MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

MISSOURI COUNCIL OF SCHOOL ADMINISTRATORS
3550 AMAZONAS DRIVE
JEFFERSON CITY, MISSOURI 65102

JULY 15, 2008
9:45 A.M. - 4:30 P.M.
CHAIRMAN: I appreciate everybody coming today, and I'm going to be introducing a few people today. David Broeker, who is the head of the Division of Professional Registration, he is here with us today. We've got Connie Clarkston, who is the head of -- she is in the Division and over legislation; have I got that right this time? And Connie is going to give us a brief overview, again, of what we're doing today. I've got Kim Grinston, the attorney: Becky Dunn, executive secretary; Lori Hayes, cur inspector; and I'm going to give the roll call for the Board.

Todd Mahn?

MR. MAHN: Here.
CHAIRMAN: Gary Fraker?
MR. FRAKER: Here.
CHAIRMAN: John McCulloch?
MR. MCCULLOCH: Here.
CHAIRMAN: Joy Gerstein?
MS. GERSTEIN: Present.
CHAIRMAN: Okay. And Vernon Martin isn't here and present today. And, once again, I want to thank you for all coming, you know. We had -- this is round two. You can
see that there has been casualties because
there's not as many people here, so,
hopefully, you all can make it through today
and come up with a third meeting. Connie, I'm
going to let you go ahead and kind of give an
overview of what we're doing again.

MS. CLARKSTON: As you know, the joint
committee was established by the passage of
Senate Bill 788. In preparation for that
joint committee to meet, several of us were
called to Senator Scott's office with the
presence of Representative Wasson. They have
asked that this Board coordinate efforts to
bring to them a proposal that has things that
everyone can agree on in Chapter 436, and then
identify those areas that they will have to
pay special attention to. Given that charge,
the Board then went back to the Division and
we sat down together to come up with
membership and try to identify different areas
of representation being on this Board. Many
of you wear dual hats. Many of you have
various interests in the preneed industry and
the funeral industry, and we tried to identify
by entity individuals that should be here.
So, because someone is at the table may not necessarily be that they’re here for the obvious reason. They’re here for -- and I’m going to use Darlene, in particular. She’s here representing a preneed seller. She has had some experience with the Board because she was previously Board staff, so she can bring a lot to the table. State regulators are here, obviously, for the various reasons that they oversee the regulations of the statutes. We’ve been very impressed with public participation. We certainly encourage that today. Again, we have comment sheets available. As we go through items, we have tried to limit the amount of dialogue from the public, but certainly are very interested in what you have to say. The comment sheets can be used. My e-mail is available on those sheets. There will a time later in the day where public comments can be taken at greater length versus topic discussions as we go. If anyone has any questions about how we have arrived where we’re at today, we certainly encourage those questions and we will try to provide answers to you.
MS. DUNN: Thanks, Connie.

CHAIRMAN: Okay. And what we're going to do is we're going to go around the roundtable here and we're going to start with Larry McCord, and he's going to introduce himself, and then we'll just work our way around the table. And state your name, what part of, you know, the state you're from, and who you represent, if you would, please.

(The members introduce themselves.)

CHAIRMAN: Now, folks, before we start today, I want to identify Todd is a member of the Board -- Todd Mahn, and John McCulloch is a member of the Board, too. So, they've represented themselves as funeral home or American Prearranged. Now, there has been some Board members that got on me for kind of not conducting the meeting properly last time, so if you, the public, will wait to make your comments at the end, because I just kind of let you -- I'm a nice guy, and I wanted you -- you know. I'm running for coroner back home, and I need the votes. So, anyway, the committee will discuss the topic, then we will ask for comments from the public, and then
we'll go from there. Also, the meeting is
recorded today with a court reporter, and when
the public comes up, identify yourself at the
podium, who you are, and then you may speak.
Oh, I've got a reminder here. Would you like
to start over here and we'll introduce
ourselves out in the public?
(Members of the public introduce
themselves.)

CHAIRMAN: Thank you. We've got
everybody. All right. Once again, I want to
tell you how much we appreciate you being
here, how much time you put in going through
the book, and you guys are great, and we do
appreciate it. So, I'm going to turn it over
to our mediator, Kim.

MS. GRINSTON: Good morning, everybody.
First, I do want to say thank you to everybody
who helped us last week and what we were able
to get done last week. I think you all
tackled a lot of information, a lot of
concepts, and I think all of the input was
very valuable, and I can tell you from the
Division level, from the Board level, we
really do appreciate everyone that helped
participate in the process because I thought
we were able to do this in a very orderly
way. We are in the process of taking what
you all voted on as a consensus last week and
putting it into language that we hope to have
something available probably at the end of
this week, if not early next week, so that you
all can start looking at the language that we
have agreed on so far. I'm sorry. The
language that includes the concepts that we
have agreed on so far, and so, Connie and I
are going to be coordinating that probably
next week or later on this week and getting it
out for you all to review and to give comments
and suggestions. Having said that, as we talk
about the committee and something that I
talked to Connie about and wanted to echo is
that we understand that there are some
concerns about the makeup of the committee and
who is on the committee that's been expressed
to us this morning. Don expressed that to us.
And if anyone has any questions about, you
know, who is being represented on the
commission or anything else, I do want to say
for the record that we invited small funeral
directors, large funeral directors; we have one person who is a representative from the insurance side; we have regulators at the table; we've got our consumer groups at the table; we've got interested parties at the table, parties who have just had a voice in 436 and who have helped and given the Board some really good suggestions. Those people are here. Now, last week I know some of our smaller funeral directors that were -- and I say smaller, I mean in terms of possibly numbers -- that were invited, were unable to attend. We are very glad that some of them are here today. But if there are any questions about the membership and/or the makeup. Of course, we have all of our Board members seated, and, excluding our public member, all of them are funeral directors.

So, I think we've got a group that's probably mostly funeral directors. How many funeral directors -- just so we can do this -- how many funeral directors are at the table -- at the roundtable? Hi, Lori -- thank you, Lori -- who is also our inspector. And insurance people, how many people do we have
representing insurance people -- at the table?

I'm sorry; I'm joking. Thank you. At the
table, the roundtable, how many insurance
people, again, just by a show of hands. Thank
you. John is seated as a Board member, even
though we understand he's with APS and he also
has the insurance side. And I just wanted to
make sure that was clear and clarified because
we understand that there have been some
questions raised about persons and
invitations. I was telling Don this morning
that we've gotten criticized because the group
was too big, and then we were told this
morning that we needed to add people to make
it a bit larger. But we want to make sure if
there are any questions, comments, or
concerns, comment cards -- if you're a member
of the public, those comments will come back
and get circulated to everyone, as well. My
understanding is that the chairman will be
opening up the floor for public discussion so
that if you are a small funeral home or large
funeral home, an insurance person, a
regulator, anyone who would like to add
comments to the discussion, I think that the
floor is going to be opened for you to do that. Having said that, I think we probably need to start with a topic that may seem like it should have been first, but I think we needed to set the framework last week, and this week, I think we're going to have to tackle some of the more difficult issues. Where I would like to start, and you guys know I jumped around last week, is #41 in our agenda.

MS. DUNN: From last week?

MS. GRINSTON: From this week, yes.

MS. DUNN: Okay. I was just trying to clarify #41 was on the July 8th agenda.

MS. GRINSTON: I'm sorry. I'm sorry.

Let's look at #41 from the July 8th agenda -- I apologize -- which is the definition of a preneed contract. In the room today is the executive director for the Office of Endowed Care Cemeteries. I understand that there are some cemetery questions that may come up as we discuss this topic. I am going to ask, and we talked to the chairman about this, we are going to have -- when we discuss some of the cemetery issues, we are going to invite in
more of the cemetery people. And so, for
ing. So, for
right now, I'd like to guide our discussion,
right now, I'd like to guide our discussion,
but we're sort of going to leave the cemetery
portions of this alone for just a minute --
for just a week or so to make sure that we
can get some of our cemetery people in to talk
to us about some of their thoughts from the
cemetery side, but, again, we do have the
executive director from the Office of Endowed
Care Cemeteries here, because I think this
conversation may be instructive for him, as
well. Right now, our definition of preneed
contract, if we can -- I think everyone has a
copy of 436. If we can look at 436.005 sub
5. I think I would like to suggest that this
committee look to see if this definition is
adequate. I know there were some suggestions
that were made last week about some of the
wording because we thought that it may -- it
needed to be clarified and, also, you all made
some decisions about insurance policies that
would be regulated, and I wanted to make sure
that this definition is in line with the
consensus of the group. So, if we could look
at the definition of preneed contract under
436.005 sub 5, and possibly take suggestions on how that needs to be changed or if it needs to be changed at all. Is it clear enough, not clear enough? Is it confusing, conflicting, and is it in line with the insurance issues and other issues that we talked about last week? Having said that, Mr. Chairman, I would like to open it up to the floor for discussion. It's on page -- well, I don't know if you guys have the full rule book, so I won't give a page number, but it should be first page of 436 and it's in the definition section and, again, it's subparagraph 5 which defines preneed contract.

