in regards to
14 that in regards to providing some type of
15 funding for that future need. I'm not
16 qualified to provide an answer. I do agree,
17 though, with the comment that Don made that 10
18 percent would probably be where my opinion
19 would be, something closer to the 100 percent,
20 but, yet, again, recognizing the need for that
21 income up front, so that would be my opinion.
22 CHAIRMAN: Becky?
23 MS. DUNN: No comment.
24 CHAIRMAN: Well, as a consumer Board,
25 I'm in favor -- as chairman of a consumer

1 Board, I'm in favor of 100 percent, but I
2 think there does need to be some fees where a
3 seller could, you know, get some of their
4 money back for their expenses. As a funeral
5 owner, I think maybe 90-10 would be more of a
6 fair thing, and I think you've got to think of
7 the portability of it. As a consumer, if you
8 want to move to another funeral home, you sure
9 want to have at least some of your money to
10 go and interest to go with it. So, anyway,
11 that's my thought.
12 MR. MEIERHOFFER: Jim, a comment to
13 that. There are several camps here. One
14 would be those who are actively selling
15 preneed, and there are those who really don't
16 actively sell it, it is walk-in business, if
17 you call it that. The dilemma is that those
18 that are trying to actively sell it do need
19 some manner in which to compensate the people
20 who are doing that. When we talk about
21 consumerism, my statement is you're doing a
22 disservice to the consumer if you're not
23 taking it to that person and letting them have
24 an opportunity to buy the product or buy the
25 service -- buy during their earning years, and

1 that's something that may not be available to
2 people if they aren't having an active program
3 presented for them. That's my only concern.
4 You talk about consumerism, 99 percent of the
5 people are going to get their money and get
6 their service. It's the fact that 90-10 isn't
7 going to change a thing of what we're talking
8 about here with NPS. If we would have been
9 90-10, NPS would have probably still done the
10 same thing, so I don't see how that's
11 addressing the problem that we're really
12 probably around this table for.
13 CHAIRMAN: True. Connie? David?
14 Court reporter? Joy?
15 MS. GERSTEIN: Because I'm the public
16 member sitting here, of course, my thing is I
17 would say 100 percent. But I also withhold
18 that down the road while we're trying to
19 figure this out, that we -- everybody keeps
20 talking about fees. I'd like a definition on
21 what the fees are. I mean, it's a hard
22 decision not knowing why you would want 20
23 percent. I don't know what you're going to do
24 with that 20 percent. And so, it's difficult
25 for me to give you an exact amount. But as a

1 public member, I would say 100 percent.
2 CHAIRMAN: Good question, Joy.
3 Anybody have an answer for her, what would it
4 cost?
5 MR. MEIERHOFFER: You have commissions
6 and advertising. You have administrative
7 costs. You have trusts to set up and
8 maintain. All those things are part of that
9 20 --
10 MS. GERSTEIN: So, every person you
11 sell to is paying part of that?
12 MR. MEIERHOFFER: Sure. Sure.
13 MS. GERSTEIN: So, how would you
14 figure a percentage of what was needed if,
15 let's say, you sold 100, how would you figure
16 the percentage that would be needed, is what
17 I'm asking? It's a very difficult question
18 for me to answer.
19 MR. STALTER: You know, when we say
20 percentages, it just comes down -- the cost
21 from a funeral-home operator to funeral-home
22 operator will differ. And part of it is, you
23 know, whether they're proactive on preneed
24 sales or not. I mean, really, if it's more
25 of an accommodation, then the costs are much

1 lower. But you'll have -- basically, your
2 salesmen are paid a commission, you know.
3 There is the expense of training the staff.
4 You may have education; you may be sending
5 them to seminars to learn. There's the legal
6 expense, the contracts, making sure that the
7 program is in compliance. You know,
8 frequently, they could change the contracts.
9 And, really, it's hard to quantify, I mean,
10 from operator to operator what those costs
11 are, so, basically, you just always kind of
12 fall back to a percentage of the purchase
13 price. But, you know, if you go to 100
14 percent, basically, you're precluding the
15 proactive preneed seller from operation. What
16 you catch, you know -- I mean, let's make a
17 distinction. It's the costs of putting the
18 contract on the books is what's being paid
19 from that 10 or 20 percent. As far as the
20 administration for the trust, it comes out of
21 the income of the trust. Once the 80 percent
22 or the 90 percent goes in trust, Mike can't
23 turn around to the trustee and say, "I have
24 other expenses for putting that on the books."
25 I mean, he's got to make it work out of the

1 20 percent. The trustee, now, though, you
2 know, basically, we'll find that a lot of
3 these banks don't have the sort of accounting
4 that's required to keep track of these
5 accounts. And so, it's often expensed out or,
6 you know, what do you say, farmed out to a
7 third-party administrator, and that expense
8 differs substantially from operation to
9 operation. I mean, what this issue is, is
10 about how much should go in the trust and,
11 once it's there, how much should you accrue in
12 trust, you know, whether -- if you look at,
13 like, what Iowa does or Nebraska does -- okay
14 -- Iowa is 80 percent, Nebraska is 85 percent,
15 but they also require some portion of accrual
16 of income. And, basically, often it's defined
17 by regulation and you go from year to year,
18 and it's whoever provides oversight to preneed
19 and makes a determination of how much it's
20 going to be. And, often, it's, like, 3
21 percent or 2 and a half percent. But, I
22 mean, Gerry, you run into this quite a bit.
23 I mean, Iowa, that's -- they've been doing it
24 for years, haven't they?
25 MR. KRAUS: Yeah. And Iowa has been

1 trying to change it for a few years, too. I
2 think probably next year in the legislature,
3 they may get it changed.
4 MR. STALTER: And in what sense are
5 they trying to change it?
6 CHAIRMAN: Well, no. You can't talk
7 about that. These Board members have been on
8 my butt, man, I'm telling you. "You did wrong
9 last week," they said. They all said it.
10 MR. STALTER: Okay. Hang on. I'm
11 trying to talk here. One thing that -- you
12 know, when we talk about 80 percent, when you
13 push up 80 percent to 90 percent, I mean, one
14 thing is you push, really, preneed into
15 insurance sales. I mean, there is a point
16 where it becomes fairly neutral in a sense,
17 you know, whether you're putting it on the
18 books at -- you know, it's the same, you know.
19 And to the funeral operator, you know, you do
20 insurance versus trust, it really makes no
21 difference.
22 CHAIRMAN: Right. Okay. We're going
23 to go back and get Gary.
24 MR. FRAKER: Yeah. Well, it's simple.
25 I think it ought to be 100 percent plus

1 administrative costs with a cap. We must
2 remember that there are other funeral
3 directors out there that do it differently,
4 like joint accounts or insurance. Are you
5 going -- how are you going to handle the
6 joint-account issue? It's defined in this 436
7 as to how joint accounts are to be handled,
8 so, see, that's another entirely different
9 story.
10 CHAIRMAN: And you've got to let them
11 stay for the small guys, so --
12 MR. FRAKER: Absolutely.
13 CHAIRMAN: Sharon?
14 MS. EULER: In my experience in
15 working with consumers and working with the
16 Board on this, the chief complaint I hear from
17 consumers is they don't understand why only 80
18 percent is in trust. They don't understand
19 why, if they move or if they get a refund,
20 it's only 80 percent. We get lots and lots
21 of complaints about this. Because from the
22 consumer point of view, they're treating the
23 local funeral home as a bank. They've got
24 their $10,000 for their funeral, they're
25 giving it to their funeral home so that they

1 don't have to make a trip down to the bank,
2 and that's the way the consumer looks at it.
3 So, I'm not taking a position on the number,
4 but it seems to me that whatever is done, that
5 it needs to be consumer friendly, and that the
6 consumer, if you told the consumer 100 percent
7 is trusted plus an administrative fee of X
8 amount, I think most people would understand
9 that as opposed to now people don't understand
10 why I paid the funeral home $10,000, why is my
11 $10,000 not in trust. Because from their
12 perspective, the funeral home gets profit on
13 it at the time of the funeral, and we all
14 know how that works in real life. But from
15 the consumer perspective, plus the funeral
16 home gets the interest income off of it, so
17 consumers don't understand the 80 percent.
18 So, if it was phrased differently so it was
19 more clear to consumers, I think that would be
20 helpful.
21 CHAIRMAN: Todd?
22 MR. MAHN: I don't think in zero
23 percent, why not just let everybody spend it,
24 you know? I mean, whether it's zero or 100
25 percent, NPS would have spent it, you know. I

1 mean --

2 MS. EULER: That would really cut down

3 on complaints.

4 MR. MAHN: That really would, and then

5 drop to freeze the cost, you know.

6 CHAIRMAN: Bill, can you reach over

7 and slap him?

8 MR. MAHN: Well, I can give you an

9 example. When we did joint accounts at the

10 funeral home, you know, we always put 100

11 percent. And they talk about these expenses.

12 I don't know. I built that into the general

13 revenue of the funeral home; you know, whether

14 it's advertising or whatever it is, you know,

15 I built that into the funeral home. And I

16 will tell you that even putting in 100 percent

17 and whatever date, whether it be five, ten

18 years later, and perform an at-need funeral,

19 there's always shortfalls. That's all you see

20 in preneed, it's just shortfall, shortfall,

21 shortfalls. And I'm kind of surprised -- you

22 know, it's almost like why wouldn't you use

23 insurance, you know, because, you know,

24 whether they make the first payment or pay it

25 in full, you're being paid the interest on the

1 face amount. You have the backup of the
2 insurance being guaranteed. You have
3 immediate coverage if their health is good.
4 There's a lot of factors. But I will say
5 this, also: I mix it up a little bit and I
6 use some of John's product, also. And there's
7 benefits to using his product at times, also,
8 and I won't get into complete details, but
9 there's a difference between letting John, a
10 third party, come in, to be 80-20 than the
11 funeral home doing 80-20 because John will --
12 if that family moves from DeSoto to Florida,
13 he's going to pay 100 percent plus the
14 interest. But at a funeral home, if you're
15 letting a funeral home do 80-20, the funeral
16 home -- there's no way a funeral -- you know,
17 really, what's going to be paid if that family
18 moves? What's the portability amount going to
19 be? It's not so much of how much them having
20 to put up front, it's what's the portability
21 going to be. And if Gary here puts it in his
22 own trust and keeps 20 percent, and then they
23 move up from his town to mine, you know, is
24 Gary going to pay me 95 percent plus interest,
25 you know? The portability of insurance, I

1 really like, you know, because I feel a family
2 ought to be able to take it and move it
3 wherever they go. But I think there's a big
4 difference here when we're talking about this
5 to, you know, John's company is able to make
6 -- do things and make guarantees that, you
7 know, small funeral homes and their small
8 trusts aren't able to do. So, you know, from
9 a consumer standpoint and from what we've
10 always did in our joint accounts, it was, you
11 know, 100 percent, but I think it depends on
12 the type of business. I think we're mixing
13 everything into the whole pot here, you know,
14 whether it's third party, individual funeral
15 homes, you know. Which are we talking about
16 here?
17 CHAIRMAN: Preaching to the choir.
18 Bill?
19 MR. TRIMM: From a consumer's
20 standpoint, I would favor the 100 percent, but
21 I realize that there should be a reasonable
22 amount deducted from that for administrative
23 costs. What that amount is, I have no idea.
24 CHAIRMAN: Darlene?
25 MS. RUSSELL: I probably agree with

1 Gary Fraker. A hundred percent with an
2 allowance for reasonable expenses with a cap.
3 MR. STALTER: Spoken like a true
4 insurance person.
5 MS. RUSSELL: That's true. True.
6 MR. STALTER: Yeah. I went on record
7 three years ago about 90-10, and -- but I
8 think that, you know, whatever that percentage
9 is, even if it's 85 or 90, it really boils
10 down to the income accrual. So, I think I
11 would probably split the -- I'd say 85 with
12 income accrual. That's where I stand.
13 MS. GRINSTON: Eight-five with -- I'm
14 sorry?
15 MR. STALTER: Income accrual of some
16 kind.
17 MR. CLINE: Okay. We almost
18 exclusively do trust only at our funeral home,
19 and we have -- we don't accept ourselves as
20 beneficiaries on insurance policies. We
21 prefer the 80-percent rule. What we actually
22 do is we put in 83 percent, and if someone
23 wants a refund or something, well, they -- we
24 give them back 100 percent, and all they have
25 to sign is a letter that says they -- or want

1 to cancel. So, we're for an 80-20 rule.
2 CHAIRMAN: All right. We've already
3 -- we've talked, and I'm not trying to cut you
4 off, Don, but we've got to let the public make
5 their comments. Bob Baker; is that right?
6 Bob Baker; is that correct?
7 MR. BAKER: Yes, Mr. Chairman. Bob
8 Baker, for the record. I'm not quite sure
9 what we're arguing about. If we're going to
10 protect the consumers and we're going to do
11 portability, CVs, trusts, and insurance is a
12 funding mechanism. Why should we
13 differentiate between the two of them -- or
14 the three of them. If you're going to give
15 consumers back money, you know that they're
16 not going to get back anywhere near that if
17 it's insurance funded. If you're -- like Mr.
18 Meierhoffer said, if you've got people
19 actively selling, your costs are greater. But
20 depending upon what investment pool you want
21 to go into, you may have different opinions at
22 different times depending on what the market
23 is. So, I think, you know, I would like to
24 see us treat all three the same. It's a
25 funding tool only.

1 MS. GRINSTON: And if we treat them
2 all three the same, what number would you be
3 looking at?
4 MR. BAKER: I would say, you know, I
5 can live with 80 percent, I can live with 90
6 percent. I don't think 100 percent is
7 realistic. I'm off the subject, but I've got
8 to respond to Gerry -- Mr. Homesteader's.
9 That's not the reason that funeral directors
10 are named as beneficiaries is to go out and
11 kill somebody, I think, like the indication
12 was. If you have a policy that's for more
13 money than what the funeral is, it's very
14 simple. Have your designation as your
15 interests may appear, submit a billing along
16 with it. Thank you. CHAIRMAN: Thank you.
17 Anybody else?
18 MR. SPEAKS: You had quite a lot of
19 fun with your name last time, so I was glad
20 to see -- or you were calling him the wrong
21 name. That's what it was.
22 CHAIRMAN: Larry -- it's Larry.
23 MR. SPEAKS: Well, my name is Brad
24 Speaks, for the record. I very much
25 appreciated Mr. Meierhoffer's comments. I

1 think I agree with everything he said. Very
2 much in favor of being proconsumer, because
3 that's what funeral service is all about. We
4 exist to help people when the most important
5 person in their life has died. And I see
6 preneed as the most consumer-friendly thing
7 ever in the funeral business. I think Todd
8 mentioned shortfalls. In every -- almost
9 every scenario I'm aware of, there are
10 shortfalls when the death occurs. The
11 exclusion has been the NPS fiasco, and we can
12 see that those sorts of ridiculous promises
13 just don't work. For a family to be able to
14 lock in their costs during their earning years
15 and have the funeral provided in 15, 17, 20
16 years in the future for no additional money,
17 regardless of 80-20, 100 percent, 85-15, that
18 is consumer friendly, ladies and gentlemen, to
19 have that cost locked in. If it was a great
20 deal, Cadillac dealers would do it. You would
21 be able to go in today and say, "I want to
22 put down the current cost of a Cadillac, and
23 when I come back in 20 years, you give me the
24 new model and I don't pay you any more money."
25 If you try that, they'll laugh you right out

1 of the dealership. Funeral homes have, from
2 my standpoint, you know, really provided a
3 service to our communities by allowing people
4 to prepay and assume the risk ourselves. I
5 stand here just like I would stand in front of
6 any group of consumers in my own community and
7 say, "If we enter into this agreement between
8 the two of us, I will stand good for it
9 regardless of what happens with the money. I
10 have promised you." It's part of that
11 contract that we so aptly started off today's
12 discussion with. Thank you for that
13 discussion. Funeral homes are on the hook to
14 provide this service for no additional money.
15 If we were to say 100 percent, you know, very
16 interesting scenario in that you then submit
17 possibly an invoice or statement to the
18 trustee and receive back commissions or
19 whatever. The problem you get into is the
20 expenses that, say, Kaylene experiences in her
21 community might be far different than Mr.
22 Meierhoffer experiences in his community or
23 that I might or that Todd might or the Clines
24 might in St. Louis. You know, I'm interested
25 in what becomes of the earnings. The public,

1 as Sharon points out, always fails to
2 understand what was the purpose of those
3 earnings. It's to help the funeral home make
4 up the difference in that shortfall, and we
5 don't make it up, it just helps. The family
6 comes in and says, "Well, you've had your
7 money all this time. We want that back."
8 Well, we have stood the risk all this time.
9 What did we get out of it, other than the
10 chance to serve this family in the future?
11 So, I'm -- you know, I'm not opposed to 90-10.
12 I think I would like 85-15 better. We have
13 actually been selling insurance at Speaks for
14 about 15 years mainly because preneed
15 shortfalls on our trust -- longstanding trust
16 dating back 40 -- almost 50 years now.
17 Insurance has done much better for us. But
18 I'm interested in, you know, how that
19 reimbursement might happen if the proposal
20 that Kim kind of put on the table were
21 enacted. I mean, frankly, I'm kind of
22 attracted to it if there could be an equitable
23 way of determining what those proper expenses
24 are. Mr. Otto mentioned that some funeral
25 homes might need that 20 percent. You know,

1 in actuality, I think that starts to head down
2 to the road to another Ponzi scheme, which
3 we've just seen the end result of with our NPS
4 brethren where current money is taken to pay
5 -- you know, to keep up, and you've got to
6 keep feeding the monkey, so to speak. I do
7 not want to go down that road. I don't think
8 that's good for our state. So, you know, the
9 Missouri Funeral Directors Association has
10 their view. I'm just speaking as an
11 individual funeral-home owner, but we have a
12 very active program and selling insurance at
13 present. If our friends in Indiana and Des
14 Moines were to go out of business, though, I
15 might be back through public demand for our
16 product to selling trusts, putting money in
17 trust, at which case I would want to be able
18 to both recoup my expenses and have some sort
19 of hedge against that future promise to the
20 consumer that I will stand good on this
21 contract no matter what happens.
22 CHAIRMAN: Thank you.
23 MS. GERSTEIN: I have a question while
24 you're there.
25 MR. SPEAKS: Yes, ma'am.

1 MS. GERSTEIN: When you all go in to
2 sell, which would make it very simple for the
3 public to understand, do you discuss the -- or
4 is there anything written as to the
5 administration fees or the fees that would go
6 along that would justify why we need whatever
7 is decided today -- the 10 or 20 percent? Or
8 is it -- do they know anything? Are they
9 explained or --
10 MR. SPEAKS: The answer ought to be
11 yes. In actual fact, I don't know that it is.
12 MS. GERSTEIN: Because that would make
13 it very simple.
14 MR. SPEAKS: It's also very difficult.
15 You explain that to a couple, say, and -- or
16 maybe their adult child when the time of death
17 arrives, or now they're ready to move Grandma
18 home to Loveland, Colorado, for instance.
19 Somehow that discussion seeps away and they
20 don't recall that. Same thing with
21 third-party charges. It's a very similar
22 discussion. Why weren't the third-party
23 charges guaranteed? Well, they're not our
24 charges.
25 MS. GERSTEIN: Well, wouldn't it be

1 easy when you're selling these things to have
2 a form that kind of talks about those prices
3 and fees and with a disclaimer about, you
4 know, the cost of living goes up every year,
5 and they could keep that in their file with
6 their contract so they would know what the
7 money was being used for.
8 MR. SPEAKS: If firms are not doing
9 that, that's an excellent idea.
10 MS. GERSTEIN: So, I mean, that would
11 be an easier way --
12 MR. SPEAKS: Probably -- John, do you
13 know; is that part of most third-party
14 sellers' toolbox?
15 MR. McCULLOCH: Explain again. I
16 don't know if I quite understood.
17 MR. SPEAKS: A disclaimer about the
18 growth and why -- how that equation works.
19 MR. McCULLOCH: Yeah. We don't --
20 MR. STALTER: I was going to say, I
21 don't -- you know, just having a disclosure
22 about what expenses are, you know. Maybe to
23 your providers, I mean, the associates, but
24 not to the consumers. It just doesn't get out
25 that far.

1 MR. SPEAKS: Great point, though.
2 MS. GERSTEIN: But personally -- yeah.
3 MR. OTTO: Well, I think, again, one
4 of the things -- some of you heard me on the
5 soapbox about this before. But under 436, and
6 what we're doing is we're amending 436 is what
7 we're talking about here. We're not really
8 starting from scratch and writing it up.
9 Under 436, one of our biggest problems is we
10 call this a funeral trust, and the consumers
11 think that it's a funeral trust for them.
12 That's my money that's put in the bank that's
13 earning interest for me. What the consumer
14 has done under 436 is prepay for a funeral;
15 okay?
16 MS. GERSTEIN: Right.
17 MR. OTTO: And so, the question that
18 we get -- I know, I understand the problem.
19 The question that a consumer gets is where is
20 my money, and it's not their money is one of
21 the problems that we have with the way 436 is
22 currently written. It's in many ways, from
23 the consumer's perspective, no different than
24 going to Target and putting patio furniture --
25 I don't like this, by the way, but this is

1 how it is -- from the consumer going to Target
2 and putting patio furniture on layaway that
3 I'm going to pick up in December. They've
4 prepaid for a funeral that they're going to
5 use at a later date. And just like with
6 Target, you know, the interest that's earned
7 on that money in the meantime is not theirs,
8 things like that. Unfortunately, in many
9 respects, from the consumer's perspective,
10 that's how in 1982 436 was written, and we
11 have the opportunity, perhaps, to change that.
12 MS. GERSTEIN: (Inaudible.)
13 MR. OTTO: Well, but I'm just saying,
14 the risk again, like he said, you know, the
15 risk is on the funeral home, and the risk on
16 the funeral home to do this -- yeah. I'm
17 sorry. But it's like -- it's no -- with
18 insurance -- we've talked about insurance. If
19 I've paid on an insurance policy for three
20 years and I cancel it, am I going to get all
21 my premiums back? No. I'm going to get the
22 cash value of that policy, which is going to
23 be way less than the premiums I've put in.
24 So, in many respects, you know -- and I know
25 your stuff was here having to deal with the

1 consumers, you know, and there's no good
2 answer sometimes for them with the way the law
3 is currently. Instead of thinking of the
4 funeral home as a bank, if they thought of it
5 more like an insurance policy, I think that
6 would be useful, because if you've paid on an
7 insurance policy for all these years and you
8 cancel it, you don't get all your money back.
9 But, yeah, I'm sorry, Kim.
10 CHAIRMAN: Okay. Kim has got a
11 comment, and let her rebuttal it.
12 MS. GRINSTON: No. Actually, I just
13 wanted to say something to that because I
14 think on the drafting side, one of the things
15 that I think we are going to be asking you
16 all to do is to let's just start 436 from
17 scratch, just in your thought. I think we
18 need to pull over some concepts, but I just
19 don't think that -- there are so many holes to
20 plug, you --
21 MR. OTTO: We don't -- we can't.
22 MS. GRINSTON: Yeah. It's --
23 MR. OTTO: You're right, we can't.
24 MS. GRINSTON: It's leaking -- right.
25 MR. OTTO: But that's one of the

1 underlying problems, though, that we're forced
2 to deal with to try to patch it.
3 MS. GRINSTON: But -- and I think we
4 -- as we go back to the amount that needs to
5 be trusted versus what should be refunded,
6 because that's going to be another topic, but
7 I think we need to -- I understand how they're
8 connected, but I think we need to stick with
9 amounts to be trusted and then we bring in
10 refunds later just for purposes of the
11 discussion. But one of the things that I did
12 want to say on that is, you know, when you go
13 to Wal-Mart or Target, and you put something
14 on layaway, if you go back at Wal-Mart, you
15 know, most of the times, they give you 100
16 percent of your money back.
17 MR. OTTO: No. There's a restocking
18 fee.
19 MS. GRINSTON: On certain things --
20 MR. OTTO: It's about 20 percent, by
21 the way.
22 MS. GRINSTON: I know this from law
23 school, Don. If you should happen to put a
24 TV, let's say, hypothetically, on layaway --
25 no, honestly. Electronics, they do, but, you

1 know, they'll give you your money back to a
2 certain extent. And that's why I think it's
3 -- I think you're right. It's a really
4 important question that we talk about because
5 some of the states clarify whose money is
6 this, you know, and I don't know if we need
7 to answer that question on whose money is it
8 because I do understand the risk that the
9 funeral home is picking up. And assuming,
10 because if you've only got $5,000 there and
11 it's going to cost you $8,000 to provide,
12 there is no other source for you to go back
13 to, you are locked into that contract, plus
14 taking a $3,000 hit. And what happens if we
15 say, you know, all the interest is the
16 consumer's or -- you know, because now you've
17 got nothing to hedge that risk.
18 MR. OTTO: Plus paying the taxes on
19 it. Plus --
20 MS. GRINSTON: Yeah, plus the taxes
21 and the trust expenses and everything else.
22 MR. OTTO: And the forms.
23 MS. GRINSTON: So, I do understand how
24 that comes into the discussion. But as we got
25 back to the amount that needs to be trusted,

1 because I think we are moving to the next
2 topic, which has to be interest. If we talk
3 about percentages, we have to talk about
4 interest next. But if we want to probably
5 finish with public comments on --
6 MR. PERKINS: John Perkins. And, one,
7 I'll make the disclosure that I'm with an
8 insurance company, but my experience is with
9 -- as a Securities Commissioner. And, I mean,
10 just listening to this, I mean, one of the
11 things I think you could look at, if you're
12 looking at this whole issue of what the
13 consumer gets, is some kind of a very short --
14 and I emphasize the word "very short", from --
15 we don't need to write prospectuses for this,
16 but some type of short disclosure that
17 discloses what the expenses -- the commission,
18 what the money is going to be used for -- to
19 the consumer and have them initial it in the
20 sales transaction. And I recognize that
21 John's expenses, as people have said, are
22 different than all around the state. My view
23 is, give that information to the consumer and
24 let the consumer make their decision as
25 opposed to, I'm sorry, you all saying it has

1 to be 10 percent or 5 percent or 20 percent.
2 Let the consumer have the information as to
3 what that's going to be used for and let them
4 make the decision. If they make the decision
5 that they would rather have it with the
6 insurance, that's great. If they make the
7 decision they would rather be paying the 5
8 percent, the 10 percent expenses of whatever
9 is being offered, let them make that decision
10 based upon information. So -- and as far as
11 it being 80-20 percent, I also will say that I
12 was around when this bill was -- when the
13 original bill, not the one in '82 was done,
14 but when the original bill, and helped
15 prosecute some cases against people back in
16 the '70s. Again, 80-20, whatever it is, I
17 mean, was done -- as I think Don pointed out,
18 was done because of what was in the works at
19 that time. Obviously, things have changed.
20 Again, from my standpoint, put the stuff in
21 the hands of the consumer. Let them make the
22 decision, give them the information, and, you
23 know, if John's company is better than
24 whatever we're offering or whatever somebody
25 else is doing, let the consumer make the

1 decision based upon that.
2 CHAIRMAN: All right. We've got two
3 more. Gerry, you had a comment, and then Joy
4 has a closing statement, and then we're going
5 to discuss gift cards after lunch.
6 MR. KRAUS: For the record, Gerry
7 Kraus. And I also want to clarify, for the
8 record, that it wasn't I that said that
9 insurance -- or funeral directors might be
10 induced to kill their clients. That was
11 insurance regulators that were arguing that
12 against me. So, I've heard it many times from
13 insurance-department regulators. And, you
14 know, I don't argue very long. But I'm going
15 to tell you, to satisfy those red flags, I
16 don't argue very long for this reason. We get
17 to the same end point. We want the funeral
18 director to be the assignee. It's a
19 contingent assignment and it allows for
20 portability. The assignee stands in line to
21 get the money ahead of the beneficiary, and,
22 for that reason, there is really no good
23 argument for making a funeral home the
24 beneficiary or the owner of the policy. Let's
25 make him the assignee. Now, back to the

1 trusting percentage, having looked at this for
2 25 years from a marketing perspective and a
3 compliance perspective and from a national
4 standpoint, we have seen a gradual increase in
5 the trusting requirements. We deal with 110
6 percent of wholesale, 25-75, 80-20, the full
7 range. And I think that gradual tightening is
8 from a lot of factors, a shift to insurance
9 where 100 percent is the parallel. More
10 people trust with insurance now than with
11 trusts, so the tendency is toward people just
12 not getting used to having any of the money.
13 They just trust it like they do with
14 insurance. The margins are getting tighter in
15 the funeral industry. That induces more
16 funeral homes to test greater and greater
17 percentages. And you get more scandals and
18 shortages. All of that leads to tighter and
19 tighter percentages. What do I think is a
20 good number? Probably, from a competitive
21 standpoint and recognizing those of you that
22 want to trust and have legitimate expenses,
23 probably 80 or 85 percent puts you on a good
24 par with insurance in terms of running your
25 operations, in terms of being competitive with

1 us in commissions. Our commissions are 15 to
2 20 percent, probably more toward 15. So, 85
3 is probably a good number, or 80.
4 CHAIRMAN: Thank you. Oh, Sharon has a
5 question of you, Gerry.
6 MS. EULER: That was the question I
7 was going to ask, what the commissions were on
8 insurance policies, so you read my mind.
9 MR. KRAUS: It's probably averaging
10 around 15, but some companies are higher.
11 There are companies out there that don't pay
12 much commission and pay real high benefits.
13 Others pay more commission and don't have as
14 much in the insurance, but I think from -- our
15 companies would probably average about 15
16 percent in the heart of the market where
17 65-year-olds walking into the funeral home or
18 70-year-olds.
19 CHAIRMAN: Thank you. Joy? Oh,
20 Sharon?
21 MS. EULER: I have one other comment.
22 I think it's important that in our language
23 that we keep the current type language that
24 the funeral -- the seller is entitled to keep
25 up to, because I know there are some funeral

1 homes in Missouri who trust 100 percent or who
2 trust 90 percent and who do that on their own
3 volition, not because the statute requires
4 them to do so.
5 MR. OTTO: And also because it
6 actually says to put the money in the trust.
7 I mean, we've got to assume that.
8 CHAIRMAN: We're going to straighten
9 them up, too. Joy?
10 MS. GERSTEIN: First of all, I would
11 like to thank you all for your patience with
12 me in asking some of these questions, and I
13 don't mean to open up a Pandora's box when I
14 ask them, but I am your consumer sitting here.
15 You all know, but I think you're backing me up
16 in having some type of disclosure on where
17 that money is going will make it easier. I
18 would never sign -- as these people all know,
19 I would never sign anything away that I don't
20 know where my money is going or how it's being
21 used. I was thinking in the beginning of
22 this, I might as well go to the bank and open
23 up a high-interest-yield savings, put all my
24 money in there to be buried by, you know.
25 So, that's why I appreciate all your patience

1 with me on this. I really do.
2 CHAIRMAN: Thank you, Joy. We've noted
3 everybody's comments, and now we're going to
4 take a ten-minute break.
5 (Off the record)
6 MS. GRINSTON: Okay. We talked
7 percentages. One of the things I would like
8 to do, for those people who are at 100 percent
9 or who said that they would be comfortable at
10 100 percent with a reasonable amount of
11 expenses, can I have some discussion -- and
12 let's just assume we were at 100 percent plus
13 a reasonable amount of expenses -- not that we
14 are -- what would you consider to be a
15 reasonable amount of expenses? And I think
16 this goes back to Joy's original question, as
17 well.
18 MS. EULER: Kim, may I append to your
19 question?
20 MS. GRINSTON: Yes, ma'am.
21 MS. EULER: What would be a reasonable
22 amount, but what types of expenses would be
23 reasonable expenses?
24 MS. GRINSTON: Yeah.
25 MR. McCULLOCH: Reasonable expenses,

1 it's just going to be like any other business.
2 Pay your electric, pay your rent, pay your
3 commissions, pay your people, just like a
4 regular business. So, it's going to be
5 different for everybody.
6 MS. GRINSTON: If it was 100 percent,
7 if there was a percentage cap, would you
8 suggest a percentage cap or just a
9 reasonable-expenses kind of suggestion?
10 MR. McCULLOCH: You know, like some of
11 the folks said, I don't think you need to
12 putting an amount. If 80-20 is where we're
13 going to go to, then some folks will use a
14 certain portion of that. Like, in our case,
15 we don't use all of that, but we pay back the
16 20 percent, you know.
17 MS. GRINSTON: Okay.
18 MR. McCULLOCH: So, we're using it,
19 we're paying it back at the time of death.
20 MS. EULER: A bright line would be
21 much easier to enforce. A 15 percent, a 10
22 percent, a 20 percent is easier to enforce
23 than reasonable because what's reasonable for
24 John and what's reasonable for Becky may be
25 two different things.

1 MS. GRINSTON: Anybody else, just for
2 purposes of us gathering comments to present?
3 If there was a 100-percent trusting
4 requirement and for those who talked about
5 reasonable expenses -- allowances -- if you
6 had to choose a percentage, would 10 percent
7 be reasonable? Would 20 percent be
8 reasonable? A hundred percent trusting plus
9 -- I mean, what's reasonable?
10 MR. STALTER: Are you talking about the
11 seller's expense or the trustee's --
12 MS. GRINSTON: Yes. The seller's.
13 I'm sorry. I'm sorry, Bill. Let's just think
14 about that.
15 MR. CLINE: Just real quickly. If
16 some of these commissions are 15 percent and
17 all that, you know, does it count postage and
18 telephone and rent and everything else, so,
19 you know, I think the 20 percent is feasible.
20 And like you said, some folks will put in 100.
21 We put in, you know, 83, you know, and we pay
22 it back, too. So, when the time of the
23 funeral, then, you know, they get a check from
24 the bank and they get a check from the preneed
25 company to cover the cost of the funeral, so --

1 MS. GRINSTON: Okay. And maybe this is
2 something we could just put under our caps and
3 just think about as we go forward. I want to
4 go back to a comment Bob made -- glad you're
5 back in the room.
6 MR. BAKER: Thank you.
7 MS. GRINSTON: We started talking
8 about trust funded and that breakdown. Should
9 that breakdown be any different for
10 insurance-funded preneed contracts or should
11 the breakdown -- I'm going to remove joint
12 accounts from the discussion just now. Before
13 insurance funded versus trust funded, should
14 whatever percentage you recommend, does anyone
15 feel that that percentage should differ if
16 it's an insurance-funded preneed contract?
17 MR. MAHN: Can I say something Kim?
18 On the insurance product, we -- I don't think
19 we have the jurisdiction to say how much is
20 going to be -- they're on a scale, you know,
21 depending on the age of the person. And I'm
22 speaking for insurance. Maybe somebody else
23 can explain this a little better than I can.
24 But if they're 105 years old, they put in
25 sometimes over 100 percent, and if they're 25

1 years old, they put in 20 percent. I mean,
2 they're all on their own scale. Are you
3 saying we somehow or another control on their
4 scale how much they put into their --
5 MS. GRINSTON: No. And thank you,
6 Todd, for the distinction, because I think I'm
7 thinking of something different. I think I'm
8 not talking about an insurance contract sold
9 through the insurance company, I'm talking
10 about Mahn Funeral Home selling a preneed
11 contract that is going to be funded through an
12 insurance vehicle. If Todd sells a preneed
13 contract that's going to be funded through
14 insurance, the percentages, should those be
15 the same if you're doing a trust-funded
16 preneed contract.
17 MR. STALTER: I'm confused, to tell
18 you the truth.
19 MS. EULER: I think if it's insurance,
20 I think it's regulated by Department of
21 Insurance, and maybe -- I don't think we're
22 understanding what you're trying to
23 communicate.
24 MS. GRINSTON: Let's talk about the
25 policy that we talked about earlier where you

1 told me that the funeral director will sell
2 the preneed contract, in comes the
3 life-insurance agent, sells the insurance.
4 We've got a seller selling a preneed contract
5 that is going to be funded through an
6 assignment of something or payments --
7 proceeds from an insurance policy. When you
8 have that setup -- and maybe I'm wrong about
9 this. When you have that setup where I am
10 selling you a preneed contract -- my funeral
11 director is -- life-insurance agent says here
12 goes your app for insurance and this is how
13 we're going to fund it, are we saying that
14 those policies will be under insurance, as
15 well?
16 MR. STALTER: Funding is regulated by
17 insurance.
18 MS. EULER: The life-insurance policy
19 is.
20 MS. GRINSTON: Yeah. I'm not talking
21 about the life-insurance policy, I'm talking
22 about the preneed contract, though, now.
23 MS. EULER: My understanding is that
24 if it's life-insurance funded, the seller gets
25 no money on the front end.

1 MS. GRINSTON: Okay. And maybe that's
2 what I need to be clarified on. If it's
3 insurance funded, we should not -- there
4 shouldn't be the seller retaining anything?
5 MS. EULER: Right.
6 MR. MANN: Absolutely.
7 MS. GRINSTON: Zero percent? Okay.
8 CHAIRMAN: John?
9 MR. McCULLOCH: I think you just
10 answered it. Those are two separate things.
11 The only thing that's happening with the
12 insurance companies is if they go in and they
13 want to pick out merchandise and now it
14 becomes under this 436 preneed, the funeral
15 home is freezing the cost at that point in
16 time if they choose to, but that's really just
17 an insurance policy. It doesn't have anything
18 to do with, like, trust funding preneed.
19 MS. GRINSTON: So, when there is an
20 insurance-funded preneed contract, would we be
21 comfortable in saying that the seller retains
22 zero percent because he should never be
23 retaining anything?
24 MR. McCULLOCH: Exactly.
25 MS. EULER: Yes.

1 MR. STALTER: There's just a
2 commission if they don't need an insurance
3 policy though, and that may go partially to
4 the funeral director.
5 MS. RUSSELL: No. Not unless they're
6 licensed.
7 MS. EULER: But that's not part of the
8 --
9 MR. STALTER: That's the whole point,
10 though.
11 MS. GRINSTON: But what if I come in
12 with an insurance contract that's already
13 done? Let's say I bought an insurance
14 contract a little while ago. I'm going to
15 change the beneficiary to you, so you're not
16 going to sell me the life-insurance, but I
17 want you to sell me a preneed contract and I'm
18 going to go back to my insurance company and
19 change this beneficiary on it, and I want this
20 payment to fund --
21 MR. OTTO: Yeah. You're mixing two
22 different things.
23 MS. GRINSTON: Am I?
24 MR OTTO: There's two different things.
25 MR. McCULLOCH: They're not getting

1 into the money -- the funeral doesn't get any
2 of that money. It all goes to the insurance
3 company.
4 MR. OTTO: Well, yeah. There's --
5 MR. McCULLOCH: They're just paying
6 premium.
7 MR. OTTO: Actually, there's three
8 scenarios with insurance that I can think of
9 real quick, and there might be more.
10 MS. GRINSTON: Help me, Don.
11 MR. OTTO: The first one is I've
12 already gotten an insurance policy. I've had
13 it for 20 years; okay? I come into the
14 funeral home and say I'd like to assign this
15 to you in exchange for a preneed plan; okay?
16 But that money is already at the insurance
17 company or you're sending it in; okay? So,
18 that's one. Two --
19 MS. GRINSTON: Can I stop you there?
20 In that instance, what does the seller get out
21 of that financially? Nothing?
22 MR. OTTO: Nothing in that example.
23 MS. GRINSTON: And when they die and
24 the policy pays out, they still get -- they
25 will never collect any benefit from that

1 instance?
2 MS. EULER: They get the face value of
3 -- they get whatever the insurance pays out.
4 (Several people talking simultaneously.)
5 MR. MAHN: Hey, Kim. If it's any
6 simpler for you, there is no circumstances
7 under anything to do with insurance where the
8 seller retains any money up front, period.
9 MS. GRINSTON: Okay.
10 MR. MAHN: Our examples, their
11 examples, nobody's examples.
12 MR. OTTO: Yeah. However, there is an
13 instance where the funeral home is a licensed
14 -- the funeral director is a licensed
15 insurance agent and is selling the policies on
16 behalf of some company. And then that funeral
17 director will get a commission.
18 MR. MAHN: Commission, yeah. That's
19 not upfont money.
20 MS. GRINSTON: From the insurance
21 company?
22 CHAIRMAN: Yeah, but none of that
23 would be --
24 MR. McCULLOCH: But that's regulated
25 under the Department of Insurance. That's a

1 different deal.
2 MS. GRINSTON: Okay. All right. So,
3 what I'm hearing, it's not an issue that needs
4 to be addressed. If it's insurance funded, we
5 should never have the seller retaining
6 anything for expenses?
7 (Numerous people agree.)
8 MS. GRINSTON: Okay. Got it. Now,
9 then let's move on -- thank you for educating
10 me and helping me understand. Let's move on
11 to the next issue which is, of course,
12 interest. Whichever number you're at, let's
13 talk about who gets the interest on a
14 contract, let's say, once it's paid. Let's --
15 we're going to go to transfers in a minute --
16 in just a second. But at the time of death,
17 this contract hasn't been transferred or moved
18 or anything else. Right now, who does that
19 interest go to?
20 MS. EULER: And when?
21 MS. GRINSTON: Yeah. Time -- you're
22 at-need now. I come in, I present my preneed
23 policy. Is it my understanding that that
24 interest goes -- 100 percent of it will go to
25 your provider? I mean, I'm sorry. The seller

1 at the time.
2 MR. McCULLOCH: The interest belongs
3 to the seller, and then by contract, they can
4 do whatever they want with it.
5 MS. GRINSTON: Got it.
6 MR. McCULLOCH: You can give it all
7 away, you can give back a portion of it. In
8 our case, we give back a reasonable percentage
9 to keep up with inflation; okay?
10 MS. GRINSTON: Uh-huh.
11 MR. McCULLOCH: And that's negotiable
12 so that I can be competitive with the other
13 businesses that are out there.
14 MS. GRINSTON: Let's talk about an
15 at-need contract. When it goes to at-need, is
16 there any need to change or should there be a
17 change in the allocation of interest at-need
18 other than what John just described?
19 MR. OTTO: The problem isn't at-need,
20 it's before that.
21 MS. GRINSTON: I get it. I get it.
22 MR. OTTO: Yeah. What I'm saying, I
23 mean, I -- the position -- the majority of our
24 folks that have been surveyed believe that the
25 income other than what's needed to operate the

1 trust should stay in the trust until the time
2 of at-need at which time, again, under the
3 current, there would be no change. It belongs
4 to the seller. If the seller is contracted,
5 the provider is that it goes to the provider,
6 and that's between the provider and the
7 seller, you know, if it's split up or whatever
8 it is.
9 MS. GRINSTON: Yeah.
10 MR. OTTO: But, so the problem isn't
11 the interest or income that's in there when
12 the person passes away. It's whether or not
13 you can sweep that interest off prior to
14 at-need, as you can under the current law.
15 MS. GRINSTON: And I think the crux of
16 this discussion, I'd like to start with the
17 easy one. At-need, someone dies, seller gets
18 100 percent of the interest. Is that
19 something that needs to be changed, and I'm
20 also looking at the consumer groups on this,
21 as well. I pay $5,000 on a funeral. I'm
22 just going to throw out ridiculous numbers.
23 It gains $8,000. Services are $6,000 -- or,
24 you know, you do services that cost you
25 $6,500, $7,000. Should this -- right now, the

1 seller retains that interest. Do I hear any
2 proposals or any concern with changing that
3 structure?
4 CHAIRMAN: I don't know, but I wish
5 you were running my program, because that's --
6 I'd like to give something back to the
7 consumer.
8 MS. EULER: One thing that has been a
9 misunderstood area of law is that right now
10 under other provisions of law if the amount
11 paid to the funeral home for the funeral is
12 $10,000, but the actual cost of the funeral is
13 -- you know, they do a cremation for $1,500
14 and there's that overage, if that person was
15 on Medicaid, that overage has to be paid to
16 the State as reimbursement for Medicaid, and
17 that is something a lot of funeral directors
18 aren't aware of, and I know at the Board
19 meetings, we've had discussions about that. I
20 would like to see something in the statute
21 referencing that other statute so that's clear
22 to funeral directors.
23 MS. GRINSTON: Okay.
24 MS. EULER: And, also, there's the
25 issue of you pay -- the consumer paid $10,000.

1 With interest, there's an extra $5,000,
2 because I'm banking at your bank. And so,
3 there's $15,000. At the time of need, the
4 funeral costs $10,000. That extra $5,000,
5 does that go -- that technically should go to
6 Medicaid, or should it be reimbursed to the
7 family, or does it belong to the seller? Does
8 the seller have to pay it out to the provider?
9 MS. GRINSTON: I want to take -- can I
10 take Medicaid out of that equation, because I
11 think that really does complicate things
12 because I understand it would be subject to
13 the restrictions governing Medicaid. But what
14 I'm hearing everyone say to the last question
15 is that that always goes to the seller at-need
16 and that's not an issue. That is not a
17 concern for this group, that interest could --
18 let's say you've just gambled well, you know,
19 or invested well. I shouldn't say that --
20 invested well, got a pretty good return. Once
21 that is paid out, all of that interest at-need
22 goes to the seller.
23 MR. OTTO: You have to do that.
24 MS. EULER: But what if it's a $10,000
25 face-value contract, and at the time of need,

1 the family decides to do a direct cremation,
2 so there's $9,000 left over?
3 MR. OTTO: That's a different issue.
4 That's a different issue.
5 MR. STALTER: That's different. You've
6 changed the terms of the contract.
7 MS. EULER: Right. But that happens.
8 Or if the contract -- I mean, I'm just using
9 that as an extreme example. If the face value
10 of the contract at the time of need is more
11 than the actual cost of the funeral, does that
12 money belong to the provider, does it belong
13 to the seller, or should it be reimbursed to
14 the next of kin?
15 MS. GRINSTON: Now, you're talking
16 about face value plus interest; right?
17 MS. EULER: I'm talking about just
18 face value.
19 MS. GRINSTON: Can I reserve that
20 question so that we can do interest first?
21 MS. EULER: Well, I think they're
22 connected, but, sure.
23 MS. GRINSTON: Okay. Maybe it is.
24 I'm sorry.
25 CHAIRMAN: Hold it. Todd?

1 MR. MAHN: Well, I'm going to combine
2 provider and establishment together because
3 we're talking about that possibly being the
4 terminology combined. But whether it's 80 or
5 90 or whatever percentage we decide to be
6 invested in trust, the interest on that -- I'm
7 going to use 80 since we're using 80 right
8 now. It's compounded on 80 -- along with the
9 80 percent ought to go to the funeral home
10 that has the funeral. I mean, we're getting
11 people switching their funerals over from XYZ.
12 And, again, what I said earlier, we've got
13 funeral homes with their own trusts saying
14 we're going to give you 80 percent of the
15 original preneed 25 years ago. It's $3,000,
16 the funeral is $7,500 today. That family
17 wants to use us 200 miles away. So, they're
18 going to keep this interest on all that, but
19 they haven't done a thing for it?
20 MS. GRINSTON: And what I hear John
21 saying is that that interest would go to the
22 seller.
23 MR. OTTO: Well, two separate issues.
24 Your first question. Let's assume there's no
25 transfer because that's a -- no portability.

1 MS. GRINSTON: That's true. That's
2 true.
3 MR. OTTO: I mean, let's -- so, the
4 issue, simple one, number one now. Consumer
5 went in and gave you $10,000. Ten years from
6 now, it's $15,000 in the trust. Turns out the
7 funeral costs you $14,000, so there's $1,000
8 "extra." Put that in quotation marks for the
9 record -- "extra." That has to go to the
10 seller.
11 MS. GRINSTON: Okay.
12 MR. OTTO: Because, otherwise, the
13 whole system collapses because on that
14 contract, you made $1,000, the next one, you
15 lost $2,000.
16 MS. GRINSTON: Got you.
17 MR. OTTO: The one after that, you
18 broke even. So, the -- and the seller --
19 although in many cases it's the funeral home,
20 you know, through the contracts are the seller
21 and the provider are the same -- are taking
22 the risk -- the funeral home is taking the
23 risk of the inflation factor. So that the
24 interest earned has got to -- we can't -- I
25 don't think we can change the way it is right

1 now on a simple at-need question.
2 MS. GRINSTON: Okay. So, hearing
3 that, can I take the consensus of the group?
4 At-need, you come in, we're going to take off
5 portability and all that other stuff.
6 At-need, I come in, interest has grown, it's
7 larger than what the face contract services
8 are. That interest belongs to the preneed
9 seller because they assumed the risk. Do I
10 hear that as the consensus of the group?
11 (Numerous people answer yes.)
12 MS. EULER: Can I ask a question
13 before we take that vote?
14 CHAIRMAN: We just took it.
15 MS. EULER: I had my red card up.
16 CHAIRMAN: She actually did have her
17 red card up previous to the vote. Okay.
18 MS. EULER: You're saying that that
19 money belongs to the seller. Under the
20 current statute, Mahn Funeral Home is the
21 provider. The preneed contract was for
22 $5,000. $5,000 was put into trust because
23 Todd is a 100-percent truster. $5,000 put
24 into trust, and he sends it -- John, I'm going
25 to pick on you because I'm looking at you.

1 And he sends it to John's company. He's got
2 $5,000. That -- John invests the money in the
3 Bank of Kim, and it grows to $15,000.
4 MS. GRINSTON: Better than IndyMac --
5 sorry.
6 MS. EULER: Yeah. Better than
7 IndyMac. So, when the person dies and it's
8 at-need, the funeral costs Todd $10,000, and
9 Todd says, "John, you owe me $10,000," and
10 John says, "The interest is all mine, you just
11 get the $5,000."
12 MR. OTTO: What Todd gets under the
13 current law is based solely on the contract
14 between Todd and John.
15 MS. EULER: No, that's not true.
16 MR. OTTO: Yeah. Yeah, it is.
17 MS. EULER: No, it's not. It's based
18 on the contract or it's the amount actually
19 deposited in trust.
20 MR. McCULLOCH: That's right. And I
21 only put 80 percent, so --
22 MS. EULER: Upon delivery to the
23 trustee of the provider's receipt for payment,
24 the trustee shall distribute to the seller
25 from the trust an amount equal to all deposits

1 made into the trust for the contract, and if
2 there is no written agreement between the
3 seller and provider, it's all payments made
4 under the contract.
5 MR. OTTO: That's the trustee to the
6 seller.
7 MS. EULER: Right. I know. But what
8 I read, "Pursuant to the written agreement
9 between the seller and the provider of all
10 payments made under the contract or an amount
11 equal to all payments required to be made.
12 The seller shall pay the provider a net amount
13 equal to all payments required to be made
14 pursuant to the written agreement or all
15 payments made under the contract."
16 MR. OTTO: So, if you don't have a
17 written agreement, yeah, but we've all got
18 written agreements.
19 MS. EULER: But what I'm saying here
20 is --
21 MR. STALTER: Most of us do.
22 MR. OTTO: Yeah. Good point.
23 MS. EULER: -- as -- while we're doing
24 this, let's say John is having a bad month --
25 and I'm picking on John because I'm looking at

1 him. John is having a bad month and he
2 really needs that extra money, and he points
3 to this in the statute and says, "Or all
4 payments made under the contract." That's
5 only $5,000, you get $5,000, Todd. It seems
6 to me like we would want to fix that.
7 MR. McCULLOCH: Todd and I fix -- have
8 already done that for you. Just let us, as
9 businesspeople, handle that and not let the
10 government get involved. He's not going to
11 let me --
12 MS. EULER: So, when Todd files a
13 complaint with the State Board saying John
14 screwed me out of all this money --
15 MR. McCULLOCH: Then you say, "Todd,
16 you're a businessman, why didn't you have a
17 contract?"
18 MR. OTTO: Sue him under the contract.
19 MS. GRINSTON: That's right.
20 MR. OTTO: Sue him under the contract.
21 MR. McCULLOCH: Yeah, go to the civil
22 areas.
23 MR. OTTO: They have a contract.
24 MS. EULER: Well, I just want to raise
25 that as an issue.

1 MR. McCULLOCH: We're not here to
2 baby-sit Todd Mahn or Marty whatever his name
3 is or anybody else.
4 MR. MEIERHOFFER: I think maybe what
5 that's relating to is if, in fact, all the
6 money hasn't been paid in the trust.
7 MS. EULER: Uh-huh. That's part of it.
8 MR. MEIERHOFFER: So, I think that's
9 what that particular phrase is referring to,
10 so it's a $5,000 deal and only $1,000 of it
11 got into trust. I think that's what they're
12 talking about there, frankly.
13 MS. EULER: Uh-huh. So, but my point
14 here is -- not to pick on John, but my point
15 here is while we're working on this, do we
16 want to address that issue statutorily to make
17 sure that the funeral home who is providing
18 the services gets fair value from the seller?
19 MR. MEIERHOFFER: Is that a problem,
20 though? I guess that's the question. Is it
21 a problem?
22 MR. McCULLOCH: It's not a problem.
23 MS. EULER: Just because it's not a
24 problem today doesn't mean it won't be a
25 problem tomorrow.

1 MR. MEIERHOFFER: Has it ever been a
2 problem; I guess that's the other question.
3 MR. McCULLOCH: Is that the purpose of
4 the Board is to take care of businesspeople,
5 though?
6 UNIDENTIFIED: No.
7 MS. EULER: The Board will receive a
8 complaint on that.
9 MR. McCULLOCH: Well, you just have to
10 give them a good answer, and that is you need
11 to have a good attorney and you need to read
12 what you sign and --
13 MR. OTTO: The funeral home as a
14 provider should have a contract with their
15 seller that says at time at-need, here is what
16 I get.
17 MS. EULER: But they don't always.
18 Currently, they don't.
19 MR. McCULLOCH: That was their choice.
20 MR. MAHN: Kim, before we go on, I've
21 got a question. Somebody please explain to me
22 if XYZ Funeral Home has their own trust and
23 they're putting in 80 percent -- okay -- and
24 that family has a preneed there and decides to
25 move it from -- you know, to me -- or from my

1 place to them. I don't care which direction.
2 And it's a 25-year-old preneed. How much,
3 under the current law or the way we're going
4 to leave it, is the funeral home providing the
5 funeral, the establishment where the funeral
6 is handled, going to be paid? That's my
7 question. Are they getting the original
8 $5,000? Are they getting some interest on
9 that? Can anybody answer that?
10 MS. EULER: That is -- I've answered
11 the question.
12 MR. OTTO: Well, first off, that's
13 separate than the vote we were just talking
14 about. I understand. But under current law,
15 there is no provision for changing funeral
16 homes. It's not in there. The only time
17 changing funeral homes is mentioned is when it
18 talks about irrevocability where it says just
19 because you made this irrevocable doesn't mean
20 you don't -- you've lost any of your rights to
21 change funeral homes, but changing funeral
22 homes is never mentioned.
23 MR. MAHN: Yeah, I know that. But I
24 am asking how is it handled right --
25 MR. OTTO: So, the only thing you can

1 do under the law, in my opinion -- this is my
2 opinion. The only thing you can technically
3 -- of course, again, if all three -- if all
4 parties are happy with it and sign off on it,
5 that solves the problem. But all that can
6 happen under current 436 is you cancel the
7 funeral home with -- you cancel the contract
8 with funeral home #1 and then rewrite it with
9 funeral home #2, which means the consumer gets
10 80 percent.
11 MR. MAHN: So, if they've had that
12 funeral there for 25 years and they cancel
13 their contract, how much are they going to get?
14 MR. McCULLOCH: Eighty percent.
15 MR. OTTO: Eighty percent of the face
16 value of the contract.
17 MR. MAHN: Originally -- another
18 interest?
19 MS. GRINSTON: Can I come back to that
20 discussion? As we talk about right now
21 at-need, what I'm hearing is at-need, Sharon
22 made a suggestion that we clarify for purposes
23 of the record what happens if he provides and
24 John gets more. John, I'm so sorry, but he
25 has the majority of the interest. What I'm

1 hearing as the consensus of the group -- and I
2 would like to ask the consensus of the group
3 on that question. At-need, interest goes to
4 the preneed seller, no need to touch that,
5 we'll leave it alone; am I hearing that as the
6 consensus of the group?
7 CHAIRMAN: Is your comment about that?
8 MS. EULER: My comment is about that.
9 CHAIRMAN: Okay. Make your comment.
10 MS. EULER: In that Todd's question
11 asks in a much more clear manner the same
12 question I was raising. Does the provider of
13 the services -- do we need to statutorily
14 provide that the provider of the services is
15 entitled to be paid how much including some of
16 that interest.
17 MS. GRINSTON: And I hear that
18 question, and I think what I heard from this
19 end of the table was let the market control,
20 you negotiate your contract, don't -- possibly
21 don't get the State involved in that. And so,
22 as we talk on that issue, does anyone else
23 have a position on the issue of should we
24 allow the final provider, by statute, to get a
25 portion of the interest?