CHAIRMAN: And just a reminder, if you hold your red card up or put it in front of your name, you'll be acknowledged.

MS. DUNN: And, panel, you either have a book like this or you have a copy of the chapter that we can get for you.

CHAIRMAN: Don?

MR. OTTO: We talked about it briefly last time, but one issue with the definition is the phrase "current payment of money or other property," particularly when you're
dealing with an insurance assigning or a
conditional beneficiary. Is that the current
payment money or property? Arguably, no. And
whichever way you go on that, it would be nice
if it were clear. I can see arguments both
ways, but it would be nice if the definition
made it clear that an assignment that's not
irrevocable is not the current payment of
money or -- if you're -- because if you get
that later on, if the funeral home is the
beneficiary, it says if the funeral home is a
beneficiary, then that kicks in 436 on a
preneed contract. But what if the beneficiary
is not irrevocable in most cases -- you know,
the owner of the policy can change that
beneficiary at any time. Is that the current
payment of money or property?

CHAIRMAN: Bill?

MR. STALTER: Yes. We've kind of seen
how the preneed contract has evolved over the
last 20 years, and I think when this was
written, we were thinking that it was always
going to be a trust-funded contract. So, I
mean, one aspect of this is, you know, what
should trigger the regulation of the
transaction? Is it consideration in any form
to the funeral home or funeral director? And
that can take the form of an assignment or the
payment of commissions or the payment of
money. But at some point, it is, you know,
okay, we need to trigger when this transaction
should come under the scope of the regulation
by the Board or another agency, but, also, you
know, what is -- I mean, the preneed contract
and, you know, we kind of see this out in
play in the industry about guaranteed versus
nonguaranteed, you know. If you’ve got a
nonguarantee that’s 100 percent and there’s no
consideration paid to the funeral home, is
that, you know, a regulated transaction, as
well? But, you know, 436 was pretty much
written for a guaranteed funeral contract, and
it’s really hard for a smaller funeral home to
do anything other than that; when we talk
about the joint contract, we’ll have a problem
with that, as well. So, you know, there
should be some kind of -- I’m going to take a
few steps back from this and think, you know,
yes, the guaranteed contract, I mean, really
is a transaction that needs to be regulated.
If we talk about a nonguaranteed that's 100 percent, how do we -- you know, how do we give more latitude in that and provide safeguards? I don't know the answers yet, you know, but it is -- you know, we've kind of defined something here, but it's really changed since then. So --

CHAIRMAN: Sharon?

MS. EULER: I'm just going to rewind the group that last week we talked about one of the ways to define a preneed contract as by its funding source, that it could have three separate funding sources. One of the things that I've encountered problems with this particular version -- this particular language is that it's confusing, it's hard to understand, and I think a more simple, straightforward definition of what a preneed contract is is in order.

MR. WARREN: Mark Warren. We talked about this a little last time about clarification with respect to the fact that the insurance industry is regulated by the Department of Insurance with respect to the sale of preneed policies or insurance-funded
preneed policies as opposed to the Board of Embalmers and Funeral Directors. The language in here now probably could be made a little more clear.

CHAIRMAN: Go ahead.

MS. GRINSTON: That was going to be my question. And maybe someone can help educate me for purposes of my understanding. When you are selling -- if you're an insurance company and you're selling a "preneed policy," tell me what documents you have. I know we've looked at some policies. But is there an insurance policy and a preneed contract that goes with it? Are those two generally combined in one document, or will we see two documents when we have an insurance company who sells a preneed contract through an insurance-funded mechanism?

MR. WARREN: If you don't mind, would you mind if I had Gerry answer that question, since he's involved with that every day?

CHAIRMAN: That would fine. Gerry?

MR. KRAUS: Gerry Kraus, Homesteader's. The question, as I understood it is, what are the documents that are normally involved in the transaction on a
life-insurance-funded preneed? Typically, the family goes to the funeral home, selects the goods and services, and they complete, if they’re going to get a guaranteed contract, a formal preneed contract that talks about that guarantee. Then they go into the funding phase, and if it’s going to be funded by insurance, then a life-insurance agent would take out an application, and with that same consumer, fill out a life-insurance application. And then after that was sent to the office, a life-insurance policy would follow to that person. If it were a nonguaranteed transaction, it would be about the same thing, except there would be a nonguaranteed contract.

MR. OTTO: And who would the owner and beneficiaries be?

MR. KRAUS: If it were a noncontract situation, as some funeral homes don’t want a contract at all, they could just fill out a goods and services form, kind of an at-need funeral services and merchandise form, and could also sell the family a policy to help them fund those wishes, and just put the
noncontract form in the file.

CHAIRMAN: Darlene? Thank you, Gerry.

MS. RUSSELL: I'll show my age and say that probably when the preneed statute went into effect, the Board took a position at that time and sent out a memo saying that any assignment or anything in consideration for preneed became a contract -- needed a contract. If you took an assignment, the funeral home was named as the owner or beneficiary, it became preneed. And in our case with our company, we provide a contract for the funeral home to use because they're the seller. So, if it's insurance funded, you still need a preneed contract, you need a statement of funeral goods and services, and you need an insurance application, you know. And if the funeral home is the -- going to be named the owner, you will have an assignment of irrevocability sometimes. But I think if you'll look in the files, you'll find a clear letter from Sara Rittman, who used to be the assistant attorney general, saying the Board took the position regardless if it was an assignment, or any time the funeral home was...
named as the beneficiary or owner, it became
preneed and required a preneed contract.

CHAIRMAN: Well, let me point this out,
though, Darlene. That didn’t get to be a rule
and we can’t make rules under 436, so, you
know, how did anybody in the public or the
industry know? You don’t, so --

MS. RUSSELL: Yeah. And that’s sad
because that -- I think the Board was on the
right track in protecting the consumer, and I
know the issue of rule making, hopefully, will
go away now and you’ll have that ability. But
to protect the consumer, if there’s an
assignment, if you’re assigned an insurance
policy, there should be something in writing
as to what that is for.

CHAIRMAN: For your funeral. Okay.
Anybody else? If you all in the public would
like to speak? Gerry?

MR. KRAUS: Gerry Kraus.
Homesteader’s. A couple of comments about the
specific definition. I think in the
second-from-the-last line, there’s a phrase in
the middle that says, "Including payment of
proceeds from contracts of insurance." I
think that's an attempt to sweep in final expense and make it somehow a preneed contract, and I don't think that clause fits and it needs to come out because even if a life-insurance policy is paid to a provider doesn't make it a preneed contract. So, I think that is an ill-fitting piece there. And in the last -- more toward the end, it says, "Making the provider the owner or beneficiary." There are a lot of regulators that are banning funeral-home ownership of policies, and, similarly, a lot of regulators are banning funeral-home beneficiary designations. Those have been trends for 20 years. So, I urge you not to go in those directions and limit the funeral-home interest in the life-insurance policy to the assignment.

CHAIRMAN: Why are they banning that, Gerry?

MR. KRAUS: Well, arguably, some regulators feel that funeral directors are better off if their clients are dead, so, let's not have any -- and valid or not, let's not have any inducement for the funeral home to make the policy good. I know it's a wild
outside argument, but there is just no reason
for anyone to come in between the consumer on
the ownership of a policy, so let's not let
the funeral home go there. If we have to
have that policy removed for some type of
public-assistance program like Medicaid --
removed from the consumer, that's where a
trust comes into play. We use a dry trust
that holds the consumers' rights. It's a
simple trust that any company can -- any
insurance company can devise fairly simply
with an attorney. They just designate a
couple of employees that will hold the rights
until death. It works for Medicaid purposes.
We've worked with Health Care Financing
Administration in Washington to kind of grease
this track, so they are pretty much nationwide
accepting of this irrevocable assignment into
a trust through a funeral home, so the funeral
home's interest and the preneed transaction
can be secured, so we have a solution for that
instance in which will let someone else other
than the policy owner step in and own the
rights. But even in those transactions, the
policy owner still has control -- still owns
the policy.

MR. STALTER: I might take this even
-- I mean, talk about what Gerry -- take it
from a context of insurance over the trust and
talk about financial situations. over the
years, some of them looked at trying to create
what they'd say a small type of trust that
would be used for final expenses or for the
funeral. The problem that we have with the
IRS and the SEC is that there has to be kind
of a contract or a nexus between the fund and
its purpose or what it's going to be used for.
in terms like -- in other words, what the --
let's just say what the Securities Exchange
looks at. When you pull these funds and
you're going to use it for this purpose, they
want to make sure it's not an investment
vehicle, but, rather, that it's going to be
used for funeral expenses. And so, they look
for a contract. Within the NPS, oh, I guess,
program, it is an associate agreement. In
other words, not only the preneed contract,
but some kind of guarantee that that fund is
going to be used for that purpose. So, we're
always kind of -- when we talk about
portability or what this fund is going to be used for, in a sense, to satisfy the federal regulations, we have to tie that -- the purpose of that down. At the same time, we have to look at, you know, in terms of limiting the funeral-director's control of the fund. And in a sense, what we look at -- I mean, what the insurance companies do is we found a way to dedicate the fund for its purpose, but we have to give the funeral director so much control -- in other words, to be able to access the fund at the proper time. And whether -- at some point when the funeral director has control of the trust to withdraw it, then it becomes a preneed contract. But if it's a fund that's just dedicated for that purpose that can't be used until at-need services, then we would say it's probably not a preneed contract.