1 MR. MAHN: Well, I'm still questioning
2 this because am I supposed to tell a family no
3 then that comes to me for a service?
4 MR. OTTO: Separate that for a second.
5 That's if there's been a change of provider.
6 MS. GRINSTON: Yeah.
7 MR. OTTO: Right now, we're just
8 dealing there is no -- been no change of
9 provider.
10 MS. GRINSTON: No.
11 CHAIRMAN: Right.
12 MR. OTTO: But from day one, you stuck
13 with the same funeral home all the way to the
14 end.
15 MS. GRINSTON: Yes.
16 CHAIRMAN: And you're entitled to all
17 the money. Yea or nay?
18 MR. MAHN: Who is entitled to all the
19 money?
20 MR. OTTO: The sellers.
21 MS. GRINSTON: The seller. Interest.
22 MR. OTTO: And what the funeral home
23 gets is based on the contract between the
24 funeral home and the seller.
25 MS. RUSSELL: Just a clarification on

1 that.
2 CHAIRMAN: Yeah. Go ahead, Darlene.
3 MS. RUSSELL: We're not talking about
4 portability, are we?
5 CHAIRMAN: No.
6 MS. GRINSTON: No, we're not talking
7 about any portability issues.
8 MS. RUSSELL: Okay. No portability.
9 MS. GRINSTON: I go to John, I've got a
10 contract with John, the consumer comes in and
11 has passed away. When the interest is paid
12 out, who keeps that interest? Now, John can
13 negotiate with me whatever he wants to, but,
14 legally, right now, John, as the seller, is
15 entitled to the interest, and without changes
16 or anything else. Now, maybe John has
17 contracted to give me a percentage of the
18 interest or whatever, or we've already worked
19 that out. But, technically, legally, it is
20 John's interest. Again -- and I'm going to
21 call this really quickly. Is there any
22 desired consensus to change that issue when we
23 don't have any portability or change issues?
24 CHAIRMAN: And anybody from the
25 audience want to make a comment real quick?

1 Gerry?
2 MR. KRAUS: I'll keep it quick. Gerry
3 Kraus, Homesteader's. When you set your
4 retainage level 80-20, you get the money that
5 you need to run your trust operation. And so,
6 what you're talking about afterwards is a
7 drawdown that I would think from that
8 interest, you should only be able to draw down
9 your legitimate trust expenses for
10 administering that trust. The rest of any
11 interest that accrues on that balance of the
12 money, the corpus, should go to the consumer,
13 wherever they go ultimately to get their
14 funeral.
15 CHAIRMAN: Now, you're talking about
16 -- that's portability. We're going to get to
17 that.
18 MR. STALTER: Yeah, that's a different
19 issue.
20 CHAIRMAN: Okay. All right. So, on
21 the question --
22 MR. KRAUS: And only in a
23 guaranteed-contract situation.
24 CHAIRMAN: Right.
25 MS. GRINSTON: Got it. Now, Bob

1 indicated he wasn't a preneed seller. Is
2 there something you would like to say as a
3 preneed seller, Bob?
4 CHAIRMAN: Bob Baker.
5 MR. BAKER: Well, we are -- I guess
6 we're registered, we're not licensed as both a
7 provider and a seller. I have a contract with
8 John. We have a provider/seller agreement.
9 And it's not fictitious; we do. If John makes
10 more money than what he has to pay me, good
11 for John, as long as he pays what our
12 contractual relationship is. And I think
13 we're going back to the problem with the NPS,
14 they're not paying what they actually
15 contracted with the funeral homes. But as far
16 as the seller, being the seller and provider
17 both, which you can be, which we are, but we
18 also have provider/seller agreements with NPS,
19 APS, Missouri Funeral Trust, and we've got
20 several more, which most funeral homes do.
21 But, you know, if John makes more money, good
22 for John, as long as he pays me what we have
23 agreed to.
24 CHAIRMAN: And that's a good point,
25 Bob. But, I mean, what Kim is trying to get

1 to is, like, if you're the provider and the
2 seller, you get all the funds. Like, if
3 you're going from $10,000 to $15,000, and the
4 funeral costs you $12,000, you're not going to
5 give $3,000 back; is that what we're on?
6 MS. GRINSTON: Yes. Pretty much.
7 CHAIRMAN: Okay. And we've all agreed
8 that that's all right because you've taken the
9 risk as -- I mean, like, with the financial
10 institutions and investing the money and all
11 that.
12 MR. MAHN: But we're still running
13 into a problem because those contracts that
14 they're talking about right there, and I don't
15 have a contract with them, is hanging up --
16 there's a lot of people moving these -- moving
17 around --
18 CHAIRMAN: Well, we're talking about
19 the individuals that stay with the same
20 funeral home all the way through.
21 MR. MAHN: But it's the same thing.
22 We're going to use those contracts to fight
23 what we're talking about.
24 MS. EULER: So, right now, you're
25 question is: Does the interest belong to the

1 consumer or does it belong to someone else?
2 MS. GRINSTON: Correct. I'm not
3 talking about portability or what you pay to
4 your provider, what your contract is. I think
5 Bob answered that question for me. Yes. I
6 think I got that.
7 CHAIRMAN: Go ahead.
8 MR. SPEAKS: Brad Speaks, for the
9 record. It's 1970. I've just sold this
10 family a preneed for $1,000. Current rules
11 are in effect. I keep 20 percent, so I get
12 $200, which I have now pocketed to pay for my
13 commission to salespeople, my marketing
14 campaign, administrative costs, so forth.
15 Fast forward, it's now 2008. Grandma finally
16 dies. It's time to cash in, if you will,
17 that preneed plan, and there has been earnings
18 growth on the trust. Your question is: What
19 happens to those earnings?
20 MS. GRINSTON: Yes.
21 MR. SPEAKS: Okay.
22 MS. GRINSTON: In that pure situation,
23 no changes, no portability, no anything else.
24 MR. SPEAKS: I've already got my $200,
25 but now that $1,000 funeral is $7,500.

1 MS. GRINSTON: Right.
2 MR. SPEAKS: That $200 did not do it.
3 Those earnings are mine.
4 MS. GRINSTON: Got it. And on that
5 sole issue, I think, again, the consensus of
6 the group is that that issue doesn't need to
7 be changed. Now, I understand that there are
8 some questions about whether that should be,
9 but let's talk about the consensus of the
10 group.
11 CHAIRMAN: All right. All in favor of
12 what we're talking about here --
13 MS. GRINSTON: Which is seller keeps
14 interest.
15 CHAIRMAN: -- say aye. Nay?
16 (Unanimous voice vote for approval.)
17 MS. GRINSTON: Now, let me move on to a
18 separate side question that Don actually
19 brought up. Should a seller be allowed to
20 withdraw interest prior to the at-need
21 services? And I'm starting this up this way
22 for a purpose because I think we've got to
23 answer that question before we get to
24 portability.
25 MR. OTTO: Like I said, that -- the

1 majority of the folks in our association that
2 have responded to our polls, regardless of
3 whether they're 80-20 or 90-10 or whatever,
4 believe that the income, less expenses,
5 require to be withdrawn to maintain the trust
6 should be left to accumulate until the time of
7 need.
8 CHAIRMAN: Everybody agree with that?
9 MR. OTTO: As opposed to the current
10 law, if anyone doesn't know, the current law
11 allows you to withdraw that.
12 CHAIRMAN: Right.
13 MR. OTTO: At any time.
14 MS. GRINSTON: So, let's get a
15 consensus of this. No portability issues,
16 interest is growing, you're getting the
17 statements, you see the growth going up, you
18 do not touch that interest until it becomes an
19 at-need contract, then it's paid over.
20 CHAIRMAN: Everybody agree with that?
21 (Numerous people agree.)
22 MR. CLINE: I vote for staying with the
23 current situation, just for the record.
24 MS. GRINSTON: Which is -- can you
25 please speak to the --

1 MR. CLINE: Which is like you said.
2 I'm George Cline, Kutis Funeral Home. That
3 the interest can be withdrawn. As a
4 businessperson, you're taking the risk, and
5 so, you can choose to do the interest as you
6 please.
7 CHAIRMAN: Okay. So, you're saying
8 you would like to see it as is.
9 MR. CLINE: I'd like to leave it as is.
10 CHAIRMAN: Okay. So, that would be a
11 nay.
12 How many people yea?
13 MS. GRINSTON: Can I affirm this
14 question, Mr. Chairman? Sorry.
15 CHAIRMAN: Go ahead.
16 MS. GRINSTON: I think your suggestion
17 was allow you to withdraw interest prior to
18 the at-need contract.
19 MR. CLINE: Not principal, but
20 interest.
21 MS. GRINSTON: Yeah. Not principal,
22 but interest.
23 CHAIRMAN: Okay. Well, let's do it
24 this way. How many people in favor of drawing
25 interest off the contracts prior to the

1 contract being fulfilled? Okay. Those
2 opposed? Is everybody voting here? Well, it
3 carried, but, I mean, it wasn't very much.
4 MS. GRINSTON: Since we're supposed to
5 be bringing together consensus draft, to the
6 extent that there is a split understanding
7 right now, we will note the split
8 understanding. This is an issue that we
9 didn't come to agree on, but these are the two
10 suggestions: Keep it as is, don't draw off,
11 and the majority vote right now I'm seeing is
12 to don't draw off, but some people didn't vote.
13 CHAIRMAN: Let's do that again. Let's
14 hold up your hands up that do want to keep
15 the interest. That was you, George, and --
16 MS. GRINSTON: Okay. Keep --
17 CHAIRMAN: Yeah. Okay. Those who --
18 MR. OTTO: Allow the seller to withdraw
19 interest as currently allowed under 436.
20 CHAIRMAN: Okay. And we've got three
21 for that. How many for the other way?
22 MS. RUSSELL: Keeping the interest in.
23 MS. GRINSTON: For purposes of the
24 record so we know who we are --
25 CHAIRMAN: Hold your hands up again.

1 Did you hold your hand up.
2 MR. OTTO: Yeah. I'm sorry. I didn't
3 know what we were doing.
4 MS. GRINSTON: Can you just state your
5 name.
6 MR. OTTO: Yeah. This is ultimately
7 dependent upon the wording of it.
8 MS. GRINSTON: Yeah.
9 CHAIRMAN: Right. Okay.
10 MS. GRINSTON: For purposes of our
11 record so that we can write down who is on
12 what side, can you just tell us who you are
13 and what your position is. I'm sorry.
14 CHAIRMAN: Yeah. Jim?
15 MR. MOODY: I'm going to abstain.
16 MS. GRINSTON: Okay.
17 CHAIRMAN: Ms. Brown.
18 MS. BROWN: I say that you should be
19 able to withdraw the interest.
20 CHAIRMAN: Mike?
21 MR. MEIERHOFFER: Withdraw the
22 interest.
23 CHAIRMAN: Don?
24 MR. OTTO: Don Otto. The majority of
25 those who responded to the Missouri Funeral

1 Directors' survey and inquiries on this
2 believe that the interest should remain in
3 until the time at-need with the exception of
4 that money needed to be drawn off to maintain
5 administration of the trust.
6 CHAIRMAN: John?
7 MR. McCULLOCH: Maintain the interest.
8 CHAIRMAN: Maintain the interest? All
9 right. One vote from insurance.
10 MS. ERICKSON: Maintain the interest.
11 CHAIRMAN: Okay.
12 MS. GRINSTON: Did you skip Rich?
13 MR. WEAVER: Yeah. Well, and I don't
14 -- I'll try to clarify, you know. Earlier I
15 voted that all the money go into trust, so if
16 we go that route, then it's only fair, I
17 think, that the seller should be able to get
18 the interest. But if you do a split of only
19 80 going in, then I think it makes sense that
20 the interest should stay in the account, so
21 I'm trying to ride the fence on that.
22 CHAIRMAN: Joy?
23 MS. GERSTEIN: I agree with Rich.
24 CHAIRMAN: The interest stays with the
25 account?

1 MS. GERSTEIN: Well, it depends on
2 which way you go.
3 CHAIRMAN: Why do you throw a curve
4 ball in? Okay.
5 MR. WEAVER: Just to be complicated.
6 CHAIRMAN: Gary?
7 MR. FRAKER: I think interest needs to
8 stay.
9 CHAIRMAN: Stay.
10 MS. EULER: Interest needs to stay.
11 MR. MAHN: Well, interest needs to
12 stay, and if it don't stay, it's going to work
13 right into the question I'm asking. If it's
14 not there and somebody else provides the
15 funeral, then who's going to pay that?
16 CHAIRMAN: We're going to get to that
17 next.
18 MR. MAHN: I know, but I'm just saying.
19 MR. TRIMM: Interest should stay.
20 MS. RUSSELL: Interest should stay.
21 MS. STALTER: Some kind of income
22 accrual, yes.
23 MR. CLINE: Interest should be allowed
24 to be used.
25 CHAIRMAN: Okay. Stay. I'm the

1 chairman.
2 MS. GRINSTON: We'll note that. Since
3 we're getting close to lunch, there are two
4 things that I think we can do very quickly.
5 Number one, 436 doesn't say the money has to
6 be placed in trust if it's trust funded. Is
7 there anybody against putting in the statute
8 that it actually has to get to the trust?
9 CHAIRMAN: Yeah. In, like, a 45-day
10 window or something.
11 MS. GRINSTON: Well, don't -- we're
12 going to do time frames in a minute.
13 MS. EULER: Well, don't confuse it.
14 MR. OTTO: Yeah. Don't do time frame
15 yet.
16 MR. MAHN: Slow down, Mr. Chairman.
17 MS. EULER: Yes.
18 CHAIRMAN: I'm going to buy everybody
19 an InBev at noon.
20 MS. EULER: Yes, Kim. The statute
21 should require.
22 MS. GRINSTON: Yeah. I think we can
23 do that by voice vote. Anybody opposed to
24 saying when -- just saying that the money has
25 to be put in trust if it's a trust-funded

1 plan? Anybody opposed? Everybody in favor.
2 (Unanimous voice vote for approval.)
3 MS. GRINSTON: Okay.
4 CHAIRMAN: A miracle.
5 MS. GRINSTON: Let's talk about --
6 after lunch, I'd like to do portability,
7 because I think we need to do that on a full
8 stomach, if we can. And it's 11:15. Do you
9 want to break for lunch now and then head into
10 that?
11 CHAIRMAN: Sure. Everybody ready for
12 lunch? Return at 1:30.
13 (Off the record)
14 MS. GRINSTON: I said that we were
15 going to do portability right after lunch.
16 Before we do that, I'd like to pick another
17 issue that I'm sure you may also have some
18 thoughts. Let's look at #1 on the July 15th
19 agenda because I think that may affect some
20 issues when we talk about portability. A
21 discussion of when preneed funds are to be
22 deposited. Right now, 436 is silent, like Don
23 pointed out. It's silent as to whether you
24 have to put it in the trust even though it's
25 implied. And the question is: When should it

1 be put in trust at whatever amount you
2 suggested for trusting; 80, 100, 90, whatever
3 amount it is. I think it might be good for
4 us to open the floor on when that money should
5 be required to be placed in trust.
6 CHAIRMAN: Like a number of days.
7 MR. OTTO: Just to throw out a number
8 that I suggest, but keep in mind that the
9 consumer has a 30-day buyer's-remorse clause
10 already. So, it is for many people,
11 particularly the ones that run their own
12 trust, it's wise for them, perhaps, to keep
13 the checks sitting there until they know the
14 consumer is not going to change their mind.
15 So, it has to be at least 30 days.
16 CHAIRMAN: I think you said before
17 that your association is about 45.
18 MR. OTTO: Well, I think -- actually,
19 I think 90, I think, is actually. I mean,
20 that sounds like a long time, but when you
21 think about it, it's got to be past 30 days
22 because of the buyer's-remorse clause. Then,
23 although it would be nice to work out a way,
24 perhaps, in rule making to streamline this, a
25 lot of people come into the funeral homes and

1 make that check out to the funeral home; okay?
2 Even though it might be going to a third-party
3 seller. So, then the funeral home has to
4 aggravate those and send them, usually, once a
5 month, to the third-party seller with an
6 accounting as to -- with a sheet that accounts
7 here's all the money that came through. So,
8 that's -- if you do that once a month. So, I
9 think, at a minimum, 60 days, but to give
10 everybody time to make sure you've gotten it
11 in, I think 90. The important thing -- I
12 don't think the important thing is the time
13 period as much as having a date certain so
14 that you know -- for example, you know that
15 you've been past that date.
16 CHAIRMAN: Well, everybody agree on --
17 Darlene?
18 MS. RUSSELL: I prefer just -- I
19 understand your thinking on how long it takes
20 and everything, but I think 90 days is just a
21 little bit further out there than most people
22 would prefer. I think the 45 to 60 days is a
23 more realistic time period.
24 CHAIRMAN: Bill?
25 MR. STALTER: We administer quite a few

1 trusts, but, I mean, typically, their deposits
2 come in once a month at the end of the month.
3 Usually, it hits, like, ten business days
4 after the end of the month. And sometimes
5 some problems happen, so, basically, what we
6 look for, that time frame is, okay, after the
7 close of the month, really, they should be
8 able to make a deposit within 30 days, maybe
9 45 days. But what we're looking at is not
10 when it's really -- you know, if you say 90
11 days from the point of receipt, really,
12 there's some time after the close of a month,
13 you know, if it's 30 days, you know, that
14 should give the funeral home or cemetery
15 enough time then to get it into the trust.
16 CHAIRMAN: George, have you got a
17 thought on that?
18 MR. CLINE: That's fine.
19 CHAIRMAN: What do you say, 45?
20 MR. CLINE: Forty-five.
21 CHAIRMAN: Any other --
22 MR. MEIERHOFFER: Jim --
23 CHAIRMAN: Yes.
24 MR. MEIERHOFFER: -- keep it simple
25 for folks. Forty-five days is sometimes hard

1 for them to -- either 60 or 90 days. And the
2 truth of it is, we're -- most people -- 99
3 percent of the people want to get it in the
4 trust as fast as they can. So, this -- we're
5 picking up the outside situation here. These
6 are the laggards; the ones, for whatever
7 reason, you can't get it in.
8 CHAIRMAN: Sure.
9 MR. MEIERHOFFER: So, I would say give
10 it on the long side because those are the
11 problems you're having, so I don't want
12 somebody coming into the place and saying,
13 "Okay. Well, we've got this problem, but your
14 out of sync already." So, I would stretch it
15 to the longer side because, in most instances,
16 people want to get the money in the trust.
17 It's the problems that we were just talking
18 about that you run into.
19 CHAIRMAN: Okay. Sixty days. And by
20 the way, Representative Meadows has joined us
21 and I want to introduce you. Appreciate you
22 coming. All those in favor of 60 days? All
23 those opposed?
24 (Unanimous voice vote for approval.)
25 CHAIRMAN: Now, you can go to the big

1 issue.
2 MS. GRINSTON: Can we do an
3 abstaining? Who is abstaining from --
4 MR. OTTO: Well, I mean, I prefer 90,
5 but 60 is better than 45.
6 MS. GRINSTON: All right. For right
7 now, we'll draft it for 60 days for you all
8 to take a look at. Okay. Let's talk about
9 portability. And I realize this conversation
10 -- I don't know what's the most organized way
11 to do it, but when we talk about portability,
12 we are going to -- I'd like to talk about
13 transferring providers or changing providers
14 or changing sellers, moving the plan to
15 someone else for whatever reason, at whatever
16 time. Can we talk about providers first, just
17 changing providers before we do changing
18 sellers? I think there's a threshold
19 question: Should the consumer have the right
20 to change providers under a preneed contract
21 because, right now, again, 436 doesn't clearly
22 answer this question on a purchaser having the
23 right to change providers. So, I would like
24 to open up the floor for discussion on that
25 issue and then maybe we can move to the next

1 issues on portability.
2 CHAIRMAN: Darlene?
3 MS. RUSSELL: I'll take this one on a
4 personal level. My father bought a preneed
5 contract from a funeral home and that funeral
6 home sold to somebody he didn't like, so he
7 wasn't able to change provider -- or get the
8 money to transfer out to another funeral home.
9 So, my suggestion is, you never know if that
10 funeral home is going to change ownership or
11 something may happen with their personnel that
12 you just don't like them anymore. I think a
13 consumer should always have the right to
14 change their providers.
15 CHAIRMAN: Bill?
16 MR. STALTER: Okay. And I'm going to
17 speak on the fiduciary part at this point, you
18 know. That trust -- we're just talking about
19 trusts at this point, is that the fiduciary
20 has a trust agreement with the seller. We
21 don't have a relationship with the provider or
22 the funeral home. So, when you do change --
23 to a different funeral home, the fiduciary
24 looks at that trust agreement in terms of
25 protections -- how that contract is going to

1 be provided and so forth. We want a contract
2 with the seller that we get promises and
3 protections, but we don't have that with the
4 new provider. So, in a sense, when you say
5 the family has a right to designate a new
6 funeral home, you know, okay, now, is it the
7 trustee's obligation or duty to make sure that
8 the contract is performed according to its
9 terms?
10 MS. GRINSTON: Well, the trustee
11 doesn't -- wouldn't have that obligation now.
12 That obligation is on the preneed seller. The
13 trustee, my understanding is under 436 right
14 now, is over the disbursement of funds. What
15 protections would a trustee who is just
16 handling money need to have from the provider
17 since his obligation is to the seller and
18 seller only? I don't know. I guess my
19 question is: How would the trustee be
20 affected if I have to change providers?
21 MR. STALTER: When I -- okay. When do
22 I distribute the funds?
23 MS. GRINSTON: Well, and the question
24 of when may be different from to who because
25 if the issue is when do funds come out, I

1 think that's a separate question. But if I'm
2 talking about being able to move from A
3 funeral home to B funeral home, how does it
4 affect the trustee if I go from Todd's to
5 Jim's? I think that's where we are in this --
6 MR. STALTER: If Jim is the seller, my
7 contract is with Jim.
8 MS. GRINSTON: Right. And so, you
9 deal with Jim.
10 MR. STALTER: So, do I pay Jim?
11 MS. GRINSTON: If Jim is the seller?
12 MR. STALTER: No. On the performance
13 of the contract, do I pay Jim?
14 MS. GRINSTON: Well, what does Jim --
15 I don't think I'm understanding the question.
16 MR. STALTER: No. In other words, you
17 can designate different providers, but the
18 trustee has a relationship only with the
19 seller.
20 MS. GRINSTON: Okay.
21 MR. STALTER: So, when it comes time
22 for performance, and it's Todd's funeral home.
23 MS. GRINSTON: How does it work now?
24 When the provider has provided a service, who
25 does the trustee pay?

1 MR. STALTER: We pay the sellers.
2 MS. GRINSTON: Is that the way it is,
3 generally?
4 MR. STALTER: Yes.
5 MS. GRINSTON: So, are you telling me
6 that if you change providers, that you may
7 still be remitting it to the seller, and would
8 that new provider be able to get payment from
9 the seller?
10 MR. STALTER: No. I mean, I've got a
11 contract with John. I mean, that's who I pay.
12 In other words, if Todd is going to look for
13 payment, you know, I --
14 MS. GRINSTON: I think I'm
15 understanding, Bill. So, seller says trustee
16 pay me for services rendered by --
17 MR. STALTER: Todd, in this case.
18 MS. GRINSTON: -- by Todd? And then
19 Todd has to get his reimbursement from the
20 seller?
21 MR. STALTER: Yes.
22 MS. GRINSTON: So, if I let Todd -- if
23 I change from Todd to Jim, since I'm coming
24 back to the seller, how would my change from
25 Todd to Jim affect what you give -- what the

1 trustee gives to you?
2 MR. STALTER: That's what I say. In
3 other words, just understand, I've got a
4 contract with John, and you -- you know,
5 basically, it is how is this new provider
6 going to get paid? He looks to the seller.
7 MS. GRINSTON: Yeah. And I think
8 that's -- I think I get it.
9 MR. OTTO: Yeah. I think that's my
10 problem because the problem I -- and this came
11 up when the legislation came up this past
12 session. I, as a seller, have a contract with
13 Joe's funeral home. Joe has obligations to
14 me, I have obligations to them. If the
15 consumer switches to Bill's funeral home, what
16 if I don't like Bill's funeral home? What if
17 I think they're crooks? What if I think they
18 are going to -- there are still installment
19 payments coming in and I don't trust them?
20 What if they refuse to sign a contract with
21 me? And I as a seller, am I going to be
22 obligated to deal with any funeral home that
23 is picked by the purchaser --
24 MS. GRINSTON: And see, yeah. And
25 that's --

1 MR. OTTO: -- regardless of whether I
2 have a contract with them or not?
3 MS. GRINSTON: Don, is that a separate
4 question?
5 MR. OTTO: No, not on this one.
6 MS. GRINSTON: The question is: Is a
7 seller obligated to accept every provider? Is
8 that a separate question from can I change
9 providers at all?
10 MR. OTTO: Well, you know, right now,
11 436, theoretically, at least, requires all
12 sellers and providers to have a contract.
13 MS. GRINSTON: Right.
14 MR. OTTO: So, if you're going to say,
15 well, what if you go to a funeral home where
16 I don't have a contract, are we going to carve
17 out an exception to that?
18 MS. GRINSTON: I think that may be --
19 I think that's a second question. I think
20 that's a second question.
21 MR. OTTO: Well, I mean, it's a
22 problem as to whether or not -- I mean, the
23 instant reaction, and understandably so, is
24 that the consumer should have the right to
25 pick any funeral home. I mean, that's what a

1 lot of people, particularly, the public, think
2 right away, but it's a lot more complicated
3 than that.
4 MS. GRINSTON: I'm thinking of this
5 from the insurance/HMO side, you know. If you
6 want -- if I sign a contract with my HMO, he
7 has a list of providers, I choose a list of
8 providers in that deal. If a provider is not
9 on the list, then my insurance company doesn't
10 --
11 MR. OTTO: Well, that's one
12 possibility is that the seller has veto power
13 over whether it goes to a different provider.
14 MS. GRINSTON: And, see, and I think
15 that's the question I'm asking right now.
16 Should the purchaser have the authority to
17 designate another provider at all?
18 MR. OTTO: Well, if it's -- you know,
19 I think one of the many problems is there are
20 so many permutations. Is the seller and the
21 original provider the same, because if the
22 seller and the original provider are the same,
23 and the person wants to go across the street
24 to another funeral home within the same
25 service area, now you've got the first seller,

1 the first funeral home that's done all this
2 work of setting up the trust, that has paid
3 all the money to have the trust every year,
4 that is paying taxes, that has administrative
5 fees, that has the secretary, everything from
6 the lights to the secretary to the
7 heating-and-cooling bill that they're paying
8 in order to maintain this, and then your
9 competitor across the street gets the benefit
10 of all that work --
11 MS. GRINSTON: But is that a transfer
12 of seller or transfer of provider?
13 MR. OTTO: Well, in that case, it's
14 just transfer of provider causes that problem.
15 CHAIRMAN: Mike?
16 MR. MEIERHOFFER: Taking this a little
17 further along with lack of guidelines from the
18 State, typically, when we put these contracts
19 together, we determine the service radius for
20 ourselves, and it may be 25 miles, it may be
21 50, it may be whatever, which meant, in fact,
22 that when you made that contract with the
23 individual, you were assured they were going
24 to use your facility and not the guy next
25 door. And that was important because, again,

1 if you're going to do the things that Don is
2 talking about, that was important, but it goes
3 one step further. Now I'm going to sell my
4 business, and I've got a block of business on
5 my books that somebody is going to pay for,
6 and the minute I sell it, they transfer it so
7 you had that runoff, and the person -- your
8 business wouldn't be worth what you would
9 think it would be because of not having -- if
10 you would have had that exclusion.
11 MR. OTTO: And like I said, I mean,
12 and you've got so many permutations. Was the
13 contract paid in full; was it not paid in
14 full? Are you going within the service area;
15 are you going without the service area? Has
16 ownership of the first funeral home changed --
17 the provider changed? Is that a reason for
18 doing that?
19 MS. GRINSTON: So, are you suggesting
20 that when we talk about portability, we adjust
21 portability for each one of those elements?
22 UNIDENTIFIED: No, absolutely not.
23 MR. OTTO: I think -- I mean, we --
24 and this may be jumping the gun. But I think
25 my position -- our position is going to be on

1 the portability issue, for purposes of what
2 this working group is doing, is that the
3 statute should -- the statute should simply
4 say that the consumer's right to change
5 funeral homes, if any, should be spelled out
6 in the contract that the funeral -- that the
7 purchaser signs and it's clear and conspicuous
8 so that the consumer, when they're entering
9 into this bargain, knows what, if any, their
10 rights are. Now, the Board may, assuming we
11 get you rule-making authority, may want to
12 flesh this out more as rule making. But it's
13 easy to say portability is a good thing, but
14 the permutations are so -- there's so many
15 different permutations with it. And I --
16 funeral home A that sells the funeral home,
17 even if it was just a pure walk-in, they don't
18 have an outside sales person, purely a walk
19 in, has incurred expenses in selling that
20 preneed.
21 MS. GRINSTON: And they would keep --
22 the administrative expenses that the seller
23 retains pays for those expenses.
24 MR. OTTO: Well, no --
25 MS. GRINSTON: Well, I should say --

1 and I'm not talking about the inflation costs
2 because they're not going to provide the
3 services. But the seller has gotten an
4 administrative-expense fee to cover those
5 expenses.
6 MR. OTTO: Well, not if it's a 25 --
7 not if it's been around for 25 years like we
8 mentioned, you know. You might cover your
9 initial cost of paying a commission to that
10 person that sold it if you do that or some of
11 your up-front costs, but every year -- I mean,
12 setting up a trust isn't free. And whether
13 you pay it directly or you have a third party
14 that has a trust, that means you're getting a
15 little bit less because they're paying those
16 fees. So, one way or the other, the funeral
17 home is paying to have that trust established,
18 whether it's directly because it's their trust
19 or indirectly through a third party. And
20 you're paying the secretary to answer that
21 phone every day for 25 years, and you're doing
22 the accounting if that person is bringing in
23 the check or cash. So, funeral home A has
24 expenses in selling a preneed that are
25 ongoing. Now, the question is, how do you --

1 the tricky part is what is a fair compensation
2 for funeral home A in the event --
3 MS. GRINSTON: But I think fair
4 compensation may be a definition of whether I
5 can just choose to pick another funeral home,
6 and I think that that may be later, too.
7 MR. OTTO: Yeah, that might be a later
8 question, but that's the problem.
9 CHAIRMAN: Darlene?
10 MS. RUSSELL: It already allows for --
11 by contract, the purchaser may designate and
12 redesignate the provider in the irrevocable
13 agreement or plan where applicable by the
14 terms of the contract, so it's already in the
15 law. The intent was to allow a purchaser to
16 make the change by contract.
17 MR. OTTO: Well, I disagree with that
18 because that's under the irrevocability clause.
19 MS. RUSSELL: That's what's in the law.
20 MR. OTTO: Well, what that says is just
21 because you made it irrevocable doesn't mean
22 you've lost any of your rights to change or
23 rechange provider. But look anywhere else in
24 436 and it doesn't have that. There is no
25 provision in 436 for changing provider, how

1 much -- what you should get. I mean,
2 basically, what that was saying was that just
3 because I made this irrevocable doesn't take
4 away my rights I have elsewhere, but there are
5 no rights elsewhere. It's not there.
6 MR. STALTER: Well, I'm going to kind
7 of use your PPO or the insurance-type analogy.
8 And let's say that with your coverage, as long
9 as you stay within your providers, that you
10 have certain guaranteed rights as far as
11 coverage. Once you step outside of that, go
12 to a different city or something like that,
13 you don't necessarily lose all your coverage,
14 but it is a substantial step down in your
15 coverage. And that's probably what we're
16 probably getting at at this point.
17 MS. GRINSTON: And I understand that,
18 but I think that that conversation is how much
19 do you get paid if you go outside the circle.
20 What I'm hearing Don saying is that it is too
21 complicated to do anything to allow you to
22 change at all, and that we should just leave
23 it up to the contract because it's just going
24 to be too complicated to have any provisions
25 for when a consumer can change. Now, if you

1 say, yes, a consumer can change, but if you
2 change, this is what happens; if you change
3 and it's paid in full, this happens; if you
4 change and it's not paid in full, that
5 happens. If you change and it's -- you know,
6 or something else. That's a different
7 question than can you change at all or should
8 we address the change all together. And I'm
9 going to speak from the consumer side. I
10 think we've heard from the legislative side,
11 and what we've heard from the consumer groups
12 is if I don't like this funeral home, I don't
13 want to be buried here. I have paid my money
14 and, granted, it may be within an approved
15 list. Is it your suggestion that we should
16 leave that to contract on whether I am locked
17 into being required to use that funeral home
18 or else?
19 MR. OTTO: Now, all I'm saying is that
20 I think it may be too complicated to spell out
21 in the legislation with our legislative
22 mandate to get something to the joint
23 committee. I think there are so many
24 permutations that that might be beyond what we
25 can get done.

1 CHAIRMAN: Mike?
2 MR. MEIERHOFFER: The question would
3 be is it worthwhile for the seller to sell
4 something if he can't assume he's going to
5 provide -- take the time and effort, and then
6 you end up with the twisting situations that
7 can go on. It will just be -- it'll be
8 chaos. I mean, I can't imagine wanting to do
9 that.
10 MS. GRINSTON: I understand that, but
11 I'm going to put on my consumer hat again.
12 MR. MEIERHOFFER: I understand. I'm
13 not talking --
14 MS. GRINSTON: Grandma doesn't like
15 this funeral director.
16 MR. MEIERHOFFER: I understand you.
17 I'm going to talk about the people that sell
18 it. Why would you sell it if I sell it and
19 tomorrow you go to another funeral home? That
20 doesn't make any sense.
21 MS. GRINSTON: And I understand that.
22 I think that this is -- and I'm just taking
23 this as a layman, not in the business. If
24 the question is if you go, then this is the
25 penalty, why can't there be language that says

1 if you go, then this is the penalty that will
2 cover it. For example, if you move over here
3 to another funeral home, and I've been doing
4 this all the time and they're going to service
5 it, I get to keep X percent no matter what.
6 MR. MEIERHOFFER: Well, that's what's
7 happening now. That's what happens now.
8 MR. McCULLOCH: Every day.
9 MR. MEIERHOFFER: Every day, that
10 happens now.
11 MS. GRINSTON: And I'm not disputing
12 that, but what I'm saying as far as clarifying
13 the right and the options of 436, we're saying
14 we don't think that needs to be clarified.
15 Because what I hear at the Board meetings is
16 portability -- we need to discuss portability.
17 What I'm hearing Don say today is probably
18 portability is not an issue that we could
19 probably work out.
20 CHAIRMAN: John?
21 MR. McCULLOCH: Again, I think it goes
22 on every day. If people want to change their
23 provider, we let them do that. But the funds
24 are staying in the trust and we're paying the
25 inflation on -- but, again, it's that inside

1 trade area. Those are handled one way; okay?
2 And outside the trade area is handled
3 differently. So, if they go outside the trade
4 area, we have the right to try to find another
5 provider, and that's something we can
6 negotiate with another funeral home. So, if I
7 call Todd up and say, hey, I have a person
8 that wants to move in -- that's moving into
9 your area and they're looking for a funeral
10 home, if he knows anything about preneed at
11 all, he's going to ask me a couple of things.
12 First off, what do I have to provide and how
13 much money are you going to pay me, if he
14 knows what to ask; correct? And I can try to
15 negotiate that. And it can be anything that
16 he and I want to negotiate and come up with
17 currently, and then that's what we'll go
18 forward with. If he doesn't want to provide
19 that funeral because there's not enough funds
20 there, he can pass on that, and I will move
21 on to the next funeral home and I'll try to
22 find another provider. If I can't find a
23 provider and the family is not satisfied with
24 the one that I find, then my only option is
25 to refund 100 percent of their money.

1 MS. GRINSTON: And so -- and that
2 process, which I understand is somewhat
3 spelled out in statute. But am I hearing Don
4 say that what we should do is instead, say put
5 it in the contract and make it conspicuous
6 because that's where it needs to be, because
7 if the idea is, for portability reasons, to
8 maintain the status quo because it's working,
9 then maintain the status quo. But am I
10 hearing Don say that what we really need to do
11 is say put it in the contract and leave it
12 alone -- in statute?
13 MR. OTTO: Well, the one confusing
14 thing with the current statute that we can
15 probably clear up is make it clear that if the
16 consumer does change providers -- does want to
17 change providers for any reason, it's treated
18 like you canceled the contract, which is
19 actually what's happening right now. That
20 would be something you could do. That is
21 something you could do in the statute without
22 making it five pages worth of permutations.
23 MS. GRINSTON: Which I think is where
24 we've come full circle because now I think
25 we've talked about the first question of

1 whether the consumer should have a right at
2 all. Now, what happens if they do or how
3 that's handled afterwards may be step two,
4 three, and four. But am I hearing you say
5 that that may be an idea that if the consumer
6 -- and repeat that again for me. If the
7 consumer chooses to cancel, then --
8 MR. OTTO: Well, if the --
9 MS. GRINSTON: If they switch
10 providers, you cancel one contract, it has to
11 be rewritten?
12 MR. OTTO: That -- I can see you could
13 come up with language in the statute that
14 would do that without, like I said, taking
15 five pages.
16 MS. GRINSTON: Sure. I think you
17 could do that in a paragraph. If I could,
18 can I open the floor for feedback on that
19 issue? If you change providers, the first
20 contract gets canceled and you have to rewrite
21 that, treat it as a cancellation, the consumer
22 has to go do another contract with the
23 provider and that seller.
24 MS. DUNN: So, does the consumer then,
25 does the new funeral home get to retain

1 another 20 percent?
2 MS. GRINSTON: I don't know. That's a
3 separate question.
4 CHAIRMAN: I've got one question
5 myself. I want to ask Mr. Trimm there, Bill,
6 what is your take on this? I mean, you're a
7 consumer group. If you contracted with one
8 funeral home and that funeral home sells and
9 everybody is saying then you don't like the
10 next owner, wouldn't you want to go out of
11 there with 100 percent of your money plus
12 interest so you could go get your funeral
13 someplace else?
14 MR. TRIMM: I don't think the consumer
15 should be penalized just because he changes --
16 because he has to move. Maybe he retires and
17 moves into another area for retirement. I
18 don't see why he would have to be penalized on
19 his preneed contract. I guess what question
20 I've got for John, if he gives the consumer
21 all their money back when they change funeral
22 homes, who gets the income that that money has
23 generated? Is that in the contract? Who gets
24 it?
25 MR. McCULLOCH: I do. I keep the

1 interest.
2 MR. TRIMM: All of it?
3 MR. McCULLOCH: Yes, sir, I do.
4 MR. TRIMM: So, all the consumer gets
5 back is, what, 80 percent of what he put in?
6 MR. McCULLOCH: No. A hundred
7 percent. If it was a $5,000 funeral, then I
8 give him back the $5,000.
9 MR. STALTER: Let's clarify. I mean,
10 that's moving out of the service area.
11 MR. McCULLOCH: That's out of the
12 service area, yeah. I didn't get to the
13 inside the service area, but outside the
14 service area. If I can't satisfy them and I
15 cannot find them another provider, then my
16 only obligation then is to give them back 100
17 percent of their money. Not just the money in
18 trust, the 20 percent plus the 80 percent.
19 MR. TRIMM: Well, I don't think there
20 should be a penalty to the consumer. That
21 doesn't seem fair to me.
22 CHAIRMAN: Well, that's what we're
23 here for. I mean, with the consumer. And,
24 Representative Meadows, you had a statement.
25 REPRESENTATIVE MEADOWS: Go to him

1 first and then come back to me.
2 CHAIRMAN: Okay. Bill?
3 MR. McCULLOCH: Part of the problem
4 is, is the consumer has set -- has had -- has
5 a contract with a specific funeral home, and
6 so, they're breaking the contract. Well,
7 there's a lot of attorneys in here that can
8 talk about contract law, but they're basically
9 breaking that contract. So -- but that's
10 their choice, or maybe their situation calls
11 for that. But it would be like with the
12 insurance, you know, if you cancel your
13 insurance policy -- we've talked about that
14 earlier -- you don't get back all of the money
15 you've paid in over the last 25 years or 40
16 years. I think it's probably less than a
17 third, actually. So -- but that's just the
18 way it works.
19 MR. TRIMM: But I don't think they
20 should incur the penalty on that.
21 CHAIRMAN: So, you're saying, like, if
22 you got 100 percent -- if you went from Jeff
23 City to St. Louis and you canceled your
24 contract here and went there, you would like
25 to have at least 100 percent of your money

1 back; correct?
2 MR. TRIMM: Correct.
3 CHAIRMAN: Okay. Todd?
4 MR. MAHN: Well, I, personally, would
5 like to start off by just asking a question,
6 because I'm not for sure on this panel who all
7 has, but just maybe a show of hands. Who has
8 actually sat down with families and made
9 funeral arrangements? Actually sat with the
10 family and made funeral arrangements, because
11 the thing I want to point here to, Bill, is
12 if Bill comes in to see me and has a funeral
13 plan in St. Louis -- and I've had this happen
14 twice in the last couple months. And he has
15 a funeral plan up there, one of the funeral
16 homes has their own trust, and he wants to
17 move down to me just because, like you said,
18 he retired down in the southern part of the
19 state.
20 CHAIRMAN: And you sit by him all day,
21 and he's going to move down there by you;
22 right?
23 MR. MAHN: We've made buddies, and I'm
24 going to scoot a seat over here in just a
25 minute. But on both occasions, I've been told

1 no. From when I contact the funeral home and
2 they want to move it, I'm told no. I mean,
3 no 80 percent, no interest, no 100 percent, no
4 anything. And they've used all -- things,
5 like, well, there's an irrevocable waiver, and
6 then they go call on the family the next day.
7 And, you know, I think until you've sat with a
8 family and they're sitting right in front of
9 you and they've lost someone and they want you
10 to bury their loved one -- and I'm going to
11 back up and say this because if you're worried
12 about them going to a competitor, then you're,
13 obviously, not a very good funeral home,
14 because I have two very good competitors.
15 They don't move around that much and, quite
16 frankly, I had one move the other day and I
17 have to give authorization for all the money
18 to be paid to them or I could keep the
19 interest and 20 percent, and I said, "No, pay
20 the whole thing," you know. "Pay the whole
21 thing to Mr. Pinyard. He's doing the
22 funeral," you know, "take care of him. Take
23 care of that family." And this -- the
24 insurance doesn't do it that way. They can
25 move insurance to any location they want, and

1 that policy is paid up 100 percent. So --
2 and I would think that's the bulk of our
3 business now, you know. I would think. I
4 don't know what the percentages are, but this
5 preneed doesn't belong to me, it doesn't
6 belong to the trust company where it's at, it
7 doesn't belong to the funeral home where it's
8 at. We're holding it there for that family
9 until the time they decide to have a funeral,
10 and when they do, wherever they have that
11 funeral at, that's where it ought to be paid
12 and be provided, and I don't believe it
13 belongs to anybody other than that family
14 right now. And all these things you can say,
15 well, the family bought this from you and they
16 should know this and read fine print and all
17 this other baloney, that's just baloney. They
18 come in and they're expecting you to help them
19 with the funeral, and later on down the road,
20 they might move, and they're not all moving
21 around. I mean, you know, you just get
22 occasion where somebody wants to move. And I
23 think penalizing them for moving because they
24 retire somewhere is absolutely ridiculous.
25 MR. McCULLOCH: Todd, that family

1 shouldn't be doing a preneed because they need
2 to just put the money in the bank and control
3 it. They're not a candidate for this if they
4 feel that way. And there's people like that
5 out there that feel like, hey, I can invest my
6 own money. They can do their own retirement.
7 They don't have to worry about Social
8 Security. They can do all those things. They
9 don't need life insurance, either.
10 MR. MAHN: I don't look at any of my
11 prearrangements that I sell as a liability
12 because, you know, we have to service these
13 contracts. We're most probably going to take
14 a loss on most of them. So, you know, that's
15 just how I look at it. But I don't think --
16 if he has prearrangement at XYZ for 25 years,
17 and he retires and moves out in the country
18 and that prearrangement 25 years ago was five
19 grand and today it's ten, and now that funeral
20 home can't perform its funeral? He's got to,
21 what, go back to that other funeral home? I
22 mean, what's he got to do, Don? What's he
23 do? Well, either one -- whoever.
24 MR. OTTO: You mean on the current law?
25 MR. MAHN: No, on what you want.

1 Forget the current law because we're
2 evaporating that, and we're writing a new one.
3 I'm asking right now, if they move to another
4 town and want to use their funeral, what can
5 they do?
6 MR. McCULLOCH: Well, in reality, I
7 find a provider for them. You know why?
8 Because I call you, I call both of your
9 competitors --
10 MR. MAHN: Right.
11 MR. McCULLOCH: -- and I say I'm
12 looking for a funeral home, and one of those
13 guys says, "I want that business."
14 MR. MAHN: Right. Well, I know you
15 will, John, and I've applauded the way you do
16 do it, and I appreciate that. The problem I
17 have is funeral homes doing their own trust
18 and not allowing that person to move their
19 funeral.
20 MR. OTTO: That -- if -- well, again,
21 on behalf of what the Missouri Funeral Trust
22 does, and we've never had a situation where
23 we've had to give the money back since I've
24 been here because we do the same thing. I've
25 got the yellow books on -- you know. And we

1 call up a funeral home that the family is
2 happy with because the family has to approve
3 it, and we say, okay, here's the statement --
4 we fax them the statement of goods and
5 services, say, "Can you provide this funeral
6 for this family for this amount of money?"
7 And to this point, I've never run into a spot
8 where I wasn't able to do that, so that's good.
9 MR. MAHN: Well, and I know you guys
10 are doing it that way because it would be a
11 black eye on your third-party business. I
12 understand that. When I hear it's an MFT or
13 APS and they want to come and transfer to me,
14 I feel totally comfortable. I'm talking about
15 the funeral homes that have their own trusts
16 that won't transfer --
17 MR. OTTO: If a funeral home that has
18 their own trust is not allowing the person to
19 cancel their contract --
20 MR. MAHN: Not cancel their contract
21 -- I'm not saying cancel their contract. I'm
22 saying they come to you, a person has passed
23 away, and they've decided, since they've
24 moved, they want to use your funeral home.
25 MR. McCULLOCH: The person has died?

1 MR. MAHN: Yes.
2 MR. McCULLOCH: Okay. You just file
3 the claim and they have to process it -- go
4 through their trustee and they get the funds
5 and then they have to pay you. They can't
6 refuse that.
7 MR. STALTER: Yeah, but how much?
8 MR. McCULLOCH: How much?
9 MR. STALTER: Yeah.
10 MR. McCULLOCH: Well, if it's outside
11 the trade area, you would have to give them --
12 MR. OTTO: Yeah. Outside the trade
13 area, outside the -- that's the problem with
14 436 is it doesn't define this. But outside
15 the area normally serviced by funeral home #1,
16 the seller has to do one of two things; find
17 a funeral home that the family is happy with
18 that will provide the funeral or pay the
19 purchaser 100 percent of the money back, no
20 interest, than what's provided for in the
21 contract, but 100 percent of the money. And
22 if a seller is not doing that for you when a
23 person dies outside the original provider's
24 service area, I would say that's a violation
25 of 436.

1 MR. McCULLOCH: Certainly.
2 CHAIRMAN: Representative Meadows?
3 REPRESENTATIVE MEADOWS: Thank you.
4 CHAIRMAN: You're welcome.
5 REPRESENTATIVE MEADOWS: I never know
6 what I missed this morning. This was an issue
7 when I wrote the first bill, House Bill 825
8 when we were working on this. And then
9 through the year or through the past 24
10 months, I've had a lot of people call me about
11 this. They were wanting to move their -- have
12 portability rights to move their service,
13 especially, like, St. Louis, I'm moving to
14 Kansas City or I'm moving to the Lake to be
15 closer to my daughter -- my son and daughter.
16 Or I'm moving to southeast Missouri or
17 somewhere, wherever they're going, and even
18 sometimes even out of state they move and they
19 want to be able to take these things with
20 them. So, just some notes that I wrote down.
21 In all honestly, stop and think about it. If
22 we're going to -- and I'm a consumer-driven
23 kind of guy. But shouldn't the consumer have
24 the right to request, without penalty, the
25 right to move their funeral arrangements from

one establishment to another? I feel they should, but at any rate, I wrote a couple examples. The example that I used, and I kind of do this is a savings account. When you open up a savings account at your local bank and you're drawing interest on that account, you can close that at any time and move that. What would be the difference of me wanting to move my savings account versus me wanting to move my prearrangement. I feel everybody should have the right to do that, you know. And, of course, the 20 percent, the interest that goes along with it now, you know, why would the consumer allow funeral homes to place their monies in accounts that would penalize them 20 percent plus all the interest if they would choose to use a firm across town or just to relocate? I was jotting, so I'm losing my place here; I apologize for that, but I just had jotted some notes down. But just stop and think about it. How would consumers or funeral homes react if they went to their local bank to withdraw their funds because they wanted to use a different bank and were told flat out, the bank tells you,

1 "No. We're keeping 20 percent right off the
2 top and all the interest because they're
3 moving their money from my bank." I mean, I
4 associate it with banking because banking, you
5 know, it's a very service-orientated industry,
6 and I think that -- and that's a lot of the
7 complaints that I receive from the consumers.
8 And, again, if we are writing a bill about
9 consumers -- and, Kim, I agree with you
10 because I feel the consumers should have a
11 right to move these things without penalty.
12 Now, I draw fervor from a lot of folks in the
13 room. Just don't start throwing the knives
14 and eggs and the tomatoes at me yet, guys, but
15 that's just my opinion, but I'm a
16 consumer-friendly guy, so --
17 CHAIRMAN: Sharon?
18 MS. EULER: I'm going to echo a lot of
19 what Representative Meadows just said. The
20 one thing that we need to keep in mind is
21 that rather than debating what the current law
22 means, we're looking at totally rewriting the
23 law and making the law say what it is we want
24 it to say, not what it currently says. Again,
25 with the AG's office, we're always looking

1 after the consumer, and from a consumer point
2 of view, I see no reason why there should not
3 be portability allowed. The consumer should
4 have the freedom to decide what funeral home
5 they want, and that money, there should be a
6 statutory process to allow for that so that
7 the money can be transferred without penalty
8 because it's just like moving your checking
9 account. You wire transfer the money to your
10 new account. Because consumers look at this
11 as like a bank. They think they're putting
12 their money into a bank, and they're using
13 their funeral home as a bank. And I just
14 don't see a downside. And maybe we need to
15 clarify that the money is held in trust on
16 behalf of the consumer because it is the
17 consumer's money. And the reason why the
18 irrevocable provision is in there is for
19 Medicaid spend down because they need to
20 relinquish control over the money, but they
21 can move it from funeral home to funeral home
22 without affecting that.
23 MR. OTTO: Well, the difference in the
24 bank analogy is the consumer hasn't purchased
25 anything with the bank. They haven't bought

1 anything. When they're buying -- when they're
2 doing a preneed contract, they've purchased
3 something. They've purchased a funeral that,
4 in most cases, is guaranteed price.
5 MR. MAHN: They haven't necessarily
6 purchased it yet.
7 MR. McCULLOCH: Yeah, they have.
8 MS. BROWN: Yes, they have.
9 MR. McCULLOCH: Yeah, they're buying
10 it.
11 MR. MAHN: No, they haven't.
12 MR. McCULLOCH: Yeah, they are.
13 MR. MAHN: It hasn't been provided yet.
14 They're just setting money to the side for the
15 funeral at a later date.
16 MS. EULER: They've entered into a
17 contract.
18 MR. McCULLOCH: They're prebuying it.
19 MR. OTTO: It's -- again, to use the
20 analogy, it's like putting something on
21 layaway. You're paying for it now, you're
22 going to pick it up later.
23 MR. MAHN: With all due respect,
24 funeral homes are not Target. Now, I know you
25 have made funeral arrangements, but I'm

1 telling you right now, I've sat with these
2 families and I'm not going to sit here and
3 have them compared to Target or Wal-Mart.
4 It's not the same thing.
5 MR. OTTO: Well, no. But from the
6 legal standpoint, that the consumer has
7 purchased something is the difference. And
8 that purchase has cost the first funeral home
9 something. And the problem is that the
10 difficulty is determining what that --
11 MR. MAHN: I've done this for 20
12 years. What does it cost me, Don, to do it
13 in the first place? You talk about this cost
14 all the time, you know. I don't understand
15 what the cost is. What cost?
16 MR. MEIERHOFFER: Let me put it
17 plainly. He gets paid for his time, you
18 don't, but you probably should as a funeral
19 director. When you say --
20 MR. MAHN: Well, I'm paid for my time,
21 but I feel like we also owe families some
22 respect and taking care of them in the right
23 manner. And this whole argument about the
24 fact that they can't move their prearrangement
25 -- all we're asking for is maybe, you know, 80

1 percent plus the interest, you know, to be
2 paid. But to tell a funeral home that they're
3 not going to get that, I mean, is just
4 ridiculous.
5 MR. OTTO: I said, well, the
6 difference -- I just wanted to point out the
7 difference from the legal standpoint, in my
8 opinion, is a consumer -- the purchaser -- we
9 call them the purchaser. They're buying
10 something. And you mentioned that you can
11 move your stuff from one bank to another
12 without penalty. Well, you know, you can't
13 cash in a five-year CD in year one without
14 there being a penalty. So, the problem that I
15 see is I think we could -- I mean, I think
16 you can come up with a portability situation.
17 The problem is there -- I see just from the
18 practicality of writing it in the statute is
19 that there are so many permutations on the
20 portability -- inside the service area,
21 outside the service area, paid in full, not
22 paid in full, guaranteed contract, not
23 guaranteed contract. Is the seller a
24 third-party seller or is the seller the same
25 as the first funeral home? With all of those

1 permutations, I'm just, from a practical
2 standpoint, seeing it difficult with amending
3 436 to come up with a portability scheme
4 that's workable. That's why my -- you know,
5 my -- the time I've had to deal with consumers
6 with portability problems, their biggest
7 problem has been they didn't realize that's
8 what the law was. They didn't realize what
9 they were getting into. They didn't know that.
10 CHAIRMAN: Kim has a question.
11 MS. GRINSTON: Can I have a question?
12 Since we're talking about expenses, and I do
13 understand the consumer issues. Whether
14 you're a third-party seller or you're selling
15 for yourself, you know, for your funeral home,
16 can you help me understand the downside of
17 saying, "Consumer, you took out a contract. I
18 had an expense element built in. If you
19 change providers" -- if you're a third-party
20 seller, you know, maybe a provider that I have
21 a contract with that is acceptable to the
22 family, which is what it is now. If that's
23 not acceptable or I sold for myself and you
24 just want to change it all together, why not
25 say go -- treat it like a cancellation, you

1 keep what you got for your expenses, and you
2 give the family back the rest? So,
3 technically, you're not out of any money
4 because this expense element was supposed to
5 last you the life of the contract. You're
6 getting out of the continuing expenses, you've
7 got your expense money in your pocket, you do
8 a formal cancellation, they go to the provider
9 they want. Now, when the consumer goes in,
10 will they get a 100-percent check back?
11 Probably not. But they knew that they were
12 going to be paying, and this is with the
13 scheme everyone talked about with expenses,
14 whatever that expense element is, but I get
15 what I signed for when I signed the dotted
16 line. I knew I was paying this, you were
17 going to deduct an amount for expenses. When
18 I walk away, I get what I paid minus the
19 expenses that you told me you were going to
20 deduct. And then, Mr. Meierhoffer and Mr.
21 McCulloch, you guys still have your
22 administrative-expense element that was
23 supposed to last you the life of the contract,
24 which you don't have the expenses, but you
25 still have the expense money paid in. Why

1 wouldn't that work in compensating a seller on
2 a cancellation? It would also allow a
3 consumer to walk away with what they were told
4 at the table; "This is what you paid, but I'm
5 going to take an expense fee."
6 MR. McCULLOCH: What if it's not paid
7 in full, how do we handle that?
8 MS. GRINSTON: Well, right now, let's
9 say the expense element is X percent, you
10 know. Let's say it's not paid in full, you
11 take the -- and I'm just using a number -- 10
12 percent, 20 percent, or whatever that expense
13 element is, and, again, you give the rest of
14 that back, because if you're talking about
15 pooling expenses, remember, you are getting
16 out of this contract. There are going to be
17 no forward expenses. So, what you take is for
18 the expenses you've already had, which will be
19 a portion of what it is, and then everybody
20 walks away. The consumer gets what he signed
21 for, and you have something to cover some of
22 your expenses, because what I'm hearing is
23 that under the scheme, the preneed seller runs
24 the risk of taking a loss. And I think if we
25 -- what I'm hearing on portability issues, it

1 sounds like we want to run the risk of taking
2 a loss, but we don't want to run the risk of
3 losing our expenses and interest.
4 CHAIRMAN: Mike?
5 MR. MEIERHOFFER: It goes a little
6 further than that, I think. From the business
7 side, if you're running the calculus of
8 running a business, it's complex. You put on
9 your books a number of contracts that you plan
10 to service, and that would simply be something
11 that you could probably sell, typically, and
12 be assured of that block of business. We're
13 introducing a wild card here that really makes
14 the calculus even more difficult to run a
15 business and plan for your future plan. If
16 something should happen -- and that can happen
17 to any business where you have an employee or
18 a staff member who gets in trouble, it hits
19 the paper, and all of a sudden, you say, "My
20 gosh. I'm going to lose all this business."
21 And that can happen. Is that right or wrong?
22 I'm not sure.
23 MS. GRINSTON: And some of it, I think
24 of it as a risk element, you know.
25 MR. MEIERHOFFER: It is.