CHAIRMAN: Okay. Sharon. Thank you.

MS. EULER: Because the world is constantly changing, it seems to me like the best way to define preneed contract would be not defining it by its funding mechanism and handle the funding mechanism in another
section so that that's easy to change in the future, and, rather, we define a preneed contract by what it is.

MS. GRINSTON: I was just going to say the exact same thing. Would it be possible, since the concern appears to be what I'm hearing is how do we protect the consumer, you know, once -- if you have an insurance policy assigned or something of the sort? What if preneed contract was just defined as what a preneed contract is, and this is just not a suggestion, but a thought. Maybe removing this language that says except for contracts and, you know, all of that, because it is very confusing. Having some language that says that if an insurance policy is assigned or, you know, a funeral home or a provider is named as beneficiary, it shall comply with the following, and pull that out from the definition of what a preneed contract is. And then I think with -- consistent with what you talked about last week, to clarify in 436 that insurance contracts are regulated by insurance; however, if you assign it, there must be a contract that has the following
protections and, again, removing that from the
general definition. I still think we have to
address Don's issue on current payment, but
I'm wondering if we could separate those two.

CHAIRMAN: Sharon?

MS. EULER: I agree. I think the
definition of a preneed contract in the
definition section should simply say it's a
contract to provide for funeral goods and
services, however we want to define that,
before the time of need. Make it a very
short and sweet, simple definition, and all of
the funding aspects and all of the
requirements can be dealt with in a separate
section.

MS. GRINSTON: So -- and I don't know
if that goes to Don's issue about current
payment of money.

MR. OTTO: Well, and that's another --
that's something that, you know, you just --
for that issue, you just flat out say that an
assignment triggers 436. You don't -- you
know, you don't have to worry about the
language of current payment of money. I mean,
that begs the question of what's the current
payment of money. You can just say if you've
1 got an insurance policy where the funeral home
2 is the owner or the beneficiary of the policy,
3 whether or not that's contingent or whether or
4 not that's irrevocable, that triggers Section
5 436.035 through .036 or whatever it is.
6 MS. GRINSTON: And are you saying
7 keeping the language that we don't regulate
8 insurance contracts, that insurance contracts
9 -- having some provisions in 436 that would
10 relate to the preneed portion of it, but that
11 insurance is regulated by insurance?
12 MR. OTTO: Well, yeah. And it's
13 accompanied -- I can't let a statement that
14 went by just a little bit earlier as to a
15 rationale for not having this regulated
16 because the implication the funeral directors
17 might go out and start killing people to get
18 their business. I can't let that go without
19 saying that that's pretty repugnant. And if
20 we're going to base any rules on that kind of
21 rationale, we might as well just get rid of
22 life insurance all together. The problem that
23 I've seen on a fairly regular basis from
24 people calling me -- attorneys calling me up
and saying what are we supposed to do is where
a consumer has made a funeral home a
beneficiary of a life-insurance policy, in
some instances, unbeknownst to the funeral
home; okay? They didn't know they were the
beneficiary of this insurance policy. So, you
know, whether or not this was appropriate with
the insurance regulations or not is a whole
other matter, but an insurance policy pops up
and, you know, final-need expenses is life
insurance, which it is. And so, what do you
do there? There is no preneed contract.

MR. MEHRHOFFER: With the knowledge
of the funeral home?

MR. OTTO: Yeah, with the knowledge of
the funeral home is one thing to perhaps stick
in there is with the knowledge of the funeral
home because, you know, was this just a gift
to the funeral director, you know? You helped
me across the street 20 years ago and now I
just want to give you $5,000 for the heck of
it and you don't have to give me anything or
not?

MS. GRINSTON: Can I add something
that's slightly related? I'm going to pull on
my insurance hat. I know when I was with the
insurance division of the department that one
of the things that we saw is what happens when
you assign or you make a funeral home a
beneficiary, the life-insurance policy is
$20,000, the funeral is $7,000; who gets the
rest of that money? And, of course, the
insurance company said, "I don't have
authority to pay anyone else," and you know,
insurance didn't have the ability to tell, you
know, a funeral home you've got to give that
money back because this funeral home was the
duly assigned beneficiary. Not that that came
up when I was there incredibly often, but we
did get phone calls on that, and it was a bit
confusing as to what we do. But going back
-- I'm sorry.

MS. EULER: No. You can finish. I
was going to echo.

CHAIRMAN: Yeah. Finish your
statement.

MS. GRINSTON: But going back to this
definition to pull in what I'm hearing, would
we do better, and, of course, we would have to
address the -- you know, what happens when
you've got, you know, an insurance contract being assigned or something else, address that separately. But for definition purposes, would we be better just defining a preneed contract as any contract or other arrangement for the final disposition of a dead human body with such services that are not immediately required, remove the current payment of money and that whole discussion, remove the whole except for contracts of insurance and assignments, and address those issues somewhere else and getting down to just a solid definition that's limited to preneed. Would that address concerns?

CHAIRMAN: Sharon?

MS. EULER: Yes. Because a preneed contract is a preneed contract regardless of its source of funding. And we can address how you fund a preneed contract in a separate statute that keeps our definition pure, and it will be easier to deal with on a future -- and if I can address another question about when insurance pays out to a funeral home $10,000 for a $5,000 policy, if that person was on Medicaid, that money is properly
payable back to the State as reimbursement for
Medicaid. In other circumstances, we have
been successful in a 407 action to order the
funeral home pay that money back to the family.

MS. GRINSTON: (Inaudible) -- 407
written.

MR. OTTO: Yeah. You left out our
funeral merchandise in your --

MS. GRINSTON: Yes.

MS. EULER: Yes.

MR. OTTO: All right. Is that on
purpose?


No. No, not at all. I just sort of skipped
over it, but leaving -- I would suggest --
because in my -- I was surprised and realized
that this language is actually in a lot of
states with very few variations, you know.
Some of them don't have the "except for
contracts" issue, but the crux of the
definition is the same. What I'm thinking is
for the final disposition of a dead human body
or for funeral burial services or facilities
or funeral merchandise where it's just not
immediately required, not period, but, you
know, including the membership fees and
everything else, and ending that before we do
this whole assignment beneficiary deal and
addressing those issues somewhere else and
just cleaning up the definition. Mr.
Chairman, I’m seeing a lot of nods. Is it
possible that we could take a vote on whether
that may be a good way for us to start with
the draft. And, of course, we’re going to
bring this back to you all to look at to see
if we’ve goofed it or if there is something
else we need to do. Bill?

MR. STALTER: Before you do, I mean,
let’s talk about this funeral merchandise if
that’s part of the definition.

MS. RULER: That’s a separate
definition.

MR. STALTER: This is why you’re here.
Part of this -- you know, when we talk about
funeral merchandise, there’s an overlapping --
we talk about vaults basically being a big
issue about either being sold by the cemetery
or by the funeral home. So, I mean, that’s --

CHAIRMAN: The Federal Trade
Commission says that anybody can sell them, so
it doesn't have to be a funeral home, it
doesn't have to be -- Federal Trade Commission.

MR. STALTER: I know. But it is --
no, keep it. Then we talk about how is it
going to be regulated under 214, and, you
know, it is -- this is -- it's going to be an
issue.

MS. GRINSTON: And this is what -- I
think you're right. And Tom and I have had
some discussion about this. I think Sharon
and I have had some discussion about this, as
well. For those who don't know, there is
going to be a working group for 214, as well.
That is being handled by the executive
director of Endowed Care Cemeteries. I'll be
working on that side. It is going to begin
after we pretty much finish the 436 process
because I think we do need to make sure we're
consistent. What I would suggest we do is
when we look at the definition of funeral
merchandise, that we do that at a later date
when we have some more of our cemetery people
in because I think it's going to probably
affect them more than anything else, because I
agree 100 percent, Bill. I think we do need
to coordinate with Tom's office under 214, and
I think we probably need to look at that
definition, as well, to see if we need to make
any changes.

MR. OTTO: Well, my only comment to
that is I can see why you're doing them
separately like that, but I hope everybody is
created the same.

MS. GRINSTON: Sure.

MR. STALTER: And, basically, there's
-- we talk about the consumer, you know. It
shouldn't make any difference whether it's
bought from a funeral home or a cemetery, you
get the same safeguards, basically.