1 MS. GRINSTON: Whenever you sell a
2 product or you sell a plan or you sell a
3 promise, if you will, whenever you sell it,
4 there's a risk always that you'll lose money.
5 And in any margin factor, I think a business
6 plan would always have this module built in.
7 But if you're guaranteed to retain a portion
8 for expenses, the hit that you would take
9 would not really be as large because you would
10 have already retained a portion for your
11 expenses that was supposed to last a little
12 bit longer for the contract. And so, I think
13 that -- I don't know if in that business
14 module what could be addressed is the expense
15 element of it, but, still, we have consumers
16 able to walk away with what they signed for.
17 "I signed for a preneed contract, I paid this
18 money minus these expenses. When I walked
19 away, they took the money they told me they
20 were going to take for expenses, and I walked
21 away with the rest of it to go take it to
22 someone else."
23 MR. MEIERHOFFER: Okay. But one other
24 element to look at --
25 MS. GRINSTON: Yes, sir.

1 MR. MEIERHOFFER: -- and that is you
2 still have to have somebody out there
3 promoting the product or service.
4 MS. GRINSTON: That's true.
5 MR. MEIERHOFFER: So, if you neuter
6 this thing to the point where it is of no
7 value for that individual or that company to
8 do it, then the consumer doesn't have that
9 opportunity, as well. So, really, what you
10 have to evaluate is a capped preneed, what we
11 really want in this business, or should you
12 let the market work on the basis of no cap
13 with people walking and take it from you
14 rather than put it out there and let people
15 have an opportunity to purchase it earlier or
16 maybe where they would never have an
17 opportunity otherwise. That's really --
18 that's the fine line you write here with
19 writing this legislation, from my standpoint.
20 MS. GRINSTON: But, respectfully,
21 let's say I sell a $5,000 contract and I get
22 to keep 20 percent. You all help me with the
23 math; I'm an attorney. That's $1,000. That
24 means $4,000. Let's say someone shows up
25 under the scheme I just talked about before.

1 I've gotten $1,000 for my expenses. They
2 walked away with the other $4,000 because
3 that's what I told them I would provide for.
4 So, now I have $1,000 on the books. I have
5 no other obligations. I've already, you know,
6 paid within the structure and/or it was the
7 max that I was allowed to have anyway, so my
8 commission is already built in to what I was
9 going to do. And so, I get that -- I don't
10 know. And I guess in weighing those
11 interests, I don't know if that's the way to
12 protect the consumer as well as protect your
13 business plan.
14 MR. McCULLOCH: That's currently there
15 now if it's inside trade area.
16 MR. MEIERHOFFER: I guess, if it's a
17 trade area --
18 MS. GRINSTON: Inside the trade --
19 MR. McCULLOCH: Inside a trade area,
20 that's exactly what happens.
21 MS. GRINSTON: And if it's inside the
22 trade area, why can't we make that outside of
23 the trade area?
24 MR. OTTO: Well, that would actually
25 be worse than --

1 MR. McCULLOCH: Outside the trade area
2 -- potentially.
3 MS. GRINSTON: Why?
4 MR. OTTO: Currently, outside of the
5 trade area -- I mean, you have to wait till
6 the consumer passes away -- or the beneficiary
7 passes away. Although John does something
8 nice for the consumers, he does it even before
9 then. But after -- if the consumer passes
10 away outside the service area, they get 100
11 percent. If you can't find a funeral home
12 that will do it with the amount you have in
13 the trust, the consumer gets 100 percent of
14 the money they paid in.
15 MR. MAHN: Minus interest?
16 MR. OTTO: Interest --
17 MR. McCULLOCH: Yeah.
18 MR. OTTO: -- well, it depends on the
19 contract. Your contract can allow the
20 consumer to get the interest or not.
21 CHAIRMAN: Sharon?
22 MS. EULER: I have several comments.
23 If we are saying the consumer has no
24 portability, does that also prohibit
25 rollovers? It would seem to me it would. If

1 the consumer doesn't have the ability to move
2 to a different seller, then it would seem to
3 me that there could be no rollovers from --
4 the funeral home could not change sellers
5 because what's good for the goose is good for
6 the gander. So, that's an issue that I see
7 which could cause problems. Funeral home goes
8 out of business, funeral home that was
9 provider and seller, if there's no
10 portability, what do those people do, you
11 know? There's no option there. The third
12 thing is the idea about canceling the
13 contracts. If the person bought the prepaid
14 funeral plan as part of their Medicaid spend
15 down, they cancel the contract, that money
16 comes into them, they get kicked off Medicaid.
17 MS. GRINSTON: Yeah. And I think we
18 probably need to treat Medicaid as an entirely
19 different animal.
20 MR. OTTO: Yeah, you're right.
21 CHAIRMAN: Representative?
22 REPRESENTATIVE MEADOWS: Yeah. I'd
23 just like to say -- and, again, I got in this
24 argument with a funeral director, and I'm
25 going to bring this up. The funeral director

1 told me the way that he looks at this, if I
2 go to Circuit City and buy a $5,000 plasma TV
3 and I take that $5,000 plasma TV home, and
4 three months or six months or a year later, I
5 don't like that plasma TV, I take it back,
6 then, by God, as a consumer, Representative
7 Meadows, I should get 100 percent of my money
8 back. And that's the way he equates preneed.
9 Now, first of all, it's a damn shame that this
10 specific person equates buying a TV set with a
11 prearrangement because we're talking about
12 people. We're talking about people, not TV
13 sets. And the difference is, is that that
14 consumer, that little old woman or little old
15 man, purchased this thing. They have not used
16 it. The family has not used it, that's why
17 they should be entitled to their money back.
18 That's my soapbox. I said it, and, you know,
19 someone once told me you better watch what the
20 heck you wish for because you just might get
21 it. And, by golly, if I have the rights to
22 do it, I'm going to push it, because the
23 people that are buying these prearrangements
24 should be entitled to get what they are
25 expected to get back. It's just that way

1 because they have not used it. You're saying
2 they're purchasing something. Yeah, they're
3 purchasing the right to use that, but the
4 industry should say, okay, you know, let's
5 take the blinders off here and stop trying to
6 protect it. Let's give them back what they're
7 entitled to get back, for crying out loud, and
8 let's don't get into this big fight, folks. I
9 mean, it doesn't have to be like this. That
10 consumer -- and to be equated to a $5,000
11 plasma TV is not the way that I look at it,
12 and that consumer has not used it. Someone
13 taking a $5,000 TV -- plasma TV home and using
14 it for six months, yeah, I can see it. There
15 would be a difference. But that little lady
16 or that little gentleman or whomever they are,
17 if they have not used it, then should be
18 entitled to move it and/or get -- and like Kim
19 said, if it's going to be specified that
20 they're going to get 80 percent, then put it
21 in writing. And a lot of senior citizens,
22 when they go in on third-party sellers -- and
23 I'm not talking about scrupulous people in
24 this room. You all are of fine scruples and
25 moral capabilities, but there are people out

1 there that will cheat and that will dupe and
2 will do these things, and that little old lady
3 did not know that she was only going to get
4 80 percent back because they've called my
5 office and complained. They've called the
6 State Board and complained. They've called.
7 So, the bottom line is, is I'm not saying we
8 can legislate morality; no, we cannot. But
9 the bottom line is is that either that or
10 you're going to have to put in bold letters so
11 they can see it, so they know flat up what
12 they're doing, and maybe that's something --
13 another thing that we need to look at, that
14 all contracts will be the same if we do this
15 here, but everyone has to sell off the same
16 contract, everybody has to sell, not that my
17 AXYZ company has this contract, and it's in
18 this big writing down in very mumbo jumbo of a
19 contract; do you know what I'm saying? So,
20 let's -- if we're going to do it, then let's
21 be fair. Let's get it out there, because I
22 know all these gentlemen, ladies in this room
23 are all of fine moral character and they
24 wouldn't do that, but you do have some out
25 there. We've had it happen, and that's why --

1 I'll get off my soapbox now. Thank you.
2 MR. McCULLOCH: What you're saying is
3 they should get back 100 percent of their
4 money, we just need to put it in writing
5 specifically what they should get back?
6 REPRESENTATIVE MEADOWS: Well, I --
7 John, to be quite honest with you, I think
8 they should get back 100 percent of their
9 money. But, I mean, you're already keeping
10 the interest off the top of it, but, you know,
11 that's just me, but --
12 CHAIRMAN: Go ahead. I'm sorry.
13 REPRESENTATIVE MEADOWS: No, that's
14 fine. I'm done, Jim.
15 MS. GERSTEIN: I would like to just say
16 something.
17 CHAIRMAN: Joy?
18 MS. GERSTEIN: And I appreciate your
19 comments. And this is -- I'm listening to you
20 all and this is a very personal thing with me.
21 I live in Missouri; Missouri is now my home.
22 I don't have any relatives here. My relatives
23 are all on the West Coast or in Florida.
24 Let's say in a few years, my mother wants to
25 move up here to be closer; this is where my

1 home is. The way you all are talking, if my
2 mother passes away when she is here, I can't
3 call Florida and get her money to bring it up
4 here to get her buried without -- that's what
5 you're saying to me; right?
6 MR. OTTO: That would depend on
7 Florida.
8 MS. GRINSTON: Well, but she's talking
9 about under Missouri's -- under the scheme
10 you're proposing in Missouri, because if she
11 put the person back the other way.
12 MR. McCULLOCH: That's not true.
13 That's not the way it works at all. We
14 haven't said that.
15 MS. GERSTEIN: You're telling me that
16 I could not transfer --
17 MR. McCULLOCH: No, ma'am, we're not.
18 MS. GERSTEIN: Yes, you are.
19 MR. McCULLOCH: No, we are not.
20 MS. GERSTEIN: You just said I can't
21 cancel from one to the other.
22 MR. McCULLOCH: We did not. We are
23 not; we did not.
24 MS. GERSTEIN: Well, that's what I
25 heard.

1 MR. McCULLOCH: You should transfer
2 them now. The law says you can do that.
3 MS. GERSTEIN: Without a large penalty.
4 CHAIRMAN: All right, folks. We've
5 come -- I want some of the public members, let
6 you all have a chance. Brad actually held his
7 hand up before you, Bob -- about two hours ago.
8 MR. SPEAKS: This is a great topic,
9 isn't it? Meadows, you missed the big
10 discussion this morning on the 80-20 rule, so
11 -- when we're talking about portability, you
12 know, to me, it always comes back to the
13 agreement. If Becky and I have entered into
14 an agreement, I am promising -- back to our
15 $1,000 analogy. It's 1970, Becky comes and
16 says, "Mr. Speaks, when I die, will you
17 handle my services," and I says, "Of course,
18 Becky, I'd love to." Here's $1,000, I keep 20
19 percent, so there's my 200 bucks, it goes in
20 my pocket. Fifteen or twenty years later,
21 services now are $7,500, and Becky comes and
22 says, "Well, I've changed my mind. I want to
23 end the agreement"; okay? That's fine. By
24 law, currently, I give her back $800. The
25 issue to the consumer is that they cannot

1 understand how -- and, believe me, we have
2 heard all the arguments that Representative
3 Meadows, that the State Board has heard.
4 Probably every funeral director in here has.
5 But let me ask you this: So, in a sense,
6 what the consumer -- what Becky is now saying
7 to me is, I want to end the agreement. I
8 want to terminate the agreement. Is everybody
9 with me? I want to terminate the agreement.
10 There is no problem with that. She can
11 certainly do that. It's all spelled out,
12 here's how that works if you terminate the
13 agreement. Conversely, what if I was to
14 suddenly appear at Becky's doorstep and say,
15 "I don't really want to follow through on
16 this. I realize that was really kind of a
17 bad deal for our funeral home. I just
18 realized I'm on the hook for all this money,
19 the difference between $1,000 and $7,500, and
20 the way I'm going to cure that is by providing
21 you a graveside service instead of the
22 full-boat funeral service that I promised
23 you." What do you suppose Becky would say to
24 me? "Oh, no. It's in our agreement. No,
25 you have to do that." You know, I'll submit

1 to the group it can't be only one way, it has
2 to be good for both parties. Whatever the
3 agreement is, that's the agreement, you know.
4 We're -- I think -- personally, I'm fine with
5 portability in the sense that I will refund
6 the money, whatever it was. But to say I
7 should give back more or should assume the
8 risk and retain nothing, you know, frankly, no
9 funeral home in their right mind would ever do
10 that. I mean, that would essentially end the
11 sale of preneed in Missouri.
12 CHAIRMAN: Bob? Bob Baker.
13 MR. BAKER: Thank you, sir. I think
14 what Brad said is great. We need to protect
15 the consumers, there's no question about it.
16 But somewhere, we need to protect the funeral
17 homes, as well, you know. We've got the
18 scenario going on right now that there's going
19 to be some people that may go out of business
20 because of what happened. I guess what I
21 wanted to say earlier, I want to throw two
22 more monkey wrenches into the gears here.
23 We're talking about trust. What happens if we
24 have a joint account, it's at the local bank,
25 it's in a CD. The president of the bank gets

1 replaced, the consumer doesn't like the new
2 one, they come in and say, "I want my money
3 out of that bank." What are they going to do?
4 They're going to give it to them, but you're
5 going to penalize them. The same situation
6 comes up, we have a new insurance salesperson
7 in town. Nobody likes him. So, all of a
8 sudden, they say, "I do not like company XYZ,
9 but I like the other guy down the street, and
10 I want him to take over, so I'm going to take
11 my insurance policy, cancel that, take it over
12 to the new guy." Again, the money is going
13 to come back in lesser proportions as they
14 cancel the contracts, whether it's a CD, a
15 trust, or insurance. So, you know, again, I
16 think I made the statement the other day that
17 when we're talking about CDs, trusts, or
18 insurance, you know, I just look at them in
19 the light that it's a funding mechanism. And
20 like several people I've said before, you have
21 a risk whether you are a consumer and that
22 funeral home goes out of business. You have a
23 risk as a funeral director to be able to have
24 the money there to service that contract. So,
25 I think portability is great, but somehow

1 along the line, we have to be able to
2 stipulate under certain conditions on what
3 happens. Kim's analogy with the PPO is
4 probably a real good situation, too. Thank
5 you.
6 CHAIRMAN: Mike?
7 MR. MEIERHOFFER: Jim, along with
8 cancellation, is everybody aware of why --
9 especially our consumer advocates -- the
10 irrevocability clause was put into the
11 Medicaid? Do you know why that's there? Do
12 you understand that at all? Here we are
13 saying you can't have your money back. Does
14 that make any sense to you? Why would
15 Medicaid say to your mother, who had to
16 qualify for Medicaid, she doesn't get her
17 money back? Why does that make any sense?
18 The reason is people were coming to the
19 funeral homes after they qualified for
20 Medicaid and withdrawing their funds, putting
21 it in their pockets, and then not having any
22 money for their funeral service later on. So,
23 the government had to act in that respect.
24 So, the point I make to you is, if people had
25 the ability to have a run on the bank for

1 whatever reason, they could, and then they
2 would up with no funeral, the funeral home may
3 be out of business, whatever. There has to be
4 some quid pro quo for putting a contract
5 together so the person can't just walk up,
6 take all their money, and go wherever they're
7 going to go -- maybe not even to a funeral
8 home -- maybe the local bar. The point is,
9 these things happen, and there's a reason why
10 Medicare and Medicaid did that. That's
11 exactly the reason.
12 CHAIRMAN: Folks, I think we've beat
13 this horse to death, and what we're going to
14 do is we're going to take your comments on
15 this topic and put them in there and say we
16 couldn't reach a consensus. I think that's
17 the way we're going to have to do it.
18 MR. OTTO: This isn't on the list, but
19 can we reach -- I mean, one thing I would
20 like, regardless of what the law on
21 portability is, what about making sure that
22 that is clear and conspicuous in the consumer
23 contract so the consumers are aware of
24 whatever the law is because, literally, most
25 of the times where I have had a problem with

1 a consumer, it's because they didn't know what
2 the law was. Does that fit in?
3 MS. GRINSTON: It does fit in, and I
4 think we need to add that to the list under
5 -- it's another agenda item, but I do think we
6 can keep a running list of those, because,
7 actually, some of you have made a lot of
8 suggestions today about mandatory disclosures
9 that I think will probably be good to talk
10 about at that time. Understanding with the
11 issue of portability -- I'm sorry.
12 CHAIRMAN: Todd has got one question,
13 and we're going to go on.
14 MR. MAHN: Yeah. One question.
15 Insurance, there's no problem with
16 portability, and that's primarily what I have
17 on my books. So, if they want to go to one
18 of my competitors, that's fine. I mean, I
19 feel confident enough that they're all not
20 going to take off, and if I've done something
21 so horrendous that it makes all my clients go
22 down there, well, then they need to go there,
23 you know. So, if that's not a problem with
24 insurance, I'm just curious. If somebody
25 could tell me why this is such a big deal on

1 trusts, because I don't get it. I don't
2 understand why this is a big deal with trusts.
3 MR. McCULLOCH: Well, first of all, if
4 you're allowing the insurance companies to
5 keep all the profits, charge whatever they
6 want to; okay? But we have fixed costs and
7 you're making us pay back all of the money, so
8 you're not giving us the same playing field.
9 That's one reason.
10 MR. MAHN: Well, I don't know about the
11 playing field. What I mean is --
12 MR. McCULLOCH: Well, it's not the
13 same.
14 MS. GRINSTON: Well, there are
15 restrictions for insurance, too.
16 MR. OTTO: With insurance, one of the
17 reasons I think possible with insurance is
18 because although, you know, it varies from
19 consumer to consumer, but on a whole, the
20 consumers are going to be -- I'm just throwing
21 out numbers; okay?
22 MR. MAHN: Right.
23 MR. OTTO: -- is going to be paying
24 $10,000 for a $7,000 funeral with insurance;
25 okay?

1 CHAIRMAN: All right. I respect all
2 of you and you're great thinkers, and we've
3 just got to move on. So, go on, Kim.
4 MS. GRINSTON: Well, while we're in
5 the fire, we might as well stay here. Let's
6 go to #18, rollovers. We've talked about
7 portability, what happens if I want to -- if
8 I'm a seller and I want to change or move a
9 contract to another seller. First of all --
10 and this is, again, I'm not going to address
11 this from the consumer side just yet, from
12 seller. I am a seller, I have contracts
13 written with one group and I'm a seller, let's
14 say -- or, actually, you're right, Becky. I'm
15 sorry; you're right. A provider. If a
16 provider has contracts written with one
17 seller, should there be an allowance for
18 having that seller change to another entity?
19 And maybe Sharon can help me frame that
20 question better.
21 CHAIRMAN: Sharon?
22 MS. EULER: Sure. I'm going to
23 intersperse a comment in amongst the framing
24 of it, though. The consumer issue on that, if
25 the consumer has a contract, their contract

1 says I have a preneed contract with Joe Blow
2 Funeral Home as the provider. It says right
3 here on my contract the money is going to be
4 held in trust at Becky's Bank or Kim's Bank.
5 Kim's Bank gives a better rate of return. And
6 that's what the consumer has. The consumer
7 goes on their merry way, and ten years later,
8 they think, you know, I need to check on my
9 account. So, they call up Kim's Bank and
10 said, "I want to verify that my money is in
11 the preneed account, you know. I bought the
12 plan from Joe Blow Funeral Home." And the
13 bank says, "We haven't done business with Joe
14 Blow in eight years." The consumer has no idea
15 where their money is because the Joe Blow
16 Funeral Home has taken and rolled that over
17 from Kim's Bank, went to Becky's Bank, rolled
18 over to Jim's Bank, and now it's at Don's
19 Bank. All the consumer has is the contract
20 that says money is in trust at Kim's Bank, and
21 I think that's a real problem from a consumer
22 point of view.
23 MS. GRINSTON: I think we're merging
24 #18 and #19 together on that issue, but I
25 think it's the same issue. Again, looking at

1 sellers or a provider or anyone moving a
2 contract from one company to another company,
3 should that be allowed in the state?
4 MS. EULER: One of the things that
5 could help clarify that, which is not clear in
6 the current law at all, the money is held in
7 trust, but on whose behalf? Is it held in
8 trust on behalf of the funeral home -- i.e.,
9 is it the funeral home's money to decide what
10 to do with -- or is it held in trust on
11 behalf of the consumer?
12 MS. GRINSTON: I think that's a good
13 point.
14 MR. OTTO: Well, I mean, I think,
15 again, to keep in mind that the consumer's
16 contract is that the funeral home is going to
17 provide the funeral, the attachment of goods
18 and services. If you start putting
19 restrictions on the transfer of the funds
20 above and beyond, I think it could get very --
21 again, very complicated, and I'm not sure we
22 could reach a consensus. I don't -- I can't
23 imagine there being anybody that would have a
24 problem with notifying the consumer that
25 you've changed in trustees, for example. If

1 you're currently -- for one thing, under 436,
2 if the provider -- if the seller doesn't
3 provide the funds they're supposed to provide,
4 the purchaser can go around the seller and
5 straight to the trustee to get payment.
6 That's in there. If the seller doesn't pay
7 the funds, but if the consumer doesn't know
8 who the trustee is, you can't do that. So,
9 the consumer has got to know who the trustee
10 is to be able to exercise their rights under
11 436.
12 MS. GRINSTON: Since we're merging #18
13 and #19 --
14 MR. OTTO: Yeah, I know.
15 MS. GRINSTON: -- should a seller be
16 allowed to transfer trusts without my
17 agreement? And I'm going to tell you this
18 from several perspectives. There are
19 financial entities that I will not do business
20 with for various reasons. And if my money is
21 held in trust -- maybe because, you know, I
22 just don't trust them, you know -- IndyMac,
23 I'm going to use as an example. I signed up
24 for this to go to U.S. Bank. You switch it
25 to IndyMac and you don't even tell me. Should

1 I be the one to say who I want or who I agree
2 to trust my money with? And that's just a
3 question. That's a question on the floor.
4 CHAIRMAN: Sharon?
5 MS. EULER: And it goes back to the
6 fact if the funeral -- if the consumer can't
7 change providers, why should the funeral home
8 be able to change sellers without that consent?
9 MR. McCULLOCH: Again, it's not your
10 funds. You purchased the funeral; it's out of
11 your hands now.
12 MS. EULER: And that's the key
13 question there, John. Whose money is it?
14 MR. McCULLOCH: And you've got the
15 funeral home that's going to provide that
16 funeral for you.
17 CHAIRMAN: Bill?
18 MR. STALTER: Sharon, the thing -- you
19 know, when the funeral home -- the most common
20 transaction when a funeral home changes hands
21 is an asset sale, you know, not a stock sale.
22 So, when a funeral home has its own trust, you
23 know, how -- if you're say you're going to
24 prohibit rollovers, how are you going to
25 effect the transfer of the liabilities of

1 those contracts without a rollover?
2 MS. GRINSTON: And let me -- I'll tell
3 you, and I'm using this as an example of the
4 some of the things that I think I've heard
5 throughout the years. I don't do business
6 with Kim's Funeral Home. I don't do business
7 with them. You get bought out by Kim's
8 Funeral Home, and now I've got a new seller
9 and it's in their trust. I don't want to do
10 business with Kim's Funeral Home. I don't
11 trust Kim, I don't like Kim. As a consumer,
12 regardless of whose money it is, it's who's
13 got control over my contract, over the funeral
14 that is going to given for Grandma, for me.
15 I don't -- let's just reserve the issue for
16 whose money it is. Who should be the one to
17 say this is the entity that we have agreed to
18 trust my funds with?
19 CHAIRMAN: Mike?
20 MR. MEIERHOFFER: Okay. A couple of
21 things from the standpoint of being realistic
22 to the point. I mean, you could offer a vote
23 to your people as you do in a stock company.
24 I'm not sure that you would have any problem
25 if you went by majority that they wouldn't do

1 what you ask them to do. But I have a
2 grantor trust; most of us do, and we reserve
3 the right to be able to change the trustee at
4 any time. If you don't, you're in trouble.
5 Any organization is going to reserve the right
6 to change, so we want to be able to change if
7 they're not performing or not doing their job
8 correctly. Would you not agree with us in
9 that respect?
10 MS. GRINSTON: Possibly.
11 MR. MEIERHOFFER: No. Now, forget
12 about individual where we're going. Just
13 wouldn't you want to have the ability to
14 change?
15 MS. GRINSTON: I don't -- possibly.
16 MR. MEIERHOFFER: Their return is 10
17 percent below everybody else.
18 MR. STALTER: I think it's a different
19 issue. We're talking about sellers here; in
20 other words, a rollover of sellers.
21 MR. MEIERHOFFER: Okay. I'm not
22 talking about -- I'm talking about me running
23 --
24 MS. GRINSTON: Moving -- transferring
25 trust funds.

1 MR. MEIERHOFFER: -- moving the whole
2 block of --
3 MS. GRINSTON: Yeah. Possibly. It
4 depends on what the --
5 MR. MEIERHOFFER: Well, here's the
6 point. You've got to trust somebody somewhere
7 to make that decision for you.
8 MS. GRINSTON: Okay. Well, why can't
9 I trust myself?
10 MR. MEIERHOFFER: Well, because in a
11 grantor trust, you can't have people spread
12 out all over everywhere.
13 MS. GRINSTON: I understand.
14 MR. MEIERHOFFER: They've got to be
15 together. You can't run a trust with one
16 person or ten people in it. You just can't.
17 It's a great thing from theory, but it won't
18 work.
19 MS. GERSTEIN: Do you notify your
20 people when you do that? Do you notify --
21 MR. MEIERHOFFER: No, we do not. Now,
22 I don't have a problem with notifying people.
23 If that becomes an issue, I don't think that's
24 a problem. But they're relying on us to
25 invest their money and do the best thing we

1 can for them. So, when we have a situation
2 where we notify somebody and then we have the
3 situation where I don't want to move it, then
4 I don't know what you do.
5 MS. GRINSTON: I'm not taking a
6 position. I'm just saying that the Board has
7 a stack of complaints from people who said I
8 never knew that they put my money in that
9 bank, or I never knew that person was going to
10 be the seller. I want to know how it got
11 there and I never agreed to that.
12 MR. MEIERHOFFER: Well, I don't have a
13 problem with that. I think they can be
14 notified. I don't think there's any problem
15 at all. I think if you withhold your vote
16 and say I want to be there, then you need to
17 cancel your contract. That's what I'd do with
18 that.
19 MS. GRINSTON: Which is -- yeah.
20 Which is the second question.
21 MR. MEIERHOFFER: Cancel your contract.
22 MS. EULER: And if you're on Medicaid,
23 you can't cancel your contract. You're stuck.
24 MS. GRINSTON: Yeah.
25 MR. MEIERHOFFER: Well, if you're on

1 Medicaid --
2 MS. GRINSTON: And Medicaid is a whole
3 different animal.
4 MR. MEIERHOFFER: -- why would want to
5 do that?
6 MS. EULER: Because you would want to
7 take it to Becky's Funeral Home --
8 MR. MEIERHOFFER: If you're on
9 Medicaid, the State is taking care of you
10 anyhow at that point. I mean, I don't get
11 the relationship there.
12 MS. EULER: But for your --
13 MR. MEIERHOFFER: Oh, the person --
14 you're taking this to the second or third
15 degree.
16 MS. EULER: No.
17 MR. MEIERHOFFER: Yeah, you really
18 area. The chances --
19 MS. EULER: I'm just saying that if the
20 funeral home has the right to change seller to
21 move to a different bank, then the consumer
22 ought to have the right, at that point, to
23 say, "No. I don't want my money going to
24 that bank."
25 MR. MEIERHOFFER: Okay. Okay. Now,

1 wait a minute. Your Medicaid person could, in
2 fact, do that. They have an irrevocable
3 contract, but it can go to another funeral
4 home.
5 MS. EULER: Right. But what we just
6 finished talking about was that they can't go
7 to another funeral home, that you don't want
8 the statute to allow them to be able to go to
9 another funeral home.
10 MR. MEIERHOFFER: I really don't. I
11 would prefer they not, but the chances of that
12 happening are one in a billion. I take my
13 chances on that one.
14 MS. GRINSTON: Well, the question is --
15 MR. MEIERHOFFER: I mean, we're
16 talking -- we're splitting hairs here.
17 MS. GRINSTON: So, am I hearing from
18 the people who have talked that the issue is
19 allow the transfer of trustees, but you would
20 agree to consumer notification as opposed to
21 consumer consent?
22 (Numerous people answer yes.)
23 CHAIRMAN: Bill?
24 MR. STALTER: No. You're a fiduciary,
25 now. Now, are you saying that the fiduciary

1 has to give notice to all those people? I
2 have no problem with doing it as a regular --
3 MS. GRINSTON: I would say the seller.
4 No. I would say the seller.
5 MR. McCULLOCH: The seller?
6 MR. STALTER: Okay.
7 MS. GRINSTON: The seller.
8 MR. OTTO: Yeah. If the seller -- I
9 mean, that makes perfect sense because, for
10 example, the purchaser has the right to
11 request from the seller a statement of the
12 payments made into the trust that the seller
13 has to respond to within 15 days. If the
14 consumer doesn't know who the seller is,
15 that's kind of a useless right. So, it sure
16 makes sense to me that if the seller changes
17 or if, likewise, the trustee changes,
18 notification should be sent to the consumer,
19 and if the consumer doesn't like that, they
20 have the right to cancel their contract.
21 MS. GRINSTON: What about that idea?
22 If transfer the trust -- and I'm talking about
23 a consensus. I'm going to reiterate what you
24 said Don and Mike -- I'm sorry. But, yes,
25 you can transfer the trust, consumers should

1 be notified. If they object, they have the
2 right to cancel?
3 MR. OTTO: They have the right cancel,
4 anyway.
5 MR. McCULLOCH: They can cancel,
6 anyway. If they don't like the institution,
7 they cancel.
8 MR. MEIERHOFFER: Yeah.
9 MS. GRINSTON: Okay.
10 CHAIRMAN: Everybody agree on that?
11 All in favor, say aye. Those opposed?
12 (Numerous people agree.)
13 MR. STALTER: One opposed. I mean,
14 and I think, basically, it comes down to
15 burden, and most -- and in this case, maybe it
16 is that notice of a change should go to the
17 Board. I mean, to say that you have to get
18 everyone's approval or notice, but, you know,
19 some of these folks you lose track of over ten
20 or fifteen years. You can't find them.
21 CHAIRMAN: Well, I mean, make a dutiful
22 attempt.
23 MS. GRINSTON: Yeah. I do think --
24 and this is just -- I am now stepping into my
25 peer-board role -- if we're changing trustees,

1 I think the Board needs to know that your
2 trustee is changed.
3 MR. STALTER: Oh, yeah. No doubt.
4 MR. OTTO: Yeah. That makes sense.
5 (Numerous people agree.)
6 CHAIRMAN: All in favor of that?
7 MS. GRINSTON: All in favor of that,
8 telling the Board that your trustee is changed?
9 (Unanimous voice vote for approval.)
10 MS. GRINSTON: Becky is going to love
11 me for that one. Okay. We just did #19.
12 Now, #18, this is my legal hat; all my
13 attorneys help me. The Board has had issues
14 where the sellers on the policies have
15 changed. And I'm putting this -- I'm
16 opinionating here. I don't think it's ever
17 appropriate for anybody to rewrite a contract
18 with the seller without the consumer's consent
19 because you are changing the contract that was
20 negotiated. Does anyone -- and maybe I'm
21 wrong here. Should it be allowed for someone
22 to change the seller on a contract? And I
23 realize that, a lot of times, we're talking
24 about third-party contracts.
25 CHAIRMAN: Mike?

1 MR. MEIERHOFFER: Do you mean an active
2 contract?
3 MS. GRINSTON: Yeah. And I'll tell
4 you the complaint we've seen. It was written
5 with MFT. I come in, I buy it, and I decide
6 I don't want to do MFT, I want to do John's
7 group. And so, then someone at this funeral
8 home rewrites all of the stuff so that now
9 that they're John's contracts. MFT didn't
10 consent to it, most likely. Now, all of a
11 sudden, they're APS contracts, and sometimes
12 we've seen the transfer of the money moving
13 over, as well. But at no time am I, as
14 consumer, brought into the deal to know that
15 what I bought was an MFT contract, and now
16 it's an APS contract. We got a call the
17 other day, someone said, "I never bought this
18 contract. I bought this contract with this
19 entity, and now six entities later, I'm in
20 another seller."
21 MR. McCULLOCH: They would have to
22 cancel and then they're going to write it on
23 our paper, and it's going to tell exactly who
24 the trustee is.
25 MS. EULER: But that's not what's

1 happening.
2 MS. GRINSTON: Yeah. And the customer
3 sometimes doesn't even know that it's been
4 transferred. I'm still thinking I've got MFT.
5 (Several people talking simultaneously.)
6 MR. MEIERHOFFER: That's not right.
7 That isn't right.
8 MR. McCULLOCH: You're not going to fix
9 everything that's going on out there.
10 MS. GRINSTON: Yeah. And I'm not
11 saying stopping it from being transferred if
12 the consumer is brought in. But what I'm
13 saying is, we have literally had consumers
14 say, "Look at my contract. It says MFT. How
15 in the world did it get to APS," and then we
16 hear a funeral director say, "Oh, I just
17 rewrote it."
18 MR. MEIERHOFFER: Well, you can't do
19 that. No, that's wrong.
20 MS. DUNN: And we don't know those
21 things until --
22 MR. OTTO: The only time I can see of
23 a seller changing where you might -- I mean,
24 the one exception is what if, again, funeral
25 home A is their own seller and they're going

1 out of business or they sell out to somebody,
2 and they've got 500 contracts and you're going
3 to have to get 500 -- that's the only
4 complicating factor is if the seller is going
5 out of business?
6 MR. McCULLOCH: What if I decide to
7 sell the business.
8 MR. OTTO: Or selling. Or selling
9 their business.
10 MS. GRINSTON: Yeah. Can we save that
11 thought for when a preneed seller goes out of
12 business and the cease-doing-business process,
13 because I know that there are a lot of Board
14 administrative issues on that. But for the
15 first issue, the idea of changing sellers on a
16 contract --
17 MR. McCULLOCH: Without consumer
18 consent.
19 MS. GRINSTON: -- without consumer
20 consent, am I hearing that no one in this room
21 agrees with that concept?
22 CHAIRMAN: Okay. Everybody in favor
23 of that, say aye.
24 (Unanimous voice vote for approval.)
25 MS. GRINSTON: And you would be

1 surprised how many times you see that happen
2 and we get calls on that.
3 CHAIRMAN: That got the average up a
4 little bit per hour on topics.
5 MS. GRINSTON: Yeah. We're doing
6 pretty good.
7 CHAIRMAN: We're getting three per --
8 MS. GRINSTON: Well, I'm getting ready
9 to sink it again. I'm getting ready to sink
10 it again, and let me know if this is an issue
11 where we're just not going to be able to meet.
12 Refunded preneed funds. This is away from the
13 portability issue. Let's say I cancel, I come
14 in to cancel a contract. I think we need to
15 discuss what do I get back. And we're not
16 going to talk about changing providers. I've
17 just come in to cancel. Don't want it
18 anymore. I need the money or something. What
19 should I be getting back, if anything --
20 that's not a suggestion -- when I come in to
21 cancel a preneed contract that is, of course,
22 obviously, hasn't turned to at-need yet.
23 MR. MAHN: Kim, I've got a question.
24 Chairman, a question?
25 CHAIRMAN: Yes.

1 MR. MAHN: I don't want it to sound
2 like I'm beating a dead horse, but I do have
3 a question because I know you're kind of
4 writing this up. But a minute ago, we just
5 kind of jumped from a discussion about it to
6 let's go to the next number, and I don't know
7 what we really decided. I think
8 Representative Meadows feels the same way.
9 REPRESENTATIVE MEADOWS: What did we
10 decide on the portability?
11 MS. GRINSTON: I think we decided to
12 highlight it as an issue that there wasn't a
13 consensus on, and we'll provide the comments
14 for review -- for just review because I don't
15 think that there was a consensus.
16 CHAIRMAN: Yeah. Well, if you want to
17 take a vote here, let's take a vote.
18 MR. MOODY: I have a question. Kim,
19 the items that you're going to say there was
20 no agreement on, does that mean you're not
21 writing any language for them, also?
22 MS. GRINSTON: Yes. Yes.
23 MR. MOODY: Okay. So, you'll only have
24 language on the consensus?
25 MS. GRINSTON: On consensus items.

1 Now, we have talked about summarizing the
2 comments for the areas that did not have an
3 agreement, and you guys can talk about how you
4 would like to do that a little bit later on
5 because the transcripts will be available. My
6 understanding is that we will only be giving
7 language to you on the items that you all
8 agreed on. Now, should the Board decide
9 separately to address some of those items, the
10 Board may, but that was my understanding.
11 MR. MAHN: Well, I would say that if
12 we end up going to 80 percent, then 80 percent
13 plus interest ought to be portable. That's
14 just my -- that's just how I feel. I mean,
15 if you want to take a vote on it.
16 CHAIRMAN: Well, I mean, I think we
17 were -- you know, we wrote down all the
18 comments.
19 MR. MEIERHOFFER: Todd, the problem
20 for that, and I don't -- I'm not saying I
21 disagree with it, is a lot of these contracts
22 are written over time, anywhere from one to I
23 know of people writing ten years. Some
24 require no interest payment, some require
25 interest payment, and then some are put into a

1 pool trust, so they aren't tracked
2 individually. So, finding a finite figure for
3 these things is going to be impossible the way
4 it's set up. There may be some imputed
5 interest rate or something, which will
6 probably come back and bite us later, but
7 that's where you're going with that. So, I
8 just wanted to tell you --
9 MR. MAHN: Oh, absolutely, that's
10 where I'm going with it because these guys do
11 have these trusts.
12 MR. MEIERHOFFER: Sure.
13 MR. MAHN: And a person has had a
14 preneed in there for 25 years --
15 MR. MEIERHOFFER: I understand. I'm
16 just saying it's different --
17 MR. MAHN: -- and they've moved and
18 they're getting three grand on a $7,500
19 funeral because this fat cat wants to keep the
20 interest. I just don't agree with it.
21 MR. MEIERHOFFER: Well, okay. There's
22 just got to be a way of tracking it, and I'm
23 not sure exactly how that is done.
24 MR. MAHN: Set up a 2 percent or
25 whatever, you know, rate that you would use,

1 you know. John, don't you guys use a minimum
2 percentage that you use that you pay on
3 preneeds?
4 MR. McCULLOCH: Well, I was going to
5 say, because I'm sitting here thinking, how in
6 the world would I ever track that, you know,
7 going back 25 years on a contract and trying
8 to figure out -- you know, there were years
9 where we didn't earn any interest at all;
10 okay? Well, you know, you had bonds and stuff
11 like that. But, yeah, we tell the funeral
12 homes we're going to pay you a specific
13 amount; 5 percent, 3 percent.
14 MR. MAHN: Right. And I understand
15 the work it could do to you guys, the hassle
16 it could be on a trust. I'm not trying to
17 argue that point. The thing I'm looking at
18 here is Bill moves down to my town and wants
19 to move his 25-year-old prearrangement and
20 expects me to provide it, and I would like to
21 help him; okay? But if it's 25 years old,
22 and it's only worth 80 percent, and 25 years
23 ago it was $2,500, and it's a $7,500 funeral,
24 someone just please explain to me how I
25 service Bill. And maybe the answer to this --

1 and I don't want to tick anybody off, but, you
2 know, maybe this is why some states are 100
3 percent insurance. I mean, you know, I'm just
4 saying that. I mean, I'm just saying, is that
5 an issue? How do I service Bill if he comes
6 to me? Just somebody please tell me how I --
7 you know, and I'm getting several of these,
8 you know, coming out of the St. Louis area.
9 MR. McCULLOCH: Well, you can service
10 it, you just may not be happy with what you
11 received. But you can also turn it down, or
12 you can have him pay the difference. Those
13 are the options that are available today;
14 right? I know those aren't the ones you like
15 --
16 MR. MAHN: No. Well, I don't think --
17 MR. McCULLOCH: -- but I'm just saying
18 those are the options.
19 MR. MAHN: Whether I like them or not,
20 I just don't think they're fair to Bill, the
21 consumer. That's just my opinion.
22 MR. McCULLOCH: It's fair to him if
23 you accept the funeral.
24 MR. MAHN: Well, sure it is.
25 MR. McCULLOCH: You may not say it's

1 fair to him if you make him pay the
2 difference; okay?
3 MS. GRINSTON: Now, I don't know when
4 we talk about refunding of fees on
5 cancellation, will this be in the same issue
6 of portability? And from the portability
7 discussion, I can sort of glean that we may be
8 in the exact same area. We will have to put
9 that on the other list of no consensus. Let
10 me know if I'm wrong on that, or if we are
11 hearing what the consensus --
12 CHAIRMAN: Don?
13 MR. OTTO: I doubt we'll reach a
14 consensus. And one of the problems is we did
15 not reach a consensus on 80-20 or 90-10.
16 MS. GRINSTON: That's true.
17 MR. OTTO: Or 100.
18 MS. GRINSTON: That's true.
19 MR. OTTO: And so, the answer to the
20 cancellation question, in large part, depends
21 on whether we're 80-20, 90-10, or 100.
22 MS. GRINSTON: Well, then maybe that's
23 the way to handle this. Maybe, just like the
24 amount to be trusted, maybe we should poll the
25 room on what you think the refund should be on

1 cancellation, we'll note the numbers and the
2 comments, and just leave it at that, because
3 that may be better because I really don't
4 think we're going to convince anybody.
5 CHAIRMAN: Mike?
6 MR. MEIERHOFFER: Let's look at this
7 in the big picture. I'm going to address this
8 to Representative Meadows. We're an advisory
9 group. This is going to go to the Board, and
10 the Board is going to go to the legislature,
11 you're going to have some meetings. I guess
12 the question I'm asking this group is, it
13 seems to me, as a group, we better figure out
14 what we want rather than just throw something
15 out there. These folks are asking for
16 direction --
17 MS. GRINSTON: That's true.
18 MR. MEIERHOFFER: -- and we're giving
19 them none on some of these important points.
20 I know what he's looking for, and I think we
21 need to figure out somehow -- and it may not
22 be today -- but we better take this back and
23 smoke it in our pipe and figure out where
24 we're coming from. You're asking for
25 direction. Our job is to give them some.

1 So, that's my counsel, is we need to figure
2 out these tough ones and punt the ball over to
3 you, and then let you see that they're --
4 REPRESENTATIVE MEADOWS: I like that
5 idea, Mike.
6 MR. MEIERHOFFER: I mean, otherwise,
7 we're not helping you a bit or ourselves.
8 REPRESENTATIVE MEADOWS: That's
9 exactly right. That's exactly right. Because
10 I'm back in the same boat where I was the
11 last couple years because I get -- I've got
12 the consumer over here telling me in this ear,
13 yelling in this ear, but I'm not hearing
14 anything over here, but I'm hearing --
15 MR. MEIERHOFFER: Sure. Yeah. Well,
16 we also know where the majority of your votes
17 come from.
18 REPRESENTATIVE MEADOWS: Right.
19 They're coming from that person I represent.
20 MR. MEIERHOFFER: So, we've got to
21 figure this out. So, I think that behooves us
22 to get on the wagon and get going.
23 CHAIRMAN: Don?
24 MR. OTTO: I mean, Mike, I see where
25 you're coming from. If that's possible, let's

1 --

2 MR. MEIERHOFFER: Well, I don't know

3 that it is, but we've got to try.

4 MR. OTTO: But I can tell you what

5 Senator Scott asked this group to do. Since

6 the committee, assuming the governor signs the

7 bill, which I don't think he has as of yet,

8 but did he? Did he sign 7?

9 REPRESENTATIVE MEADOWS: Uh-huh.

10 MR. OTTO: Okay. Good. Okay.

11 Excellent. But since the committee doesn't go

12 into effect until August 28th -- that's when

13 the legislative committee kicks in -- they're

14 worried about how much time they have. It's a

15 very short time period. So, when we were in

16 his office -- and anybody that was there, jump

17 on me if you think I'm misstating it -- but

18 one of their main concerns was they didn't

19 want to waste time arguing about things that

20 we could all agree on, you know. For example,

21 if we're going to get to it at some point

22 saying no term insurance to fund a preneed

23 contract --

24 MS. GRINSTON: That's next, Don. Very

25 good.

1 MR. OTTO: Okay. Isn't that a good
2 one? If we can all agree to that, and nobody
3 is going to object to that, then there's no
4 reason for the committee to waste time on that.
5 MR. MEIERHOFFER: Right.
6 MR. OTTO: So, what he wanted, I think
7 -- my opinion of the meeting was he wanted out
8 of this group a base legislation that nobody
9 is going to complain about. This one would go
10 through without any complaints, so that then
11 irritative issues that they're going to have
12 to spend their time on, for which there's
13 going to be controversy or not a consensus.
14 So, if this group comes up with a proposal
15 that when it gets to the legislature, you've
16 got two or three big insurance companies that
17 are opposing it or two or three big funeral
18 homes that are opposing it or advocacy groups
19 that are opposing it, then we will not have
20 given the committee what I think they wanted.
21 MS. DUNN: But we have an opportunity
22 here to put something before them that -- and,
23 you know, if we could come to an agreement on
24 some of these items, they're going to say,
25 well, we pooled the industry and the public --

1 MR. OTTO: Well, we can -- but, yeah.
2 But giving them something out of this group
3 that is going to create an opposition -- a
4 large opposition block, in my opinion, is not
5 what Senator Scott and Representative Wasson
6 asked for.
7 MR. MEIERHOFFER: Well, I'm not
8 suggesting that, either.
9 CHAIRMAN: Okay, Todd?
10 MR. MAHN: Yeah. Just real quick.
11 You know, Representative Meadows is sitting
12 here telling us what consumers are aggravated
13 about, are not happy with about this,
14 everything. I mean, he's sitting here telling
15 us everything. He's almost spoon-feeding it.
16 And then we're back to arguing to keep it the
17 old way that has stunk, has been terrible, has
18 been not consumer friendly, the Board can't do
19 anything about anybody. But you know what,
20 when we can't do anything about anybody, we've
21 got the whole entire funeral directors in this
22 state crying and whining that it's our fault
23 about NPS -- you know, it's the Board's fault.
24 Well, you know, you can't have your cake and
25 eat it, too.

1 CHAIRMAN: Can you sugar coat it a
2 little better than that?
3 MR. MAHN: When it's no good, it's the
4 Board's fault, you know, but let's keep the
5 old law because we like it the way it is.
6 MS. EULER: Mr. Chairman?
7 CHAIRMAN: Okay. Sharon?
8 MS. EULER: Might I make a suggestion
9 that we continue on with the list and at least
10 get through the stuff and figure out what we
11 can agree with. And then once we're done with
12 what we can agree with, go back to those
13 things we can't agree on and maybe we can come
14 to some consensus?
15 MS. GRINSTON: You must be psychic.
16 That's exactly what I just told Jim.
17 REPRESENTATIVE MEADOWS Well, I'm just
18 going to just end it on this part. And,
19 Mike, thank you very much, and everyone,
20 again, for the comments -- Becky. Back when I
21 -- from the best that I can tell -- and I've
22 been in the legislature five years. So, from
23 the best that I can tell, and what we have to
24 realize and I think what you all have to
25 realize -- I liked and I agree very strongly

1 with what Mike is saying. If you can provide
2 us some guidance, especially on these really
3 tight issues, I think would be better off
4 because back in -- and I know Jim Moody would
5 remember this. In 1990 -- I think it was '95
6 -- '93, '95, Senator Jay Howard, they were
7 working on the same thing on trying to get
8 some legislation passed. And, supposedly, I
9 heard that there was a lot of agreement and a
10 lot of movement, but then in the end, I think
11 there was a company called NPS that had some
12 very powerful lobbyists that walked in and
13 just turned up the apple cart, turned it
14 upside down. So, I think in my conversations
15 with Senator Scott, although I wasn't there
16 that specific day when you all were there, I
17 think what Senator Scott is saying is that we
18 need -- you need to really tell us. That's
19 kind of like what I told you before, watch
20 what you wish for because you just might get
21 it. And please don't leave those decisions up
22 to the legislature because if you do that,
23 then we're going to be fighting over it and
24 then you may not even get a bill at all, and
25 here we are. We're still stuck. So, you

1 know, the bottom line here is, is that the
2 whole idea was, I think, to bring everybody in
3 the industry together, to play very well in
4 the sandbox, and give us something -- give us
5 direction, and even on the tight issues, and I
6 think Becky knows that full well. And I think
7 that, as the State Board, you guys realize it
8 probably more than others, but -- because we
9 want to give the State Board what they need to
10 provide you all with the tools to do your job
11 to the fullest, to streamline the measures
12 that you guys have got to take care of, and,
13 Connie, you know this as well as I do. And
14 so, yeah, on these tight things, and Mike is
15 right. Give us some direction on it. That
16 would be -- because even though I might be a
17 100-percent guy, but if the consensus of the
18 industry 90-10, well, then I don't need to
19 even open my mouth on the issue. Why would I
20 upset the apple cart to get legislation? You
21 guys were the ones that decided what was best,
22 even though I may disagree, but -- but you
23 know what I'm saying? But -- so, I'll get
24 off my soapbox again.
25 MS. GRINSTON: Having said that, and I

1 think that my understanding my recollection is
2 the same as Don's about what we were tasked
3 with doing, may I make a suggestion that we
4 take portability and refunds back home? We
5 take it back to our members, our associations,
6 our constituents, maybe really give some
7 thought about -- and I would encourage
8 everybody -- I'm speaking not just for the
9 Board -- to not just Board members or to
10 industry people, consumer people, to try to
11 come up with something that does take into
12 consideration all of the needs of these
13 people, you know. The consumer groups, I
14 think consumers are important. They have to
15 be. Not just consumers, but the funeral
16 homes, they are important. They provide a
17 valuable service. Think about the sellers.
18 They are important. They provide a valuable
19 service. And maybe as you formulate that
20 discussion back in our separate camps, next
21 meeting maybe, maybe as we give it more
22 thought, there may be some other issues that
23 we can agree on even if we don't work out a
24 100-percent deal.
25 MR. MEIERHOFFER: Can I ask one

1 question?
2 CHAIRMAN: Do you want to go to the
3 bathroom?
4 MR. MEIERHOFFER: It's not a bad idea.
5 And this is directed to Representative
6 Meadows, again. Are we thinking about this
7 proactively and not retroactively as far as
8 this law? I mean, because that makes --
9 that's a big difference.
10 REPRESENTATIVE MEADOWS: Sure.
11 MR. MEIERHOFFER: And that's where we
12 --
13 REPRESENTATIVE MEADOWS: I think Kim
14 could answer that. I think we're going
15 proactive.
16 MS. GRINSTON: Well, I think that's
17 the reason why we've asked people to please
18 keep your focus broader than what we're
19 dealing with right now, because I think for
20 some of the issues that we're dealing with
21 right now, to be honest, we are reacting to an
22 issue. But there is -- I think that the
23 majority of what we talked about are proactive
24 issues that have been issues in 436 that we
25 have an opportunity now to go up and fix.

1 The department has a special counsel who is
2 going to be looking at legislative issues,
3 legislative fixes, but there are some
4 proactive steps outside of the immediate
5 crisis that need to be fixed. And I think
6 that as we -- when you talk about coming to a
7 consensus, which is the reason why I
8 appreciate this group being patient with me
9 and hitting some of those areas that you have
10 expressed, because I think that's where 436 is
11 going to get fixed, because I think I can
12 speak for everybody, it is hardly broken right
13 now.
14 CHAIRMAN: And on that note, we're
15 going to take a break.
16 (Off the record)
17 CHAIRMAN: All right. Folks, what we
18 have talked about is you've been out of the
19 room, and we've got to make some hard
20 decisions here. In the next meeting, we are
21 going to take up the amount in trust and we're
22 going to address that and take a vote on it.
23 We're going to take the refunding issue, take
24 a vote on it, because we've got to make a
25 stand here someplace and turn this over to the

1 legislature -- and portability. So, those
2 three issues. You go home, have a
3 come-to-Jesus meeting about them, because Kim
4 said that, and we need to do those things.
5 So, talk to your constituents and talk to your
6 -- you know, the association and talk to
7 Baker. Yes, Mr. Baker?
8 MR. BAKER: Clarification on the next
9 meeting date. We've got two dates, next
10 Tuesday and next Thursday.
11 CHAIRMAN: Thursday, I believe.
12 MS. DUNN: Next Thursday.
13 MR. OTTO: Okay. The stuff -- the one
14 that was on today's says next Tuesday.
15 CHAIRMAN: You're welcome to come
16 Tuesday and stay till Thursday.
17 MS. DUNN: Oh, the one that says on
18 today says next --
19 MS. GRINSTON: If you come Tuesday,
20 you'll be a real estate appraiser.
21 MR. OTTO: Yeah. Well, now, the one
22 that says July 15th -- we've got two different
23 pieces of paper, in other words.
24 CHAIRMAN: But it's Thursday -- next
25 Thursday. (Several people say the

1 24th.)
2 MR. OTTO: Twenty-fourth. Okay.
3 Well, we got one piece of paper that said
4 Tuesday and one that said Thursday.
5 CHAIRMAN: Kim has got some comfort
6 issues that we can finally take --
7 MS. DUNN: It's July 24th and 29th.
8 MS. GRINSTON: As we start wrap-up,
9 because I know the hour is getting late, maybe
10 it would be a good idea for us to start with
11 some of the things I think we can probably
12 handle pretty quickly. Number 15, location of
13 trustee/trust accounts. It was suggested --
14 and this is not a suggestion from the Board.
15 Someone suggested that we require that the
16 trustee, as well as the actual trust account,
17 be housed in the state of Missouri. So, if
18 you had a financial institution that actually
19 was maintaining the account from Florida or
20 some other state, that wouldn't be acceptable.
21 But the suggestion was or the question was,
22 should we require that both the trustee and
23 the trust account be in the state of Missouri?
24 MR. OTTO: Assuming they had Missouri
25 trust powers, I'm not sure you can restrict

1 it. It would be a violation of the interstate
2 commerce laws.
3 MS. GRINSTON: It might be.
4 MR. STALTER: Some states, they do
5 actually require it, yeah.
6 MS. GRINSTON: Yeah, some states do.
7 There are some states that say that the
8 trustee, the trust account, and the trust
9 records have to all be housed in that state.
10 And that's not a suggestion. I'm just saying
11 it was what was presented.
12 CHAIRMAN: Sharon?
13 MS. EULER: Perhaps Rich can help us.
14 If there is a bank -- an out-of-state bank
15 that holds the trust, does Missouri have
16 cooperative agreements with other states so we
17 could still reach that?
18 MR. WEAVER: To give you a little bit
19 of clarification on that, let's say if you
20 said it has to be in a Missouri financial
21 institution, then if you have a bank that's
22 actually chartered in another state -- and to
23 give you an example of there's one right here
24 in town, Regions Bank is actually an Alabama
25 state chartered bank, they would not quality

1 under the banking definition of a Missouri
2 financial institution. If you say, as Don
3 mentioned, if you have trust powers to operate
4 in the state of Missouri, then a bank that is
5 chartered in another state that actually has
6 trust powers here in Missouri then would meet
7 that definition. Under the current definition
8 of the law, Regions could do that if they have
9 trust powers to operate in the state.
10 MS. EULER So, we wouldn't have any
11 problem reaching a bank if it was in another
12 state if there were problems?
13 CHAIRMAN: Mike?
14 MR. MEIERHOFFER: We use Forethought
15 National Bank out of Batesville, Indiana.
16 They specialize in that type stuff, so there
17 are -- and they have trust powers in the state
18 and you can reach them.
19 MS. GRINSTON: So, the current
20 language says state or federally chartered
21 financial institution who can exercise trust
22 powers. Any thoughts that that needs to be
23 changed?
24 CHAIRMAN: Okay. Yes. All in favor,
25 say aye. All opposed?