MR. OTTO: Well, it also matters, you
know, if a cemetery can keep 40 percent, I
want a funeral home to keep 40 percent. If a
funeral home can only keep 20 percent, the
cemetery should only keep 20 percent, you
know. If we're selling the same exact thing
on a preneed basis, the key rules ought to
apply to everybody. And if you're not going
to regulate the cemeteries on the presale --
or anybody else other than funeral directors
on preselling funeral merchandise, I think
you've got a problem.

MS. GRINSTON: I think that's a good point, Don. And, Tom, who is in the back, I think I'm going to -- he wants to speak. Is Tom here? Tom? I can't see him. He's hiding. I can tell that, and maybe Tom can speak to this, as well, that he also had a goal and a concern of making sure those two things are being treated consistently, as well. And I think when we open up to the funeral-merchandise side, I think it would help to have some more of the cemetery people here so that we can really have the benefit of a full discussion, you know, with Tom and everyone else here. But for that definition of preneed contract, can I get a consensus if it's okay for me to try to pull that language together and clean that up, just on those issues, addressing, you know, what happens when you have an insurance-funded preneed contract, and what that contract needs to look like?

CHAIRMAN: All in favor, Committee, aye? All those opposed, nay?

(Unanimous voice vote for approval.)
MS. GRINSTON: Okay. Having said that, and we'll -- again, we'll bring that back for you to look at. Okay. Next, I think that was one of the other preliminary things that I wanted to get to before we go to our next big issue, and we might as well tackle the monster head-on. I'd like to do -- this is going to be so much fun -- #5 on the July 15th agenda. Now that I think we've gotten a little bit more definition of what a preneed contract is, I think we cannot organize this discussion properly without talking about the amount of funds required to be trusted. As we do this, I think that it is probably good to say that I am not expecting that everybody here will be of the same opinion. What I think we'd like to do, and I think when we talked to Representative Wasson in Senator Scott's office, that they understood that they may be in a position where the general assembly has to make the final decision. What we would like to do, with your permission, is just gather what the positions are on what amount should be trusted when I am buying a trust-funded preneed
contract. Again, we are not going to be
talking about insurance right now, we're not
talking about joint accounts, but when I have
a trust-funded preneed contract, how much of
that amount should be trusted? And what I
think we may need to do is possibly just
submit a list of where -- of who was
represented at whatever level. So, if you add
100 percent, 85 percent, 90 percent, 20
percent, whatever your percentage is, it may
be a good idea, instead of trying to -- I
don't know that we'll convince anybody or
everybody at the table, just allow us to do a
report of what the recommendations were
because I really do believe that this may be
an issue that the general assembly may have to
-- will be making a decision on, and we'd just
like to provide the consensus of what you
believe. When we talk about the amount that
needs to be trusted, one of the things that
came up in my mind as I was going through the
state laws was that, a lot of times, I think
we use numbers on the percentage amount, but
we don't address the second component. When
you talk about how much needs to be trusted, I
think we also have to talk about how much is
the preneed seller allowed to retain, if any.
If you say -- and I'm just using this as a
number. If you say 100 percent, does that
mean 100 percent and then you can submit a
bill to the trustee for your commission at a
certain set amount? Does it mean 100 percent
and there are no administrative costs or
expenses allowed? If you say 80 percent, does
that mean 80 percent plus administrative --
and everything else is retained as an
administrative expense? I'd like to possibly
poll the table and open the floor for
discussion. I think it may be better if we
probably went around the table to see where
people may be or what your thoughts are on how
much needs to be trusted when you're assigning
a trust-funded account, and whether that
amount that you believe needs to be trusted,
what amount of expenses do you think a seller
should be able to retain from that contract?
So -- and I know that this is probably the
hot-buzz issue today, so, Mr. Chairman, if you
could possibly start at whichever end of the
table.
CHAIRMAN: Mark?

MR. WARREN: Why don't you start on that side?

CHAIRMAN: We'll come back to him.

Ms. Brown, do you want to --

MR. MAHN: Does the Board have to speak? I mean, we've already --

MS. EULER: Yes. I think the Board members should speak.

CHAIRMAN: Should the Board members speak individually or as a group?

MS. EULER: Individually.

MS. GRINSTON: Individually.

MS. EULER: As a part of the group.

MS. GRINSTON: And just as we clarify this, the Board member -- and we said this last week. Everyone knows that last year, the Board went on record at 100 percent. I think the Board members who are participating today will be giving you their personal opinions. They are Board members, but they will not be speaking on behalf of the entire Board right now because this -- again, this issue will probably be on their August agenda, again, for the Board to make an official decision. Right
now, they are participating as members of the

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

CHAIRMAN: Don?

MR. OTTO: Oh, yeah. A little background, too. A couple things to keep in mind before you spit out a number. I think probably in a perfect world, if there was no such thing as preneed, we just thought it up today -- hey, let's do preneed -- we'd probably come to -- 100 percent would probably be a very likely number. That, unfortunately, again, in our current environment, causes a lot of problems, so I don't think it's probably realistic over at the legislature, for one thing. So, one thing is to keep in mind what is realistic over at the capitol, and I don't perceive that 100 percent is realistic. Also, 100 percent would probably put some people who have done absolutely nothing wrong out of business, which is another issue. Another thing to keep in mind is a lot of times -- and I'm guilty of this,
as well, sometimes in talking about this -- is
sometimes we focus on an individual contract.
Mrs. Jones come in and paid $7,000 for her
contract and this and that. What you really
need to look at in many -- when you're talking
about 436 globally is the entire book of
business that a funeral home or a seller has
because the funeral home is taking a lot of
risks, particularly when they guarantee a
contract. They may be paying the taxes on
that, they're doing all the administrative
costs, they are risking whether or not
inflation beats out the guarantee. And so, on
one contract, perhaps they make 100 bucks more
than what the funeral actually cost them. On
another funeral, maybe they lost 200 bucks on
what the funeral cost them. So, it's
important to draft a number that is good for a
funeral home's entire book of business. If
you go to 100 percent, it also makes other
things in 436 difficult, like the portability
issue and the cancellation issue. If you have
some sort of number retainage, whether it's 20
percent, 15 percent, or 10 percent, that makes
writing the other parts of 436 easier because
you've already got a number there that can be retained by the first funeral home or the first seller if a person moves or transfers or something like that. If you do 100 percent, writing the other parts of 436 are possible, but it's more complicated. That being said, we -- 20 percent also has problems. Frankly, NPS probably could not have existed if it weren't for the 20 percent. And the fact that they're out of business now and, to my knowledge, no one else out there is abusing that 20 percent, doesn't mean that if we leave 20 percent in there, in 15 years, there won't be another NPS that comes along and figures out how to do the same thing. Also, apart from NPS, if you take NPS out of the equation, to my knowledge, all of the problems that we had in preneed were with funeral homes -- individual funeral homes, and I'm talking about the last several years -- where, frankly, as I like to put it, the 20 percent led them unto temptation. A funeral home had their own trust and was keeping that 20 percent and using that 20 percent for whatever -- a new car, a new house. Whatever. And
then when five funerals come due in one week
-- and you can't really divorce this
completely from also the interest of what
you're doing with the income off of the trust.
But if they have taken that 20 percent and
they slopped off the interest and they've got
five funerals that cost them $7,000, but
they've only got $5,000 in the trust, then
they start looking around, where am I going to
make that up, and I think that's where we've
had some problems. So, the 20 percent, I
think, is a problem because both it allows the
NPSs of the world to exist. It, at least on
its face, appears very anticonsumer the way we
do it right now, and so, there's going to be
pressure at the legislature to do something
about that. It's relatively on the high side
compared to most of the other states now,
particularly most of our surrounding states
who are 5 or 10 or 100 percent. And like I
said, it leads funeral homes unto temptation,
which has been a problem that we've had. I'd
say having polled our membership, the
overwhelming majority favors moving off of 20
percent. I'd say it's a split between those
who their instant reaction is 100 percent and
those that think it should go to 90 percent
with still a large percentage that believe it
should stay at 20. Now, was that a lawyer
that just said that, because I probably didn’t
give you an answer. But I think if you take
a look at all of our comments that we had at
our meetings and and our district meetings,
moving to something less than 20 percent,
perhaps 10 percent, is the best compromise of
all of those different positions.

MS. GRINSTON: Don, can I clarify
that? So, would we be correct to say that
the association -- that the majority consensus
may be that 90-10 may be a compromise -- well,
I’m sorry. The majority of your people
probably may still be at 80-20, but 90-10,
they believe, is a workable compromise?

MR. OTTO: The majority of those who
responded to both per our request for input
have suggested moving off of 80 percent.

MS. GRINSTON: Okay.

MR. OTTO: Moving to something more
trusting than 80 percent. I would say others
are very -- between those who say 100 percent
and those who say 90 percent, I would say that
is the overwhelming majority of those who have
responded.

MS. GRINSTON: Okay.

MR. OTTO: I'm not sure that all of
those who have said 100 percent, that's a very
good knee-jerk morally, I think, good position
to make, but I'm not sure that everyone who
says 100 percent right off the bat has thought
everything through, like what do you do if
there's a cancellation, what do you do if we
create portability and all of these -- what do
you do about the expenses and things like that
-- and commissions.

MS. GRINSTON: Okay.

MR. OTTO: So, I think that's the best
our -- but I don't think you can also divorce
this completely from the income -- what you're
doing with the income, as well, because if --
because that's tied with it very closely.

CHAIRMAN: John?

MR. MCCULLOCH: As a funeral owner and
as having a preneed company, I would
definitely be for the 80-20.

MR. WEAVER: I have very limited
knowledge, I guess, of the funeral-business

preneed business, but, I guess, financially

speaking, if we were starting from the scratch

of paper, then our office would say 100

percent would be ultimate consumer protection.

MS. GRINSTON: Rich, can I just

qualify? Would that be 100 percent plus an

allowance for expenses or just 100 percent

trusted?

MR. WEAVER: Well, allowance for

expenses, and I'm not sure what -- you know,

if you said 5 percent. That's what I say; I

have limited knowledge as far as what those

costs would be. But like I said, if we were

going to recommend -- because the other part

that Don mentioned, it doesn't make sense to

me when you look at it and say 80 percent,

and then the seller is also entitled to all

the interest income off the fund. So, from

square one, if you started off, you

fundamentally don't have enough in there. If

you chopped it up after day one and it's sold,

you don't have enough money. So, that's, I

guess, our perspective is coming from 100

percent and allowing a reasonable amount for
administrative expenses.

MR. STUHLHUTH: I think I would defer
to Larry, although I add that you really have
to bring in the income off the trust in the
discussion, whatever the figure is.

MR. McCORD: On behalf of the
department -- Larry McCord, deputy director.
Having no knowledge about insurance -- or,
excuse me, about insurance. Hopefully,
something about insurance -- about a funeral
business or cemeteries, I do understand the
need to have some type of income and I
appreciate Mr. Otto's comments in regards to
that in regards to providing some type of
funding for that future need. I'm not
qualified to provide an answer. I do agree,
though, with the comment that Don made that 10
percent would probably be where my opinion
would be, something closer to the 100 percent,
but, yet, again, recognizing the need for that
income up front, so that would be my opinion.

CHAIRMAN: Becky?

MS. DUNN: No comment.

CHAIRMAN: Well, as a consumer Board,
I'm in favor -- as chairman of a consumer
board, I'm in favor of 100 percent, but I think there does need to be some fees where a seller could, you know, get some of their money back for their expenses. As a funeral owner, I think maybe 90-10 would be more of a fair thing, and I think you've got to think of the portability of it. As a consumer, if you want to move to another funeral home, you sure want to have at least some of your money to go and interest to go with it. So, anyway, that's my thought.

MR. MEIERHOFFER: Jim, a comment to that. There are several camps here. One would be those who are actively selling preneed, and there are those who really don't actively sell it, it is walk-in business, if you call it that. The dilemma is that those that are trying to actively sell it do need some manner in which to compensate the people who are doing that. When we talk about consumerism, my statement is you're doing a disservice to the consumer if you're not taking it to that person and letting them have an opportunity to buy the product or buy the service -- buy during their earning years, and
that's something that may not be available to
people if they aren't having an active program
presented for them. That's my only concern.
You talk about consumerism, 99 percent of the
people are going to get their money and get
their service. It's the fact that 90-10 isn't
going to change a thing of what we're talking
about here with NPS. If we would have been
90-10, NPS would have probably still done the
same thing, so I don't see how that's
addressing the problem that we're really
probably around this table for.

CHAIRMAN: True. Connie? David?
Court reporter? Joy?

MS. GERSTEIN: Because I'm the public
member sitting here, of course, my thing is I
would say 100 percent. But I also withhold
that down the road while we're trying to
figure this out, that we -- everybody keeps
talking about fees. I'd like a definition on
what the fees are. I mean, it's a hard
decision not knowing why you would want 20
percent. I don't know what you're going to do
with that 20 percent. And so, it's difficult
for me to give you an exact amount. But as a
public member, I would say 100 percent.

CHAIRMAN: Good question, Joy.

Anybody have an answer for her, what would it cost?

MR. MEIERHOFFER: You have commissions and advertising. You have administrative costs. You have trusts to set up and maintain. All those things are part of that.

20 --

MS. GERSTEIN: So, every person you sell to is paying part of that?

MR. MEIERHOFFER: Sure. Sure.

MS. GERSTEIN: So, how would you figure a percentage of what was needed if, let's say, you sold 100, how would you figure the percentage that would be needed, is what I'm asking? It's a very difficult question for me to answer.

MR. STALTER: You know, when we say percentages, it just comes down -- the cost from a funeral-home operator to funeral-home operator will differ. And part of it is, you know, whether they’re proactive or preneed sales or not. I mean, really, if it's more of an accommodation, then the costs are much
lower. But you'll have -- basically, your
salesmen are paid a commission, you know.
There is the expense of training the staff.
You may have education; you may be sending
them to seminars to learn. There's the legal
expense, the contracts, making sure that the
program is in compliance. You know,
frequently, they could change the contracts.
And, really, it's hard to quantify, I mean,
from operator to operator what those costs
are, so, basically, you just always kind of
fall back to a percentage of the purchase
price. But, you know, if you go to 100
percent, basically, you're precluding the
proactive prereed seller from operation. What
you catch, you know -- I mean, let's make a
distinction. It's the costs of putting the
contract on the books is what's being paid
from that 10 or 20 percent. As far as the
administration for the trust, it comes out of
the income of the trust. Once the 80 percent
or the 90 percent goes in trust, Mike can't
turn around to the trustee and say, "I have
other expenses for putting that on the books."
I mean, he's got to make it work out of the
20 percent. The trustee, now, though, you know, basically, we’ll find that a lot of these banks don’t have the sort of accounting that’s required to keep track of these accounts. And so, it’s often expensed out or, you know, what do you say, farmed out to a third-party administrator, and that expense differs substantially from operation to operation. I mean, what this issue is, is about how much should go in the trust and, once it’s there, how much should you accrue in trust, you know, whether -- if you look at, like, what Iowa does or Nebraska does -- okay -- Iowa is 80 percent, Nebraska is 85 percent, but they also require some portion of accrual of income. And, basically, often it’s defined by regulation and you go from year to year, and it’s whoever provides oversight to preneed and makes a determination of how much it’s going to be. And, often, it’s, like, 3 percent or 2 and a half percent. But, I mean, Gerry, you run into this quite a bit. I mean, Iowa, that’s -- they’ve been doing it for years, haven’t they?

MR. KRAUS: Yeah. And Iowa has been
trying to change it for a few years, too. I think probably next year in the legislature, they may get it changed.

MR. STALTER: And in what sense are they trying to change it?

CHAIRMAN: Well, no. You can't talk about that. These Board members have been on my butt, man, I'm telling you. "You did wrong last week," they said. They all said it.

MR. STALTER: Okay. Hang on. I'm trying to talk here. One thing that -- you know, when we talk about 80 percent, when you push up 80 percent to 90 percent, I mean, one thing is you push, really, preneed into insurance sales. I mean, there is a point where it becomes fairly neutral in a sense, you know, whether you're putting it on the books at -- you know, it's the same, you know. And to the funeral operator, you know, you do insurance versus trust, it really makes no difference.

CHAIRMAN: Right. Okay. We're going to go back and get Gary.

MR. FRAKER: Yeah. Well, it's simple. I think it ought to be 100 percent plus
administrative costs with a cap. We must remember that there are other funeral directors out there that do it differently, like joint accounts or insurance. Are you going -- how are you going to handle the joint-account issue? It's defined in this 436 as to how joint accounts are to be handled, so, see, that's another entirely different story.

CHAIRMAN: And you've got to let them stay for the small guys, so --

MR. FRAKER: Absolutely.

CHAIRMAN: Sharon?

MS. EULER: In my experience in working with consumers and working with the Board on this, the chief complaint I hear from consumers is they don't understand why only 80 percent is in trust. They don't understand why, if they move or if they get a refund, it's only 80 percent. We get lots and lots of complaints about this. Because from the consumer point of view, they're treating the local funeral home as a bank. They've got their $10,000 for their funeral, they're giving it to their funeral home so that they
don't have to make a trip down to the bank, and that's the way the consumer looks at it.
So, I'm not taking a position on the number, but it seems to me that whatever is done, that it needs to be consumer friendly, and that the consumer, if you told the consumer 100 percent is trusted plus an administrative fee of X amount, I think most people would understand that as opposed to now people don't understand why I paid the funeral home $10,000, why is my $10,000 not in trust. Because from their perspective, the funeral home gets profit on it at the time of the funeral, and we all know how that works in real life. But from the consumer perspective, plus the funeral home gets the interest income off of it, so consumers don't understand the 20 percent.
So, if it was phrased differently so it was more clear to consumers, I think that would be helpful.

CHAIRMAN: Todd?

MR. MANN: I don't think in zero percent, why not just let everybody spend it, you know? I mean, whether it's zero or 100 percent, NPS would have spent it, you know. I
mean --

WS. EULER: That would really cut down on complaints.

MR. MAHN: That really would, and then drop to freeze the cost, you know.

CHAIRMAN: Bill, can you reach over and slap him?

MR. MAHN: Well, I can give you an example. When we did joint accounts at the funeral home, you know, we always put 100 percent. And they talk about these expenses. I don't know. I built that into the general revenue of the funeral home; you know, whether it's advertising or whatever it is, you know, I built that into the funeral home. And I will tell you that even putting in 100 percent and whatever date, whether it be five, ten years later, and perform an at-need funeral, there's always shortfalls. That's all you see in preneed, it's just shortfall, shortfall, shortfall. And I'm kind of surprised -- you know, it's almost like why wouldn't you use insurance, you know, because, you know, whether they make the first payment or pay it in full, you're being paid the interest on the
face amount. You have the backup of the
insurance being guaranteed. You have
immediate coverage if their health is good.
There’s a lot of factors. But I will say
this, also: I mix it up a little bit and I
use some of John’s product, also. And there’s
benefits to using his product at times, also,
and I won’t get into complete details, but
there’s a difference between letting John, a
third party, come in, to be 80-20 than the
funeral home doing 80-20 because John will --
if that family moves from LeSoto to Florida,
he’s going to pay 100 percent plus the
interest. But at a funeral home, if you’re
letting a funeral home do 80-20, the funeral
home -- there’s no way a funeral -- you know,
really, what’s going to be paid if that family
moves? What’s the portability amount going to
be? It’s not so much of how much them having
to put up front, it’s what’s the portability
going to be. And if Gary here puts it in his
own trust and keeps 20 percent, and then they
move up from his town to mine, you know, is
Gary going to pay me 95 percent plus interest,
you know? The portability of insurance, I
really like, you know, because I feel a family
ought to be able to take it and move it
wherever they go. But I think there's a big
difference here when we're talking about this
to, you know, John's company is able to make
-- do things and make guarantees that, you
know, small funeral homes and their small
trusts aren't able to do. So, you know, from
a consumer standpoint and from what we've
always did in our joint accounts, it was, you
know, 100 percent, but I think it depends on
the type of business. I think we're mixing
everything into the whole pot here, you know,
whether it's third party, individual funeral
homes, you know. Which are we talking about
here?

CHAIRMAN: Preaching to the choir.

Bill?

MR. TRIMM: From a consumer's
standpoint, I would favor the 100 percent, but
I realize that there should be a reasonable
amount deducted from that for administrative
costs. What that amount is, I have no idea.

CHAIRMAN: Darlene?

MS. RUSSELL: I probably agree with
Gary Fraker. A hundred percent with an 
allowance for reasonable expenses with a cap.

MR. STALTER: Spoken like a true 
insurance person.

MS. RUSSELL: That's true. True.

MR. STALTER: Yeah. I went on record 
three years ago about 90-10, and -- but I 
think that, you know, whatever that percentage 
is, even if it's 85 or 90, it really boils 
down to the income accrual. So, I think I 
would probably split the -- I'd say 85 with 
income accrual. That's where I stand.

MS. GRINSTON: Eight-five with -- I'm 
sorry?

MR. STALTER: Income accrual of some 
kind.

MR. CLINE: Okay. We almost 
exclusively do trust only at our funeral home, 
and we have -- we don't accept ourselves as 
beneficiaries on insurance policies. We 
prefer the 80-percent rule. What we actually 
do is we put in 83 percent, and if someone 
wants a refund or something, well, they -- we 
give them back 100 percent, and all they have 
to sign is a letter that says they -- or want
to cancel. So, we're for an 80-20 rule.

CHAIRMAN: All right. We've already
-- we've talked, and I'm not trying to cut you
off, Don, but we've got to let the public make
their comments. Bob Baker; is that right?

Bob Baker: is that correct?

MR. BAKER: Yes, Mr. Chairman. Bob
Baker, for the record. I'm not quite sure
what we're arguing about. If we're going to
protect the consumers and we're going to do
portability, Cuts, trusts, and insurance is a
funding mechanism. Why should we
differentiate between the two of them -- or
the three of them. If you're going to give
consumers back money, you know that they're
not going to get back anywhere near that if
it's insurance funded. If you're -- like Mr.
Meierhoffer said, if you've got people
actively selling, your costs are greater. But
depending upon what investment pool you want
to go into, you may have different opinions at
different times depending on what the market
is. So, I think, you know, I would like to
see us treat all three the same. It's a
funding tool only.
MS. GRINSTON: And if we treat them all three the same, what number would you be looking at?

MR. BAKER: I would say, you know, I can live with 80 percent, I can live with 90 percent. I don't think 100 percent is realistic. I'm off the subject, but I've got to respond to Gerry -- Mr. Homesteader's. That's not the reason that funeral directors are named as beneficiaries is to go out and kill somebody, I think, like the indication was. If you have a policy that's for more money than what the funeral is, it's very simple. Have your designation as your interests may appear, submit a billing along with it. Thank you. CHAIRMAN: Thank you. Anybody else?

MR. SPEAKS: You had quite a lot of fun with your name last time, so I was glad to see -- or you were calling him the wrong name. That's what it was. 

CHAIRMAN: Larry -- it's Larry. 

MR. SPEAKS: Well, my name is Brad Speaks, for the record. I very much appreciated Mr. Meierhoffer's comments. I
think I agree with everything he said. Very much in favor of being proconsumer, because that's what funeral service is all about. We exist to help people when the most important person in their life has died. And I see preneed as the most consumer-friendly thing ever in the funeral business. I think Todd mentioned shortfalls. In every -- almost every scenario I'm aware of, there are shortfalls when the death occurs. The exclusion has been the NPS fiasco, and we can see that those sorts of ridiculous promises just don't work. For a family to be able to lock in their costs during their earning years and have the funeral provided in 15, 17, 20 years in the future for no additional money, regardless of 80-20, 100 percent, 85-15, that is consumer friendly, ladies and gentlemen, to have that cost locked in. If it was a great deal, Cadillac dealers would do it. You would be able to go in today and say, "I want to put down the current cost of a Cadillac, and when I come back in 20 years, you give me the new model and I don't pay you any more money."

If you try that, they'll laugh you right out.
of the dealership. Funeral homes have, from my standpoint, you know, really provided a service to our communities by allowing people to prepay and assume the risk ourselves. I stand here just like I would stand in front of any group of consumers in my own community and say, "If we enter into this agreement between the two of us, I will stand good for it regardless of what happens with the money. I have promised you." It's part of that contract that we so aptly started off today's discussion with. Thank you for that discussion. Funeral homes are on the hook to provide this service for no additional money. If we were to say 100 percent, you know, very interesting scenario in that you then submit possibly an invoice or statement to the trustee and receive back commissions or whatever. The problem you get into is the expenses that, say, Kaylene experiences in her community might be far different than Mr. Maierhoffer experiences in his community or that I might or that Todd might or the Clines might in St. Louis. You know, I'm interested in what becomes of the earnings. The public,
as Sharon points out, always fails to understand what was the purpose of those earnings. It's to help the funeral home make up the difference in that shortfall, and we don't make it up, it just helps. The family comes in and says, "Well, you've had your money all this time. We want that back."

Well, we have stood the risk all this time. What did we get out of it, other than the chance to serve this family in the future?

So, I'm -- you know, I'm not opposed to 90-10. I think I would like 85-15 better. We have actually been selling insurance at Speaks for about 15 years mainly because preneed shortfalls on our trust -- longstanding trust dating back 40 -- almost 50 years now. Insurance has done much better for us. But I'm interested in, you know, how that reimbursement might happen if the proposal that Kim kind of put on the table were enacted. I mean, frankly, I'm kind of attracted to it if there could be an equitable way of determining what those proper expenses are. Mr. Otto mentioned that some funeral homes might need that 20 percent. You know,
in actuality, I think that starts to head down
to the road to another Ponzi scheme, which
we've just seen the end result of with our NPS
brethren where current money is taken to pay
-- you know, to keep up, and you've got to
keep feeding the monkey, so to speak. I do
not want to go down that road. I don't think
that's good for our state. So, you know, the
Missouri Funeral Directors Association has
their view. I'm just speaking as an
individual funeral-home owner, but we have a
very active program and selling insurance at
present. If our friends in Indiana and Des
Moines were to go out of business, though, I
might be back through public demand for our
product to selling trusts, putting money in
trust, at which case I would want to be able
to both recoup my expenses and have some sort
of hedge against that future promise to the
consumer that I will stand good on this
contract no matter what happens.

CHAIRMAN: Thank you.

MS. GERSTEIN: I have a question while
you're there.

MR. SPEAKS: Yes, ma'am.
MS. GERSTEIN: When you all go in to sell, which would make it very simple for the public to understand, do you discuss the -- or is there anything written as to the administration fees or the fees that would go along that would justify why we need whatever is decided today -- the 10 or 20 percent? Or is it -- do they know anything? Are they explained or --

MR. SPEAKS: The answer ought to be yes. In actual fact, I don't know that it is.

MS. GERSTEIN: Because that would make it very simple.

MR. SPEAKS: It's also very difficult. You explain that to a couple, say, and -- or maybe their adult child when the time of death arrives, or now they're ready to move Grandma home to Loveland, Colorado, for instance. Somehow that discussion seeps away and they don't recall that. Same thing with third-party charges. It's a very similar discussion. Why weren't the third-party charges guaranteed? Well, they're not our charges.

MS. GERSTEIN: Well, wouldn't it be
easy when you're selling these things to have
a form that kind of talks about those prices
and fees and with a disclaimer about, you
know, the cost of living goes up every year,
and they could keep that in their file with
their contract so they would know what the
money was being used for.

MR. SPEAKS: If firms are not doing
that, that's an excellent idea.

MS. GERSTEIN: So, I mean, that would
be an easier way --

MR. SPEAKS: Probably -- John, do you
know; is that part of most third-party
sellers' toolbox?

MR. McCULLOCH: Explain again. I
don't know if I quite understood.

MR. SPEAKS: A disclaimer about the
growth and why -- how that equation works.

MR. McCULLOCH: Yeah. We don't --

MR. STALTER: I was going to say, I
don't -- you know, just having a disclosure
about what expenses are, you know. Maybe to
your providers, I mean, the associates, but
not to the consumers. It just doesn't get out
that far.
MR. SPEAKS: Great point, though.

MS. GERSTEIN: But personally -- yeah.

MR. OTTO: Well, I think, again, one

of the things -- some of you heard me on the

soapbox about this before. But under 436, and

what we're doing is we're amending 436 is what

we're talking about here. We're not really

starting from scratch and writing it up.

Under 436, one of our biggest problems is we

call this a funeral trust, and the consumer's

think that it's a funeral trust for them.

That's my money that's put in the bank that's

earning interest for me. What the consumer

has done under 436 is prepay for a funeral;

okay?

MS. GERSTEIN: Right.

MR. OTTO: And so, the question that

we get -- I know, I understand the problem.

The question that a consumer gets is where is

my money, and it's not their money is one of

the problems that we have with the way 436 is

currently written. It's in many ways, from

the consumer's perspective, no different than

going to Target and putting patio furniture --

I don't like this, by the way, but this is
how it is -- from the consumer going to Target
and putting patio furniture on layaway that
I'm going to pick up in December. They've
prepaid for a funeral that they're going to
use at a later date. And just like with
Target, you know, the interest that's earned
on that money in the meantime is not theirs,
things like that. Unfortunately, in many
respects, from the consumer's perspective,
that's how in 1982 436 was written, and we
have the opportunity, perhaps, to change that.

MS. GERSTEIN: (Inaudible.)

MR. OTTO: Well, but I'm just saying,
the risk again, like he said, you know, the
risk is on the funeral home, and the risk on
the funeral home to do this -- yeah. I'm
sorry. But it's like -- it's no -- with
insurance -- we've talked about insurance. If
I've paid on an insurance policy for three
years and I cancel it, am I going to get all
my premiums back? No. I'm going to get the
cash value of that policy, which is going to
be way less than the premiums I've put in.
So, in many respects, you know -- and I know
your stuff was here having to deal with the
consumers, you know, and there’s no good
answer sometimes for them with the way the law
is currently. Instead of thinking of the
funeral home as a bank, if they thought of it
more like an insurance policy, I think that
would be useful, because if you’ve paid on an
insurance policy for all these years and you
cancel it, you don’t get all your money back.
But, yeah, I’m sorry, Kim.

CHAIRMAN: Okay. Kim has got a
comment, and let her rebuttal it.

MS. GRINSTON: No. Actually, I just
wanted to say something to that because I
think on the drafting side, one of the things
that I think we are going to be asking you
all to do is to let’s just start 436 from
scratch, just in your thought. I think we
need to pull over some concepts, but I just
don’t think that -- there are so many holes to
plug, you --

MR. OTTO: We don’t -- we can’t.

MS. GRINSTON: Yeah. It’s --

MR. OTTO: You’re right, we can’t.

MS. GRINSTON: It’s leaking -- right.

MR. OTTO: But that’s one of the
underlying problems, though, that we're forced
to deal with to try to patch it.

MS. GRINSTON: But -- and I think we
-- as we go back to the amount that needs to
be trusted versus what should be refunded,
because that's going to be another topic, but
I think we need to -- I understand how they're
connected, but I think we need to stick with
amounts to be trusted and then we bring in
refunds later just for purposes of the
discussion. But one of the things that I did
want to say on that is, you know, when you go
to Wal-Mart or Target, and you put something
on layaway, if you go back at Wal-Mart, you
know, most of the times, they give you 100
percent of your money back.

MR. OTTO: No. There's a restocking
fee.

MS. GRINSTON: On certain things --
MR. OTTO: It's about 20 percent, by
the way.

MS. GRINSTON: I know this from law
school, Don. If you should happen to put a
TV, let's say, hypothetically, on layaway --
no, honestly. Electronics, they do, but, you
know, they'll give you your money back to a
certain extent. And that's why I think it's
-- I think you're right. It's a really
important question that we talk about because
some of the states clarify whose money is
this, you know, and I don't know if we need
to answer that question on whose money is it
because I do understand the risk that the
funeral home is picking up. And assuming,
because if you've only got $5,000 there and
it's going to cost you $8,000 to provide,
there is no other source for you to go back
to, you are locked into that contract, plus
taking a $3,000 hit. And what happens if we
say, you know, all the interest is the
consumer's or -- you know, because now you've
got nothing to hedge that risk.

MR. OTTO: Plus paying the taxes on
it. Plus --

MS. GRINSON: Yeah, plus the taxes
and the trust expenses and everything else.

MR. OTTO: And the forms.

MS. GRINSON: So, I do understand how
that comes into the discussion. But as we got
back to the amount that needs to be trusted,
because I think we are moving to the next
topic, which has to be interest. If we talk
about percentages, we have to talk about
interest next. But if we want to probably
finish with public comments on --

MR. PERKINS: John Perkins. And, one,

I'll make the disclosure that I'm with an
insurance company, but my experience is with
-- as a Securities Commissioner. And, I mean,
just listening to this, I mean, one of the
things I think you could look at, if you're
looking at this whole issue of what the
consumer gets, is some kind of a very short --
and I emphasize the word "very short", from --
we don't need to write prospectuses for this,
but some type of short disclosure that
discloses what the expenses -- the commission,
what the money is going to be used for -- to
the consumer and have them initial it in the
sales transaction. And I recognize that
John's expenses, as people have said, are
different than all around the state. My view
is, give that information to the consumer and
let the consumer make their decision as
opposed to, I'm sorry, you all saying it has
to be 10 percent or 5 percent or 20 percent.

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

CHAIRMAN: All right. We've got two
more. Gerry, you had a comment, and then Joy
has a closing statement, and then we're going
to discuss gift cards after lunch.

MR. KRAUS: For the record, Gerry
Kraus. And I also want to clarify, for the
record, that it wasn't I that said that
insurance -- or funeral directors might be
induced to kill their clients. That was
insurance regulators that were arguing that
against me. So, I've heard it many times from
insurance-department regulators. And, you
know, I don't argue very long. But I'm going
to tell you, to satisfy those red flags, I
don't argue very long for this reason. We get
to the same end point. We want the funeral
director to be the assignee. It's a
contingent assignment and it allows for
portability. The assignee stands in line to
get the money ahead of the beneficiary, and,
for that reason, there is really no good
argument for making a funeral home the
beneficiary or the owner of the policy. Let's
make him the assignee. Now, back to the
trusting percentage, having looked at this for
25 years from a marketing perspective and a
compliance perspective and from a national
standpoint, we have seen a gradual increase in
the trusting requirements. We deal with 110
percent of wholesale, 25-75, 80-20, the full
range. And I think that gradual tightening is
from a lot of factors, a shift to insurance
where 100 percent is the parallel. More
people trust with insurance now than with
trusts, so the tendency is toward people just
not getting used to having any of the money.
They just trust it like they do with
insurance. The margins are getting tighter in
the funeral industry. That induces more
funeral homes to test greater and greater
percentages. And you get more scandals and
shortages. All of that leads to tighter and
tighter percentages. What do I think is a
good number? Probably, from a competitive
standpoint and recognizing those of you that
want to trust and have legitimate expenses,
probably 80 or 85 percent puts you on a good
par with insurance in terms of running your
operations, in terms of being competitive with
us in commissions. Our commissions are 15 to
20 percent, probably more toward 15. So, 85
is probably a good number, or 80.

CHAIRMAN: Thank you. Oh, Sharon has a
question of you, Gerry.

MS. EULER: That was the question I
was going to ask, what the commissions were on
insurance policies, so you read my mind.

MR. KRAUS: It's probably averaging
around 15, but some companies are higher.
There are companies out there that don't pay
much commission and pay real high benefits.
Others pay more commission and don't have as
much in the insurance, but I think from -- our
companies would probably average about 15
percent in the heart of the market where
65-year-olds walking into the funeral home or
70-year-olds.

CHAIRMAN: Thank you. Joy? Oh,
Sharon?

MS. EULER: I have one other comment.
I think it's important that in our language
that we keep the current type language that
the funeral -- the seller is entitled to keep
up to, because I know there are some funeral
homes in Missouri who trust 100 percent or who
trust 90 percent and who do that on their own
volition, not because the statute requires
them to do so.

MR. OTTO: And also because it
actually says to put the money in the trust.
I mean, we’ve got to assume that.

CHAIRMAN: We’re going to straighten
them up, too. Joy?

MS. GERSTEIN: First of all, I would
like to thank you all for your patience with
me in asking some of these questions, and I
don’t mean to open up a Pandora’s box when I
ask them, but I am your consumer sitting here.
You all know, but I think you’re backing me up
in having some type of disclosure on where
that money is going will make it easier. I
would never sign -- as these people all know,
I would never sign anything away that I don’t
know where my money is going or how it’s being
used. I was thinking in the beginning of
this, I might as well go to the bank and open
up a high-interest-yield savings, put all my
money in there to be buried by, you know.
So, that’s why I appreciate all your patience
with me on this. I really do.

CHAIRMAN: Thank you, Joy. We've noted
everybody's comments, and now we're going to
take a ten-minute break.

(Off the record)

MS. GRINSTON: Okay. We talked
percentages. One of the things I would like
to do, for those people who are at 100 percent
or who said that they would be comfortable at
100 percent with a reasonable amount of
expenses, can I have some discussion -- and
let's just assume we were at 100 percent plus
a reasonable amount of expenses -- not that we
are -- what would you consider to be a
reasonable amount of expenses? And I think
this goes back to Joy's original question, as
well.

MS. EULER: Kim, may I append to your
question?

MS. GRINSTON: Yes, ma'am.

MS. EULER: What would be a reasonable
amount, but what types of expenses would be
reasonable expenses?

MS. GRINSTON: Yeah.

MR. McCULLOCH: Reasonable expenses,
it's just going to be like any other business. Pay your electric, pay your rent, pay your
commissions, pay your people, just like a
regular business. So, it's going to be
different for everybody.

MS. GRINSTON: If it was 100 percent,
if there was a percentage cap, would you
suggest a percentage cap or just a
reasonable-expenses kind of suggestion?

MR. McCULLOCH: You know, like some of
the folks said, I don't think you need to
putting an amount. If 80-20 is where we're
going to go to, then some folks will use a
certain portion of that. Like, in our case,
we don't use all of that, but we pay back the
20 percent, you know.

MS. GRINSTON: Okay.

MR. McCULLOCH: So, we're using it,
we're paying it back at the time of death.

MS. EULER: A bright line would be
much easier to enforce. A 15 percent, a 10
percent, a 20 percent is easier to enforce
than reasonable because what's reasonable for
John and what's reasonable for Becky may be
two different things.
MS. GRINSTON: Anybody else, just for purposes of us gathering comments to present?
If there was a 100-percent trusting requirement and for those who talked about reasonable expenses -- allowances -- if you had to choose a percentage, would 10 percent be reasonable? Would 20 percent be reasonable? A hundred percent trusting plus -- I mean, what's reasonable?

MR. STALTER: Are you talking about the seller's expense or the trustee's --

MS. GRINSTON: Yes. The seller's. I'm sorry. I'm sorry, Bill. Let's just think about that.

MR. CLINE: Just real quickly. If some of these commissions are 15 percent and all that, you know, does it count postage and telephone and rent and everything else, so, you know, I think the 20 percent is feasible. And like you said, some folks will put in 100. We put in, you know, 83, you know, and we pay it back, too. So, when the time of the funeral, then, you know, they get a check from the bank and they get a check from the preneed company to cover the cost of the funeral, so --
MS. GRINSTON: Okay. And maybe this is something we could just put under our caps and just think about as we go forward. I want to go back to a comment Bob made -- glad you're back in the room.

MR. BAKER: Thank you.

MS. GRINSTON: We started talking about trust funded and that breakdown. Should that breakdown be any different for insurance-funded preneed contracts or should the breakdown -- I'm going to remove joint accounts from the discussion just now. Before insurance funded versus trust funded, should whatever percentage you recommend, does anyone feel that that percentage should differ if it's an insurance-funded preneed contract?

MR. MAHN: Can I say something Kim?

On the insurance product, we -- I don't think we have the jurisdiction to say how much is going to be -- they're on a scale, you know, depending on the age of the person. And I'm speaking for insurance. Maybe somebody else can explain this a little better than I can. But if they're 105 years old, they put in sometimes over 100 percent, and if they're 25
years old, they put in 20 percent. I mean, they're all on their own scale. Are you saying we somehow or another control on their scale how much they put into their --

MS. GRINSTON: No. And thank you, Todd, for the distinction, because I think I'm thinking of something different. I think I'm not talking about an insurance contract sold through the insurance company. I'm talking about Main Funeral Home selling a preneed contract that is going to be funded through an insurance vehicle. If Todd sells a preneed contract that's going to be funded through insurance, the percentages, should those be the same if you're doing a trust-funded preneed contract.

MR. STALTER: I'm confused, to tell you the truth.

MS. EULER: I think if it's insurance, I think it's regulated by Department of Insurance, and maybe -- I don't think we're understanding what you're trying to communicate.

MS. GRINSTON: Let's talk about the policy that we talked about earlier where you
told me that the funeral director will sell
the preneed contract, in comes the
life-insurance agent, sells the insurance.
We've got a seller selling a preneed contract
that is going to be funded through an
assignment of something or payments --
proceeds from an insurance policy. When you
have that setup -- and maybe I'm wrong about
this. When you have that setup where I am
selling you a preneed contract -- my funeral
director is -- life-insurance agent says here
goes your app for insurance and this is how
we're going to fund it, are we saying that
those policies will be under insurance, as
well?

MR. STALTER: Funding is regulated by
insurance.

MS. EULER: The life-insurance policy
is.

MS. GRINSTON: Yeah. I'm not talking
about the life-insurance policy, I'm talking
about the preneed contract, though, now.

MS. EULER: My understanding is that
if it's life-insurance funded, the seller gets
no money on the front end.
MS. GRINSTON: Okay. And maybe that’s what I need to be clarified on. If it’s insurance funded, we should not -- there shouldn’t be the seller retaining anything?

MS. EULER: Right.

MR. MANN: Absolutely.

MS. GRINSTON: Zero percent? Okay.

CHAIRMAN: John?

MR. McCULLOCH: I think you just answered it. Those are two separate things. The only thing that’s happening with the insurance companies is if they go in and they want to pick out merchandise and now it becomes under this 436 preneed, the funeral home is freezing the cost at that point in time if they choose to, but that’s really just an insurance policy. It doesn’t have anything to do with, like, trust funding preneed.

MS. GRINSTON: So, when there is an insurance-funded preneed contract, would we be comfortable in saying that the seller retains zero percent because he should never be retaining anything?

MR. McCULLOCH: Exactly.

MS. EULER: Yes.
MR. STALTER: There's just a
commission if they don't need an insurance
policy though, and that may go partially to
the funeral director.

MS. RUSSELL: No. Not unless they're
licensed.

MS. EULER: But that's not part of the
--

MR. STALTER: That's the whole point,
though.

MS. GRINSTON: But what if I come in
with an insurance contract that's already
done? Let's say I bought an insurance
contract a little while ago. I'm going to
change the beneficiary to you, so you're not
going to sell me the life-insurance, but I
want you to sell me a preneed contract and I'm
going to go back to my insurance company and
change this beneficiary on it, and I want this
payment to fund --

MR. OTTO: Yeah. You're mixing two
different things.

MS. GRINSTON: Am I?

MR. OTTO: There's two different things.

MR. MCCULLOCH: They're not getting
into the money -- the funeral doesn't get any
of that money. It all goes to the insurance
company.

MR. OTTO: Well, yeah. There's --

MR. McCULLOCH: They're just paying
premium.

MR. OTTO: Actually, there's three
scenarios with insurance that I can think of
real quick, and there might be more.

MS. GRINSTON: Help me, Don.

MR. OTTO: The first one is I've
already gotten an insurance policy. I've had
it for 20 years; okay? I come into the
funeral home and say I'd like to assign this
to you in exchange for a preneed plan; okay?
But that money is already at the insurance
company or you're sending it in; okay? So,
that's one. Two --

MS. GRINSTON: Can I stop you there?

In that instance, what does the seller get out
of that financially? Nothing?

MR. OTTO: Nothing in