1 (Unanimous voice vote for approval.)
2 MS. GRINSTON: And in line with that
3 location of trust records, this has come up
4 from another context, but should we require
5 that the records be maintained in the state of
6 Missouri versus accessible in the state of
7 Missouri? What's the consensus?
8 MR. MEIERHOFFER: Well, I guess the
9 question becomes whether you're electronic or
10 paper. Anymore, most of this stuff is
11 electronic and is available by a push of the
12 button anywhere in the world. Now, if it's
13 paper records, I don't know why that would be
14 any different, to tell you the truth.
15 CHAIRMAN: Bill?
16 MR. STALTER: Yeah. I mean, we've got
17 lots of electronic. I mean, the banks are
18 even trying to avoid the paper records. So, I
19 mean, really, accessibility is much easier.
20 And to the extent that we have to -- I mean,
21 we have special service and process where we
22 agree to provide records within so many days
23 of a request, so --
24 MR. MEIERHOFFER: I think that's
25 exactly right. The accessibility and time.

1 MS. GRINSTON: So, am I hearing
2 consensus that they just must be made
3 available, which should be upon request -- in
4 a reasonable amount upon request?
5 CHAIRMAN: All in favor? Those
6 opposed?
7 (Unanimous voice vote for approval.)
8 MS. GRINSTON: All right. Let's skip
9 to #14, which is another big topic that I
10 think is interesting. And as we go into #14,
11 I'd like to point out that the department does
12 have a special counsel. Oh, before I do that,
13 I have been advised by a very well-respected
14 person that I need to quit saying a 436
15 scheme. In light of current events -- so,
16 thank you, Representative Meadows. So, we're
17 not doing a scheme here because it will be on
18 the first page of "The Post" that the Board is
19 cooking up a scheme. Number 14, I do want to
20 remark that the department does have a special
21 counsel who will be looking at a lot of these
22 trust issues versus insurance issues and
23 making recommendations to address some of the
24 problems we have now. I just wanted to make
25 sure everyone was aware of that. When we talk

1 about investment of trust funds, as we go into
2 that calculation and for that consideration,
3 as well as for consideration by the joint
4 committee, when we talk about investment of
5 trust funds, last session there was, the
6 language included a provision that said you
7 cannot use term life. Is there anyone here
8 who would like to take a position on allowing
9 or prohibiting, or does the group want to take
10 a position on allowing or prohibiting
11 insurance -- a preneed contract funded by
12 insurance?
13 MR. OTTO: No.
14 MS. GRINSTON: No, I'm sorry. That's
15 wrong. Allowing funds that are in a trust to
16 be invested in a term-life policy. And I'm
17 sorry, I just -- I lost my train of thought
18 there.
19 MR. OTTO: Yeah. That was the
20 distinction I wanted to make. There's a
21 difference between I buy a term-life-insurance
22 policy with Prudential and I make the
23 beneficiary of that my funeral home --
24 MS. GRINSTON: Yeah.
25 MR. OTTO: -- versus I have a trust

1 fund with $300,000 in it and my -- I can
2 invest that in certificates of deposit,
3 money-market accounts, mutual funds. I choose
4 to invest in term life. That's the issue.
5 MS. GRINSTON: And I'd like to start
6 that issue. When I have monies in the trust
7 fund, should I be allowed or prohibited to
8 invest in term-life policies?
9 MR. OTTO: No.
10 MS. RUSSELL: Prohibited.
11 MS. GRINSTON: I think I could
12 probably take a real quick vote on that one,
13 Mr. Chairman?
14 CHAIRMAN: All in favor of prohibiting
15 it, say aye. All those opposed?
16 (Unanimous voice vote for approval.)
17 MS. GRINSTON: There was a
18 recommendation -- I'm sorry.
19 MR. MEIERHOFFER: Coming from the
20 devil's advocate, is there any reason why it
21 would be of help to the consumer to have it?
22 Are we overlooking something here? Are we
23 missing something about term that we're --
24 MS. GRINSTON: The only thing I'm
25 going to suggest from the insurance

1 standpoint, and I don't know if this is
2 actually right, term life may be cheaper than
3 some of the other insurance options out there,
4 but I don't know if it's radically cheaper.
5 But that is not a defense at all.
6 MS. RUSSELL: We're talking about
7 trusts, too, though.
8 MR. STALTER: I've heard of a funding
9 mechanism where they said that with the cash
10 that's in the trust, apply a portion of it to
11 term to cover during, like, a pay-in period or
12 something that, but not as the exclusive
13 investment of the trust.
14 MS. GRINSTON: Got it.
15 MR. MEIERHOFFER: I guess that's where
16 I'm coming from is there may be a reason that
17 it could be used to the benefit of the
18 consumer and the trust. Now, obviously, if
19 you just go to that, in the latter years, you
20 have no problem, but I'm not smart enough to
21 know. Can somebody help me with the insurance
22 part of that?
23 MS. GRINSTON: I don't know.
24 MR. MEIERHOFFER: Okay.
25 MS. GRINSTON: I don't know.

1 MS. DUNN: Do you want me go get
2 somebody?
3 MS. GRINSTON: Okay. Last year's
4 language, there was language that said that
5 those funds in a trust account can only be
6 invested in a whole-life policy. I know there
7 were some issues that were raised with that.
8 Let's talk about that issue, whether
9 whole-life-insurance policies should be the
10 only allowable insurance investment for trust
11 funds.
12 MR. OTTO: Yeah. That was my thing.
13 I think you meant if you use insurance, it
14 could only be whole life.
15 MS. GRINSTON: No. That's the second
16 question. Funds in a trust account, can I use
17 those funds to invest in a whole-life policy?
18 MR. OTTO: Yeah. But, no. The way
19 you stated it first was that that's the only
20 investment option available to a trust was
21 buying whole life.
22 MS. GRINSTON: I'm sorry.
23 MS. EULER: If the trust is going to
24 buy insurance.
25 MS. GRINSTON: Yeah. Yeah.

1 MR. OTTO: Yeah. If the trust is --
2 MS. GRINSTON: It's the only insurance
3 --
4 MR. OTTO: -- the only insurance
5 vehicle --
6 MS. GRINSTON: -- investment option
7 available. The only insurance -- and I can
8 tell you what we heard, and this is not a
9 position. Some people asked us about
10 annuities, some people asked us about things
11 like variable life. And the insurance people,
12 you're going to have help me. Whether the
13 restriction to whole life only was appropriate.
14 MR. STALTER: In other words, what
15 you're asking is to exclude annuities or
16 variable life?
17 MR. MEIERHOFFER: Or universal, all
18 these other things, and the things that --
19 MS. GRINSTON: Yeah. Because my
20 understanding is that universal wouldn't fall
21 under the general -- the definition of what a
22 whole-life policy is. The idea of saying
23 investing in whole life only if you invest in
24 insurance, is that necessary or is it --
25 MS. EULER: I have a comment on that.

1 And insurance is not my area of expertise,
2 although I've learned a lot about it in the
3 last six months. Rather than restricting
4 that, would it be better to define the kinds
5 of investments that the trust can invest in so
6 that they are investments that are designed to
7 be asset producing, because the problem with
8 term insurance is that it doesn't gain in
9 value. Whole life may or may not be a good
10 investment because it has a potential to
11 increase in value. So, rather than tie into a
12 kind of life insurance that is in use now,
13 because somebody is going to come up with
14 another permutation and call it something
15 else, tie it to investments that have a
16 potential to gain value.
17 MS. GRINSTON: And I think we had some
18 language floated last year that said that, and
19 I think, if I hear your suggestion, no to term
20 life as an investment, but the investment must
21 be an income-producing investment?
22 MS. EULER: Have the potential to
23 produce income.
24 MS. GRINSTON: Have the potential.
25 Sorry.

1 MS. EULER: Some investments have the
2 potential, but they don't really work out so
3 well.
4 MS. GRINSTON: Yeah. Have the
5 potential. With the market the way it is now,
6 I understand. Have the potential. Is that
7 something -- I think that's what was probably
8 drafted last year. Is it something that this
9 group still has a consensus on?
10 CHAIRMAN: Well, public?
11 MR. OTTO: You would have to be
12 careful how you worded it, but --
13 MS. GRINSTON: Yeah.
14 CHAIRMAN: Bob?
15 MR. BAKER: Bob Baker. I think I made
16 the statement the other day, if the investment
17 is eventually going to get to a whole-life
18 policy, why not sell it as the insurance
19 product to start with?
20 MS. GRINSTON: I don't know. That's
21 for the --
22 MR. BAKER: And if you're going to
23 sell it as a trust, we're dealing with cash
24 only.
25 MS. GRINSTON: I don't know if that's

1 the issue of just choice for the
2 practitioners. I don't know the answer to
3 that question.
4 MR. STALTER: In some states, you
5 actually see -- I mean, the rollover is being
6 required for approval, they have a process for
7 that. I mean, the thing that you want to
8 guard against is, okay, let's say that we stay
9 at 80 percent, and then you take the first 20
10 percent off. Then you put the trust into
11 insurance, is there a commission that's being
12 taken? There's a liquidity issue as far with
13 a whole-life policy or the annuity. So, it
14 gets down to -- also, I mean, do you define
15 the investment standard by the prudent-person
16 or the prudent-investor rule because the
17 latter suggests diversification as opposed to
18 a single asset.
19 MS. GRINSTON: Well, and I don't know
20 if those issues can be stacked, whether you
21 address the -- you know, should there be a
22 limit to whole life, and also I think the next
23 one is this reasonable-person/prudent-person
24 standard. Do we need to couple those issues
25 together as we talk about the allowable

1 investment of trust funds? Is the standard --
2 and I'm going to -- well, before I skip to
3 Bill's issue -- and, Bill, if you could just
4 not let me forget that thought. On the
5 whole-life standard, though or -- well, I
6 think we did that pretty much -- income
7 producing. Well, then I'm going to skip to
8 Bill's issue, too, and bring that in. Is the
9 standard for a trustee's fiduciary
10 responsibility too low, is it standard, does
11 it need to be fixed? Should we refer back
12 to, you know, the Missouri Uniform Trust Act,
13 which has a procedure incorporated into it,
14 even though I understand that there are some
15 problems with the definitions of income in
16 there?
17 CHAIRMAN: Don?
18 MR. OTTO: Well, another thing I think
19 we should at least discuss real quick is what
20 Bob just mentioned. Should we allow insurance
21 in any flavor to be the investment choice of a
22 trust fund? Should we allow that, given that,
23 like you said, if you're going to do that, why
24 not just sell the insurance policy in the
25 first place?

1 MS. GRINSTON: It's a question.
2 MR. OTTO: And the answer to that
3 might take care of other questions, too.
4 MS. GRINSTON: That's a good question.
5 CHAIRMAN: Discussion? Sharon?
6 MS. EULER: I have a comment. At one
7 point, the position of the Board was that
8 insurance was not a permissible investment of
9 a trust. All of that has kind of changed
10 with time. It seems to me, to make sense
11 then, instead of reinventing the wheel, that
12 we refer back that the trustee of a preneed
13 trust shall make its investments in accordance
14 with the Uniform Trust Act because that
15 statute already talks about that a trustee
16 must diversify, you know, a trustee must do
17 all of these things, and why reinvent the
18 wheel?
19 MR. OTTO: Well, we've had this
20 discussion with the cemetery folks. There's
21 definitional problems with some of the things
22 in the Uniform Trust Act which don't quite
23 mesh up with 436, at least right now. I'd
24 have to do --
25 MS. EULER: But we're changing 436.

1 MR. OTTO: I know. I know. We'd have
2 to -- that's one of the ones I'm going to
3 have to go back and research on and get my
4 notes from when we discussed that with the
5 cemetery folks.
6 MS. EULER: And from a bank-examiner's
7 audit -- and, Rich, you can correct me if I'm
8 wrong on this -- wouldn't it be easier to have
9 the preneed trust law mirror the Uniform Trust
10 Law so everybody knows what they're looking at?
11 MR. WEAVER: I could see arguments on
12 both sides of it, and I know I sound like I'm
13 waffling there, but, you know, you're talking
14 about insurance. To me, from my perspective,
15 if it's going to be funded 100 percent with
16 insurance, there's no need for a trust. So,
17 if you look at, as Bill mentioned, the
18 prudent-investor role is going to stress -- I
19 mean, you're going to look at the cash needs
20 of the trust, you're going to look at
21 diversification of those investments. They're
22 going to be conservative, and so, you wouldn't
23 load up in any one vehicle or investment
24 either way, so I could see arguments, really,
25 on both sides of that.

1 CHAIRMAN: Don?
2 MR. OTTO: I think one of the problems
3 with the Uniform Trust Act, if I remember
4 right in discussing with the cemeterians was
5 the definition of income in the Uniform Trust
6 Act. It had a definition that was causing
7 problems.
8 MR. STALTER: Well, that's the endowed
9 care. That's a different issue. I mean, with
10 preneed, you basically -- you know, we're
11 going to get to that issue about accrual and
12 so forth, but, you know, just leave that --
13 you know, 214 endowed care off the wall. It's
14 just a whole different thing.
15 MR. OTTO: Hold on. I'm just saying
16 that the problem was that the definition of
17 income in the Uniform Trust Act was causing a
18 problem with the endowed-care definition of
19 income, and I don't know if it causes a
20 problem with the 436 definition of income.
21 MR. STALTER: Well, the position I've
22 taken with the banks is that, you know,
23 preneed laws are a special type of trust law.
24 You've really got to throw the Uniform
25 Principal and Income Act out the window

1 because the State preneed law will define how
2 the principal and income are to be
3 administered. So, basically, you know, by the
4 State law, we'll -- you know, it's just a
5 totally different trust accounting method as
6 opposed to what the bank usually handles with
7 trust accounts.
8 CHAIRMAN: Darlene?
9 MS. RUSSELL: I was just going to say,
10 you know, it's going to be impossible to
11 really tell a trustee what their duties are.
12 I think they're going to have use some of
13 those guidelines of the trust requirements and
14 everything else. For instance, I know this
15 funeral home -- I know a funeral home that
16 thinks investing in their own personal real
17 estate, their own farm or whatever, is prudent
18 man. They've convinced their trustee. So, I
19 think that what Kim and Sharon were saying
20 about saying, you know, it must be done in
21 investments and tie the hand to the trustee a
22 little bit in regards to what the language
23 should say.
24 CHAIRMAN: Todd?
25 MR. MAHN: Can't we just simply, if

1 they want to put it in trust, that it goes in
2 trust, stays in the bank, period. If you want
3 to sell insurance, then sell insurance. It's
4 this whole flipping little scheme stuff that's
5 the problem.
6 MS. GRINSTON: No insurance
7 investments. Are you saying no insurance
8 investments?
9 MR. MAHN: Well, they wanted to put it
10 in trust. Your whole day has been a big deal
11 on trusts, so, you know, leave it in the bank,
12 put it in trust, then, I mean --
13 MS. EULER: In some instances, it may
14 be reasonably prudent to have insurance, and
15 in other instances, it may not. But it seems
16 to me -- and we're going to talk about this
17 in #9 -- that preneed trusts should be a
18 trust. The trustee should control the assets,
19 not the funeral home.
20 MS. GRINSTON: So, what I'm hearing,
21 I'm hearing two things; that there are some
22 concerns about using the Uniform Trust Act,
23 the reasonable-person standard versus the
24 prudent-person standard, and a lot of us have
25 legal definitions. Is the group looking to

1 adjust that, or do you think that addressing
2 that the investment must have income-producing
3 potential will address the other standards, or
4 do we need to clarify, again, reasonable
5 person versus prudent person?
6 MR. OTTO: I just feel like -- I mean,
7 keep in mind one of the concepts we talked
8 about last time was having, okay, here is your
9 basic rules on 436 contracts, and then we've
10 got different funding vehicles that you might
11 get licensed for separately -- selling
12 insurance, selling trusts, selling joint
13 accounts. When you have -- and if somebody
14 could tell me why there's a good reason to do
15 this, I would be willing to stand corrected.
16 But when you have the trust buying a
17 life-insurance policy on the purchaser as the
18 investment decision of the trust, right there
19 we've got -- we're now kind of sort of, in a
20 way, mixing two of those categories. And I
21 still don't know why -- and, again, I could be
22 -- you know, there might be a good reason for
23 it that somebody can explain to me. But why
24 not just sell the insurance policy? If that
25 is going to be your investment decision, why

1 not just skip that complicating factor and
2 sell the insurance policy straight up?
3 MS. GRINSTON: So, I hear you saying
4 what Bob just said, which is what I think Todd
5 said, and possibly just restricting insurance
6 investments with trust money. And let me know
7 if I'm summarizing that incorrectly.
8 CHAIRMAN: Baker, why don't you just
9 pull your chair up there by the podium?
10 MR. BAKER: Believe it or not, this
11 time, I don't have a comment, I've got a
12 question. It's been several years since I
13 have taken the insurance test. But, insurance
14 people, if you do not sell a policy to a
15 consumer directly, can you go behind that from
16 the trust funds and purchase an insurance
17 policy on anyone?
18 MR. McCORD: I have no idea. I'm not
19 an insurance agent.
20 MS. RUSSELL: I can talk about --
21 well, I can say what Missouri Funeral Trust
22 used to do. Missouri Funeral Trust did
23 insurance investing for -- as a mechanism for
24 investments. Don, are you familiar with that?
25 And how they did it was a power of attorney.

1 MR. BAKER: Yeah. It was sold as an
2 insurance kind of product.
3 MS. RUSSELL: It was sold as -- but the
4 individual signed a power of attorney allowing
5 the trust to invest it, and what the trust did
6 was take that commissions and use it to help
7 offset the cash value.
8 MR. KRAUS: Gerry Kraus,
9 Homesteader's. The Iowa legislature just, I
10 think in response to what happened down here
11 with this marketing company, banned the
12 investment of trusts in insurance, and they
13 are very strong insurance-funding advocates,
14 but they did not deem insurance to be a
15 prudent investment for the trust.
16 MS. GRINSTON: Consensus of the group?
17 CHAIRMAN: Yeah, Bill, to ahead.
18 MR. STALTER: Why you see that happen
19 in some states, though, is that my clients,
20 the fiduciaries, are such poor asset managers.
21 You see a return on the trusts of being 2 or
22 3 percent. And they turn around and look at
23 what Homesteader's and say, well, I mean, why
24 can't I get a higher return, 5 or so percent?
25 And, basically, it just -- the trustee is

1 doing such a poor job, I mean, they'll just
2 roll it over into insurance.
3 MS. GRINSTON: So, is that the
4 consensus? No investment in insurance with
5 trust-fund monies?
6 MS. EULER: I'm good with that.
7 CHAIRMAN: All in favor? Well, let's
8 just go around the room. Start with Jim, yea
9 or nay.
10 MR. MOODY: I'm going to have to
11 abstain again.
12 UNIDENTIFIED: What's the question?
13 UNIDENTIFIED: I'm sorry; what's the
14 question?
15 CHAIRMAN: The question is that no
16 monies from a trust will buy an insurance
17 policy; is that right -- pretty close?
18 MS. GRINSTON: It can be invested in
19 insurance?
20 MR. MEIERHOFFER: I would disagree
21 with that.
22 MS. GRINSTON: Disagree?
23 CHAIRMAN: So you think that's fine?
24 MR. MEIERHOFFER: Well, I just hate to
25 put something restrictive to the point where

1 you can't for whatever reason.
2 CHAIRMAN: Don?
3 MR. OTTO: Unless someone explains to
4 me why you should do that instead of selling
5 the insurance policy straight up, I would say
6 -- agree with that statement. My mind can be
7 changed.
8 MR. McCULLOCH: I think you should be
9 allowed to purchase insurance.
10 MR. WEAVER: Yeah. I guess I have the
11 same comment that Don does. If you've got --
12 if you're 100 percent -- fund them 100 percent
13 with life insurance, then you don't need the
14 trust. But if you're going to have the trust,
15 then I don't think you should restrict the
16 trust from what an investment should be, that
17 that 5 percent or 10 percent can go into life
18 insurance, then I would -- that's why I
19 disagree with that.
20 MR. McCORD: I would concur with that
21 statement, but my position would be a
22 reasonable and prudent investor should be the
23 standard.
24 CHAIRMAN: Joy?
25 MS. GERSTEIN: I agree with him. That

1 was good.
2 MR. FRAKER: I agree.
3 CHAIRMAN: With him?
4 MR. FRAKER: Uh-huh.
5 MS. GRINSTON: Sharon?
6 MS. EULER: I don't remember what him
7 said, so I don't know if I agree with him or
8 not. How's that for honesty.
9 MR. McCORD: I'll repeat it. What the
10 comment over here was that if you're going to
11 fund it with insurance, why do you need to use
12 a trust? And while I said I don't disagree
13 with that statement, I still believe the
14 standard should be a reasonable and prudent
15 investor, what that person would do should be
16 the standard. And if that includes insurance,
17 again, a situation I don't know. It depends
18 upon the factors at play. But, again,
19 reasonable and prudent investors should be the
20 standard that trust is evaluated upon.
21 MS. EULER: I agree that reasonable and
22 prudent standard should be -- don't check me
23 in the box yet -- that reasonable and prudent
24 standard should be the standard, but I'm also
25 okay with saying that insurance is not a

1 reasonable and prudent investment.
2 CHAIRMAN: Representative?
3 REPRESENTATIVE MEADOWS: If I'm
4 hearing right, and I was listening to what
5 Mike Meierhoffer had to say, what if you put
6 -- and, again, here we go, we're putting more
7 permutations out there. But what if you put a
8 certain cap on amount of percentage that a
9 person, that a trust could do that. Let's
10 say, okay, we'll allow you to do it, but do
11 it up to 10 percent. Then that way, each
12 individual trust or each individual group
13 would have the opportunity to go that far, but
14 no more; you know what I'm saying? And then
15 when you audit, you could see that if they're
16 really, really out there using insurance and
17 where they're going with it, if they're more
18 than what the 10 percent is, then you could
19 say, hey, whoa, whoa, what are you doing here,
20 you know. But maybe a cap of a certain
21 percentage. I mean, that's just an idea. But
22 Iowa has closed the door all the way because
23 there might be a case where a person could
24 have invested there, so, I mean, I guess it's
25 a trick question. I don't mean to be a

1 politician and opt out of this here, but the
2 bottom line is, I think that they ought to at
3 least have the opportunity to a certain
4 percentage.
5 MS. GRINSTON: Okay.
6 MR. OTTO: Yeah. Well, perhaps the
7 reasonable investment standard takes care of a
8 problem because you have to have
9 diversification, you know. The concern -- one
10 of the concerns I have is with a trust that
11 does nothing but buy insurance policies on its
12 consumers, that's all they do, not only is
13 that arguably maybe not a good investment
14 because you don't have it diversified, but
15 also in the event of a meltdown as we're all
16 experiencing, now you have a very complicated
17 factor of how you're treating those
18 investments with the possible situation where
19 you -- are you treating it like an insurance
20 investment? Are you treating it -- you know,
21 when somebody goes into receivership, are you
22 treating it like insurance? Are you treating
23 it like a trust, you know? Is the fact that
24 Mrs. Smith had an insurance policy that was
25 good, does that mean Mrs. Smith's funeral is

1 going to get taken care of, while Mrs. Jones,
2 her funeral -- you know? It really gets -- I
3 think it really starts causing a lot of issues
4 that we're dealing with right now when you're
5 100-percent funded with life-insurance
6 policies on the beneficiaries' lives, but
7 maybe the prudent-investment standard takes
8 care of that to some degree with
9 diversification.
10 UNIDENTIFIED: I think it does.
11 MR. STALTER: But when you say that,
12 it almost makes it mutually exclusive. I
13 mean, how can you be diversified and have
14 insurance, because one thing is you're looking
15 to have 10 percent. When you go to a trust
16 that holds life insurance, you're basically
17 buying an insurance policy for each purchaser,
18 you know. So, I mean, you're just buying lots
19 of little policies. But the feature about
20 that with the prudent investor is then --
21 let's talk about liquidity. What's the
22 liquidity of that trust once you've done that?
23 And, really, it's almost, again, mutually
24 exclusive about the diversification once you
25 put it all into insurance.

1 CHAIRMAN: Joy?
2 MS. GERSTEIN: I'm sorry, but aren't
3 we in the middle of taking a vote?
4 CHAIRMAN: Yeah. Todd?
5 MR. MAHN: I think we could fix this
6 whole problem. Why don't we just do joint
7 accounts with everything, and, that way, the
8 consumer still has part control of their
9 account?
10 MS. EULER: There's a problem with
11 that.
12 MR. MAHN: And then you can calculate
13 the interest on their joint account, and then
14 we don't have the problem when the transfer
15 comes up of how much interest transfers with
16 it.
17 MS. EULER: But we can't do joint
18 accounts anymore.
19 MR. MAHN: So, maybe, you know, it
20 seems like this whole trust thing is a
21 monster. Every time we bring something up,
22 there's 15 things why we shouldn't do it a
23 certain way. I don't know. I'm not an
24 attorney; I don't know whether insurance ought
25 to cover it or not.

1 MS. EULER: So, we could go 100 percent
2 insurance.
3 MR. MAHN: I mean, I'm not -- you
4 know, I bury people, but, you know, I don't --
5 I'm not a --
6 CHAIRMAN: Was that a yea or for or
7 against, or I didn't quite get it.
8 MS. GRINSTON: That's a third category.
9 MR. MAHN: A third category. I'm for
10 joint accounts.
11 CHAIRMAN: Bill?
12 MR. TRIMM: Prudent-investment
13 strategy is what I think.
14 CHAIRMAN: And let them put insurance
15 in trusts? Okay. Darlene?
16 MS. RUSSELL: I agree with what Bill
17 just said.
18 CHAIRMAN: Which Bill?
19 MS. RUSSELL: This Bill.
20 CHAIRMAN: Okay.
21 MR. STALTER: She's not going to agree
22 with me. I say no insurance.
23 MS. RUSSELL: No.
24 CHAIRMAN: No insurance?
25 MR. STALTER: Yeah.

1 CHAIRMAN: Well, I guess I have to
2 break this tie. Okay. You can put insurance
3 in trust, and you're going to have to do it
4 -- we'll write it up as a prudent-man
5 investment or something.
6 MS. GRINSTON: I think the majority is
7 reasonable and prudent, no term life, must be
8 income producing, have the potential of being
9 income producing.
10 CHAIRMAN: Yes. Brad had a comment.
11 MR. SPEAKS: Well, I just want to
12 address Don's question, you know, about -- if
13 I'm understanding the question right. Why
14 would you do insurance; why don't you just
15 sell insurance to begin with? It may be as
16 simple as either the health questions that the
17 family can't answer -- the person can't answer
18 appropriately to get insured, or it could have
19 to do with the commission structure. Perhaps
20 this person's age is such -- maybe they're 90
21 years old, they come in, they want to buy a
22 preneed, commissions, and go that's 4 percent;
23 that doesn't cut it. Let's give this person
24 -- put them in trust. So, I think that may
25 answer that question.

1 CHAIRMAN: Gerry?
2 MR. KRAUS: Don also mentioned an
3 important point that we learned in Illinois.
4 Their trustees thought that they could buy,
5 through the prudent-investment rule, policies
6 on other people, their executives. We need to
7 limit this to policies purchased on the life
8 of the intended funeral recipient.
9 MS. RUSSELL: Yeah, good idea. Key
10 man.
11 CHAIRMAN: There you go.
12 MR. MEIERHOFFER: And nonrelated,
13 meaning good -- (inaudible) -- rated companies.
14 CHAIRMAN: Good point. Thank you.
15 We'll note that. All right. Go on to the
16 next topic.
17 UNIDENTIFIED: Was that a yea or a nay?
18 MS. GRINSTON: Yeah. That's what I'm
19 -- not on the life, has to be on the life of
20 the intended beneficiary. Is that a consensus?
21 (Several people answer yes.)
22 MR. McCULLOCH: For those that are
23 concerned about insurance, can I talk about
24 that?
25 CHAIRMAN: Uh-huh.

1 MR. McCULLOCH: It's not the fact that
2 the companies have purchased a life policy.
3 That's not where the problem is, I don't
4 think. The problem appears to be that the
5 cash values were taken out of it. It's not
6 the purchasing of life insurance. Life
7 insurance is regulated very highly, and so,
8 that's the problem.
9 MS. EULER: It has to do with who the
10 owner is.
11 MS. GRINSTON: Can we move to John's
12 point, though. If we're going to say
13 reasonable and prudent standard that, you
14 know, possible this investment mix may include
15 insurance, should we address loans against the
16 policies, which we did address last year.
17 Should anyone be allowed to take a loan
18 against a policy that is being held in trust?
19 Yes, I do.
20 MR. McCULLOCH: I think these folks
21 are going to fix that. These folks are going
22 to fix that, I think. I don't think we'll
23 have to worry about that.
24 CHAIRMAN: Sharon?
25 MS. EULER: If we're going to have a

1 section that talks about funding with
2 insurance, it would seem to me that it would
3 be appropriate to have some guidelines about
4 insurance, whether it was funded --
5 insurance-funded preneed or if the trust
6 purchased insurance, things like that. Like,
7 who is the owner, who is the beneficiary, what
8 kind of notice needs to be given, who has the
9 authority to borrow against the policy, if
10 anybody, does it need to be paid up, all of
11 those sorts of things would apply --
12 MS. GRINSTON: Can I take that
13 suggestion and put it on another agenda so we
14 can send it out as a think item?
15 MS. EULER: Yes.
16 MS. GRINSTON: Because I think that
17 that's a good point, but I think we probably
18 -- I think it's a good point.
19 MS. EULER: That's why I'm saying, I
20 think it is another agenda item because there
21 needs to be guidance for insurance, regardless
22 of how it falls.
23 MS. GRINSTON: Well, on that note,
24 while we're here, #28 on the agenda from July
25 8th. When you're doing insurance-funded

1 plans, we just talked about prohibiting
2 investment of trust funds in term life and
3 certain insurance products. What about should
4 there be a restriction on the type of plans
5 that can be used to fund a preneed contract,
6 and I'm going to start with the biggie -- term
7 life. Should there be a prohibition on using
8 term life to fund a preneed contract? I see
9 everybody nodding.
10 MS. RUSSELL: Yes.
11 MS. GRINSTON: Consensus?
12 CHAIRMAN: Everybody agree with that?
13 Say aye. Those opposed?
14 (Unanimous voice vote for approval.)
15 CHAIRMAN: Okay.
16 MS. GRINSTON: Sharon?
17 MS. EULER: Well, I was just going to
18 have a question. And like I said, my
19 knowledge, I'm on the edges of my knowledge
20 here, so I'm looking at Larry. With
21 insurance, for somebody who is 95 years old
22 who is buying a preneed plan, if you're
23 funding it not through a trust, not as an
24 investment, but if you're just funding the
25 life insurance, does it make sense to buy a

1 term policy on somebody who is 95 if the term
2 was a year, because you couldn't buy a
3 whole-life policy on somebody who is 95, I
4 don't think.
5 MR. McCORD: Well, I don't know
6 whether you could or not. Policies, across
7 the board, Sharon, in regards to what
8 companies will sell. Typically, you will not
9 see that for an individual that age.
10 MR. MEIERHOFFER: Yeah. The answer is
11 no, you probably can't buy one.
12 MS. EULER: A whole life, but could
13 you buy --
14 (Several people talking simultaneously.)
15 MR. McCORD: You could buy a paid-up
16 policy.
17 MS. EULER: So, I guess my question
18 is: So long as you're not looking at it as
19 an investment, but if you're looking at it as
20 insurance-funded preneed, there may be
21 situations where term is appropriate? I throw
22 that out.
23 MR. McCORD: I would agree with you,
24 Sharon. I'm sorry. This is Larry McCord. I
25 would agree if it's a paid-up-front policy; in

1 other words, not a series of payments, but
2 paid up front, paid in whole.
3 MS. EULER: Right.
4 MR. McCORD: Then a term policy, I
5 believe, could be -- could be a funding
6 vehicle if used in that manner.
7 MS. GRINSTON: What about that idea?
8 Fund it. If term life is used, it must be
9 fully paid?
10 MR. MEIERHOFFER: You just wouldn't
11 use it through a trust, though, would you?
12 Wouldn't you just -- going back to -- I mean,
13 it's --
14 MS. EULER: Right. As an
15 insurance-funded plan.
16 MS. GRINSTON: Yeah, as an
17 insurance-funded.
18 MR. OTTO: Well, if I buy a term-life
19 policy on myself -- all right -- and I feel
20 like making the funeral home the beneficiary,
21 and my contract with the funeral home is that
22 when I die, this insurance is going to pay for
23 the things on this thing, what's wrong with
24 that?
25 MR. McCULLOCH: Nothing.

1 MR. MEIERHOFFER: Nothing, but I
2 wouldn't guarantee it for you.
3 MR. OTTO: Well, you may not -- I
4 mean, what's wrong with that? I currently
5 have a term-life policy on myself; okay? I
6 take a look at it and I say, well, look,
7 that's -- I can lock in my insurance, I can
8 hopefully lock in -- and it may be guaranteed
9 or may be not -- but I want to work out my
10 funeral right now so my family doesn't have to
11 take care of it. Now, obviously, there's a
12 situation where if I stop making payments on
13 that term policy, it's going to go away.
14 There is no money to fund the preneed.
15 MR. McCORD: That's why he was saying
16 he wouldn't --
17 MR. OTTO Well, yeah. It's just no
18 different than a contingent beneficiary where
19 I can change the beneficiary any time I feel
20 like it.
21 MS. GRINSTON: What I'm hearing
22 everyone say is that the insurance funding,
23 that option is okay. The question is: Should
24 that term-life policy that you use, should it
25 be required to be paid up before you use it

1 as a thing on the policy, and I don't know.
2 CHAIRMAN: Gerry, you had a comment?
3 MR. McCULLOCH: I think it's just
4 this. If the funeral home would want to say,
5 yeah, if you have a policy, it'll apply
6 towards your funeral, but we're not freezing
7 the costs. I wouldn't think anyone would want
8 to do that. That's where the risk would be.
9 MR. McCULLOCH: Yeah.
10 CHAIRMAN: Gerry?
11 MR. KRAUS: As a final-expense policy,
12 I don't see anything wrong with the term life.
13 But for funding a preneed contract, it doesn't
14 make sense. It's a temporary coverage. If
15 you're looking at it as ultimately being there
16 when you die, the premiums are going to be
17 prohibitively expensive in older years, and
18 it's just naturally going to fall away, so it
19 doesn't make any sense to allow term on a
20 guaranteed-contract situation.
21 MR. McCULLOCH: Exactly.
22 CHAIRMAN: Thank you.
23 MS. GRINSTON: So, no term on
24 guaranteed?
25 MR. McCULLOCH: Well, that's -- I

1 mean, to some -- you don't have to do anything
2 about it, it'll take care of itself.
3 MR. OTTO: Yeah. But the funeral home
4 shouldn't be guaranteeing something on a term.
5 MS. GRINSTON: Is there a need at all
6 to restrict the type of insurance plans that
7 can be used to fund a preneed plan?
8 (Several people respond no.)
9 MR. McCULLOCH: That's up to the
10 individuals and the funeral homes.
11 MS. GRINSTON: Take the consensus.
12 CHAIRMAN: Do you want to go vote it
13 individually?
14 MR. BAKER: How do you buy a paid-up
15 term policy unless it's a whole life that's
16 converted to a reduced paid up?
17 MR. McCORD: You can buy a term policy
18 in a single lump-sum payment, sir.
19 MR. BAKER: You can?
20 MR. McCORD: Yes, sir.
21 MR. BAKER: But it's capped the number
22 of years that it's --
23 MR. McCORD: Yes. Yes, sir. The
24 amount and years is capped.
25 MR. BAKER: Right.

1 MR. McCORD: Yes, sir.
2 CHAIRMAN: What if you get some dumb
3 undertaker that does that?
4 (Numerous people talking
5 simultaneously.)
6 MS. EULER: Well, then they can. The
7 market will take care of itself.
8 CHAIRMAN: Yeah, then he's lost his
9 money. He's paid his policy.
10 MR. MAHN: Boy, Don made a point. I
11 was, like, if Don wants to come over to my
12 funeral home and use his term policy to
13 prearrange a funeral and, you know, he ought
14 to be able to do that. But you've got to
15 both understand that the term policy will run
16 out which will null and void the
17 prearrangement. I mean, that's what you're
18 saying; right, Don?
19 MS. GRINSTON: So, if what I'm hearing
20 --
21 MR. MEIERHOFFER: Well, that's great,
22 except you're talking to his kids who said it
23 was paid up. That's the problem with these
24 things.
25 CHAIRMAN: Good point there, too.

1 MR. MAHN: Well, they're going to say
2 a whole-life policy is paid up, too, and what
3 if it's not paid up?
4 MR. MEIERHOFFER: Well, that's what a
5 life-insurance policy is for; it should pay
6 when he dies.
7 MR. MAHN: Right.
8 MR. MEIERHOFFER: But the term policy
9 could have run out; that's my point.
10 MR. MAHN: Right. But what about a
11 whole-life policy that they quit making the
12 payments on and you find out they haven't been
13 making the payments on that, either?
14 MR. McCULLOCH: And they don't have the
15 policy.
16 MS. GRINSTON: Well, am I hearing
17 everyone say that there may not be a need for
18 us to restrict the type of insurance funding
19 that can be used, but that maybe we may need
20 to address this from the notification issue on
21 what is being used as opposed to restricting
22 what is being used?
23 MS. EULER: Yes.
24 MS. GRINSTON: Meaning requiring
25 disclosure in the contract or something of

1 what is being used?
2 MS. EULER: Yes.
3 MR. KRAUS: And maybe a simple
4 suggestion. I would go toward enabling just
5 permanent whole life -- permanent life
6 insurance and annuities that are designed to
7 help you with your contract promise of keeping
8 up with inflation.
9 MS. GRINSTON: What about the
10 potential of producing income?
11 MR. OTTO: Well, we're mixing up trust
12 investments versus --
13 MR. KRAUS: This is just for outright
14 insurance purchases.
15 MS. GRINSTON: Okay.
16 MR. OTTO: Yeah. I've got a
17 life-insurance policy that's term life that
18 pays me $10,000 if I die in the next ten
19 years. I've got it through work, you know.
20 I decide I want to make the beneficiary my
21 funeral home, and I make a deal with my
22 funeral home that this is how I'm going to
23 fund it.
24 MR. McCULLOCH: But if you die in 11
25 years --

1 MR. OTTO: But if I die in 11 years, I
2 don't have any. I don't see anything wrong
3 with that.
4 MR. MAHN: But, most likely, as young
5 as Don is, he's going to have a couple hundred
6 thousand dollar policy, because you always buy
7 more in term and his family has got an
8 opportunity to buy you an even nicer funeral.
9 (Several people talking simultaneously.)
10 MS. GRINSTON: Having said that, Mr.
11 Chairman, can we vote the consensus?
12 CHAIRMAN: I don't think they should
13 sell term. Because I'm saying, like, what if
14 you have a commission. What if the commission
15 sale to some undertaker that has -- however
16 you're doing this. And he goes -- you get
17 $1,000 on a $5,000 policy. The woman dies at
18 80 years old, the coverage ends at 75. It's
19 like he's saying the family comes in and says,
20 "Mother has got a policy with you." "No, she
21 doesn't." "Well, where is it?" You know, "It
22 lapsed, or it didn't lapse, it's just -- that
23 was the end of the policy. At age 75, it
24 expired." Okay. I've still got a thousand
25 bucks in my pocket, going, "Hey," you know.

1 MR. OTTO: That's how insurance works.
2 CHAIRMAN: And I'm telling you, people
3 don't do this. They're going, "I know
4 undertakers and if they can get a dollar,
5 they're going to get a dollar out of
6 something."
7 MR. OTTO: That's how insurance works.
8 CHAIRMAN: You know, if you're going
9 to do something for a person, put it in term
10 where they're going to have something. When
11 they come in there, they've got some -- whole.
12 I mean, whole. You'd have a policy that's
13 paid up in full and you've got the money, and
14 everybody is happy.
15 MR. MAHN: But you're saying the
16 funeral home -- like, Don Otto walks into a
17 funeral home and he wants to just work out a
18 deal where if something happens to him while
19 he still has young children and everything, he
20 wants his term policy to pay for his funeral,
21 does that funeral home have to say, "Well, I
22 can't accept it"? I'm going to take all these
23 shortfalls over here where I'm getting smoked,
24 but I like your couple-hundred-thousand-dollar
25 policy, but I'm not going to take that?

1 CHAIRMAN: How much commission do I
2 get?
3 MR. MAHN: He already owns the policy,
4 he just wants to use it --
5 CHAIRMAN: We're talking about buying
6 -- selling insurance --
7 MR. MAHN: He was talking about he
8 already had the policy, he was just wanted to
9 come in and fill out --
10 CHAIRMAN: What funeral home do you
11 normally use, Don?
12 MR. OTTO: Yeah, but I do -- through
13 my job, I've got, like, it's about a $10,000
14 term-life policy that's good, and I can name
15 the beneficiary. What if I wanted to go to a
16 funeral home and say --
17 MR. BAKER: Chris and I have them
18 because we're the ones that pays.
19 MR. OTTO: Yeah.
20 (Several people talking simultaneously.)
21 MR. STALTER: Yeah. But your point is
22 whether the funeral home should be selling
23 term as a way of funding up these contracts.
24 It's just a little different from what Don
25 has. I mean --

1 CHAIRMAN: Okay. Are we going to
2 restrict it, yea or nay? Bill?
3 MR. STALTER: Yeah. Restrict it from
4 -- that the funeral home cannot sell term.
5 CHAIRMAN: Okay. Darlene?
6 MS. RUSSELL: You're talking just term
7 right now? We're not talking of the whole --
8 just restricting term? I have no problem with
9 that.
10 MR. TRIMM: Yea.
11 CHAIRMAN: You want to restrict it;
12 correct? Okay.
13 MR. MAHN: And you're talking about the
14 guarantee a funeral price or nonguarantee?
15 CHAIRMAN: Well, you would be
16 guaranteeing up --
17 MR. MAHN: Well, if I'm an insurance
18 agent, also, and somebody comes in my funeral
19 home, a young person that has four or five
20 kids, you're telling me I can't sell him a
21 term policy because I own a funeral home?
22 MS. GRINSTON: That's the vote.
23 CHAIRMAN: Right.
24 MR. MAHN: Even if it has nothing to
25 do with the guaranteeing the funeral?

1 MS. GRINSTON: No. No. No. If it's
2 connected -- if it's going to be used to fund a
3 preneed contract. If you're just selling him
4 term life just because --
5 MR. MAHN: To guarantee the contract?
6 Okay. Whole life.
7 CHAIRMAN: Okay.
8 REPRESENTATIVE MEADOWS: I'm the same
9 way as the rest of them.
10 CHAIRMAN: All right.
11 MS. EULER: Ditto.
12 MR. FRAKER: Same way.
13 MS. GERSTEIN: (Inaudible.)
14 MR. McCORD: Yes.
15 MR. WEAVER: Yes.
16 MR. McCULLOCH: I don't understand the
17 question.
18 CHAIRMAN: What we're saying is we're
19 going to -- you cannot -- a person is not
20 going to be able to walk in your funeral home
21 and you sell them term insurance on a funeral.
22 MR. McCULLOCH: If I'm an insurance
23 agent, I'll sell whatever I wish to sell them.
24 CHAIRMAN: No. I'm saying, like, to
25 guarantee a plan.

1 MS. GRINSTON: To fund the preneed
2 contract.
3 CHAIRMAN: To fund the preneed
4 contract.
5 MR. McCULLOCH: And if I'm a funeral
6 director, I'll fund it if I want to.
7 MS. GRINSTON: Got it.
8 MR. McCULLOCH: You see what I'm
9 saying?
10 MS. GRINSTON: I got it.
11 MR. McCULLOCH: So, why would you guys
12 say no to that? You can do whatever you
13 want. It's your business. If you want to
14 fund it, fund it. If you want to take that
15 risk, take it. I'm not sure why you would
16 without some specifics in there, like if it
17 drops off in ten years, you say if you die in
18 11, this deal is no good. But up until that
19 point, what's wrong with that? Think about it.
20 CHAIRMAN: Well, we're taking a vote.
21 Yea or nay?
22 McCULLOCH: I'd say that you should be
23 able to buy the term.
24 MR. OTTO: If I'm a funeral director --
25 CHAIRMAN: Yea or nay?

1 MR. OTTO: And that's -- I understand
2 that. If I'm a funeral director and I have --
3 CHAIRMAN: Well, we're not questioning.
4 You've got to vote like a ballot.
5 MR. OTTO: Well, I'm about to be a
6 hanging chad here, I think. I don't think you
7 should restrict an insurance agent from
8 selling an insurance product with the
9 beneficiary the purchaser of the policy wants
10 to have.
11 CHAIRMAN: But we're talking about
12 guaranteeing a funeral.
13 MS. GRINSTON: Yeah. He's saying
14 either way.
15 CHAIRMAN: Either way, yea or nay?
16 MS. GRINSTON: I think that's a no.
17 MR. OTTO: I think that should be
18 allowed.
19 CHAIRMAN: Okay.
20 MR. MEIERHOFFER: Nay.
21 CHAIRMAN: Okay. The nays have it.
22 MS. GRINSTON: No, they don't.
23 CHAIRMAN: I mean, the ayes have it.
24 All right.
25 MS. GRINSTON: He's got it. Okay.

1 And, again, we'll pull the language in so
2 everyone else can take a look at that. Since
3 we're getting close to our release time, if
4 you will, can we just do something. I don't
5 know how long this will take, but let's just
6 start the discussion. Thirty-one on the July
7 8th agenda. We're going to move out of trust
8 for just a second. Thirty-one on the July 8th
9 agenda, and we are skipping topics, but I
10 think we need to. When this bill went
11 through, I think if it wasn't last year, it
12 was the year before that, I think, there was a
13 suggestion about requiring bonding or
14 insurance for preneed providers. I'm talking
15 about providers right now. The suggestion was
16 that in cases of them and if they went out of
17 business or something else happened, or if the
18 provider collecting payment did something with
19 the money, there may be a bonding or an
20 insurance something to back that up. Should
21 there be a requirement for bond or insurance
22 for preneed providers?
23 CHAIRMAN: Don?
24 MR. OTTO: No.
25 MS. GRINSTON: Thank you, sir.

1 CHAIRMAN: That was the last question,
2 damn it.
3 MR. OTTO: As we discovered, although
4 that sounded good to start with, the entity
5 that was pushing that bill a couple years ago
6 was NPS. The reason being is that would have
7 prevented funeral homes from selling preneed
8 as a seller. They would have had to have
9 gone to NPS. That bond, it sounds good,
10 something if you just throw it out there, but
11 you can't get it. The bond does not exist.
12 MR. MAHN: No. You can't get it.
13 (Several people talking simultaneously.)
14 MS. GRINSTON: No.
15 CHAIRMAN: All right. No. Everybody
16 agree?
17 (Unanimous voice vote for approval.)
18 MS. GRINSTON: We're going to switch
19 this over to the other side. Preneed sellers,
20 I think it's the exact same discussion.
21 MR. OTTO: It's the same -- exact same
22 thing.
23 MS. GRINSTON: Consensus of the group,
24 binding insurance for preneed sellers?
25 (Numerous people say no.)

1 CHAIRMAN: Everybody say no?
2 (Unanimous voice vote for disapproval.)
3 CHAIRMAN: Okay.
4 MS. GRINSTON: Let's do #4, the last
5 one today, on the July 15th agenda.
6 Notification to consumers of preneed-fund
7 payments -- and I'm sorry. July 15th -- yeah.
8 Number 4. Notification to consumers of
9 preneed-fund payments, deposits, interest, or
10 account statements. The suggestion was made
11 that consumers should know, number one, when a
12 payment has been made into trust for their
13 contract. On that issue, when the seller has
14 put money into trust on their individual
15 contract.
16 CHAIRMAN: Comment? Don?
17 MR. OTTO: I think what the concern
18 was is that the consumer needs to make sure
19 that the money that they have paid, perhaps
20 dropping it off right at their local funeral
21 home, has made it into the trust that's
22 located or that's listed on their contract.
23 Perhaps you should split this out. I think
24 it's dangerous if you necessarily report
25 interest income, particularly on whether or

1 not we reach a consensus on whether that
2 income and interest would be sloughed off or
3 not. But as to the consumer's payments being
4 received by the trust, the Missouri Funeral
5 Trust will likely do that anyway, whether
6 that's the -- but I'm not sure it's -- we'd
7 like that clarified in the law, that that's
8 permissible. Whether it's required or not, we
9 want to make sure that it's permissible.
10 MS. GRINSTON: Okay.
11 CHAIRMAN: Mike?
12 MR. MEIERHOFFER: I think it's great
13 that we do that. It's just not practical to
14 do it every time that a payment is made.
15 You're talking --
16 MR. OTTO: Oh, I'm thinking once a
17 year.
18 MR. MEIERHOFFER: That's my point.
19 MR. OTTO: Yeah.
20 MR. MEIERHOFFER: Do you want to do it
21 maybe once a year, and even that will confuse
22 a lot of people, but it's not a bad thing to
23 do.
24 MS. GRINSTON: So, the suggestion is an
25 annual report to consumers of what has been

1 put into trust --
2 MR. MEIERHOFFER: What has been placed
3 into trust or the balance.
4 MR. OTTO: Excuse me. What has been
5 received.
6 MS. EULER: No.
7 MR. OTTO: Well, here's the problem
8 I've got is the way we're worded right now,
9 $5,000 funeral -- a $5,000 funeral where
10 you're paying $100 a month; okay? Make it a
11 $6,000 funeral -- $6,000 funeral, the consumer
12 is paying $100 a month. One year later, zero
13 would have been put in the trust; okay?
14 Because the seller gets the first 20 percent
15 of the money. So, if you just tell the
16 consumer how much money has been put into the
17 trust, they'll say zero has been put in the
18 trust. But what the consumer needs to know is
19 my payments for the past year have been
20 received by the seller and accounted for, not
21 just deposited into the trust.
22 MR. MAHN: Shouldn't 80 percent of each
23 payment be put in trust, 20 percent of the
24 payment kept out?
25 MS. EULER: No.

1 MR. MEIERHOFFER: That's not the way
2 the law works.
3 MR. OTTO: That's not how the law is.
4 MS. EULER: Right now.
5 MR. MAHN: The working law. Okay.
6 CHAIRMAN: Sharon?
7 MS. EULER: I think it's important
8 that the consumer receive notice when money is
9 deposited into the trust. There are going to
10 be some situations where people are paying
11 $100 a month, but there are going to be a lot
12 of situations where people have written a
13 check for $10,000 or for $20,000, and I think
14 that they need confirmation that that money
15 has been placed into trust.
16 MR. OTTO: I think they need more.
17 I'm not saying -- I agree that if money is
18 deposited in the trust, they need an account,
19 they need a notice. But I'm saying we should
20 step -- do more than that. Not just the
21 money that's been deposited into trust, but
22 any money that has been paid to the seller,
23 the consumer needs to know, I got the check.
24 MS. EULER: And that's a separate
25 issue.

1 MR. McCULLOCH: Well, who's going to
2 notify and who's going to pay for that
3 notification?
4 MR. STALTER: We do that. Our
5 administration company does that from one of
6 the banks. And, I mean, it is a cost to it.
7 And, you know, sometimes we try to figure out
8 who should bear that, whether it be the seller
9 or the consumers. And, actually, we have a
10 push-back from consumers. We're charging
11 $3.50 a statement. They still don't want to
12 pay for it. And, truthfully, you know, they
13 outsource it to us because they don't have the
14 software to do that. So, I mean, it is --
15 it's a problem.
16 CHAIRMAN: Well, it's getting close to
17 4:30. Let's table this and we'll take this up
18 first at the next meeting. You all can think
19 about what you want to do. Maybe we can get
20 some -- Gerry?
21 MR. KRAUS: Just one quick comment.
22 We have dealt with this issue because of
23 funeral scandals in four different
24 legislatures during this session. And where
25 we ended up on most of them was on the

1 insurance side, we allowed -- we wrote the
2 requirements such that if the -- when the
3 insurance companies delivered the policy, that
4 would satisfy as notice that their money got
5 into the insurance company. And the
6 subsequent billing, if they were making
7 payments, was sufficient notice that they were
8 keeping track of what was going on on the
9 modal pay side. On the trust side, we set an
10 initial deposit requirement and thereafter a
11 periodic report. Some of these states went to
12 quarterly reports, but most of them went to
13 annual.
14 CHAIRMAN: That gives us some idea
15 about what the --
16 MR. OTTO: We already do the initial
17 one. We do an initial one right now.
18 CHAIRMAN: Okay.
19 MR. OTTO: We'd like to do an annual
20 one, as well. We'd like to make it clear in
21 the law that we're not breaking our fiduciary
22 duty to our providers by doing that directly
23 to the purchaser.
24 CHAIRMAN: Bill, would you be able to
25 get some costs on what that would be, like per

1 --

2 MR. STALTER: I think it's going to

3 differ, you know. We will make some inquiries

4 and see what other people charge. I've heard,

5 like, from $16 a statement, you know. We

6 charge $3.50, but we don't make any money off

7 of it when we do it that cheap.

8 CHAIRMAN: Yeah. You know, you're

9 talking a financial burden. All right. John?

10 MR. McCULLOCH: Just so you know, and

11 I assume everybody does it the same way, you

12 have to have on there who the trustee is on

13 the -- and they can call and check on their

14 account any day -- every day, if they want to.

15 MS. GRINSTON: That's a suggestion.

16 CHAIRMAN: Okay. Well, let's think

17 about that and I appreciate that. I

18 appreciate everybody's time, energy they put

19 in. Those notebooks are huge and you've got

20 to go read those, and that's a time-consuming

21 effort. Once again, thanks each and every one

22 of you, and we'll see you a week from Thursday.

23 MS. DUNN: Okay. Clarification -- the

24 next meeting is next Thursday, then the 29th,

25 which is a Tuesday. Then we skip a week

because we didn't have a meeting-location site, and then August 12th. So, 24, 29, August 12.

CHAIRMAN: And 12th is, like, an optional, day if we don't get it all done, so --

MS. DUNN: And then August 20th is our Board meeting open session at the Lake.

MR. OTTO: In case anyone is confused, wasn't August 12th originally a Board meeting at the Lake at one point in time?

MS. DUNN: Uh-huh.

MR. OTTO: So, everyone just needs to check their calendar because I had August 12th being at the Country Club, and that's no longer the case.

MS. DUNN: That's true. August 20th.

MR. MEIERHOFFER: Is it going to be here?

MR. OTTO: It's here.

MS. DUNN: August 20th at the Lake.

CHAIRMAN: Twelfth, here.

MR. OTTO: Twelfth, here.

MS. DUNN: Yes.

MR. OTTO: Twentieth at the Lake.

1 MS. DUNN: Yes.
2 CHAIRMAN: All the rest is like --
3 yeah. The meetings -- the next three meetings
4 are all here.
5 MS. DUNN: Right. The 24th is a
6 Thursday, the 29th is a Tuesday, and August
7 12th is a Tuesday, and August 20th is a
8 Wednesday.
9 MS. GERSTEIN: What's happening August
10 12th?
11 MS. EULER: The meeting.
12 MS. DUNN: The meeting here. It's all
13 the 436 meetings.
14 MS. GRINSTON: Not the Board meeting.
15 CHAIRMAN: Yeah. And it's an optional
16 meeting. We may not need it.
17 MS. DUNN: See, we have to keep
18 meeting until we get done.
19 MR. OTTO: I would suggest -- I mean,
20 there is confusion about whether next week's
21 meeting is Tuesday or Thursday because one
22 piece of paper that was handed out said
23 Tuesday.
24 MS. DUNN: I've got them on the Web
25 site, too.

1 MR. OTTO: I know. But I'm going to
2 send an e-mail out to all our folks --
3 MS. DUNN: Okay.
4 MR. OTTO: -- to make sure that they
5 understand it's Thursday.
6 MS. DUNN: Okay.
7 MR. OTTO: If you have -- I mean,
8 whoever has the capability of e-mailing it out
9 saying -- they should do that.
10 MS. GRINSTON: Thank you, everyone.
11 CHAIRMAN: Nine-thirty. Thank you.
12 (Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on July 15, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 8th day of August, 2008.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR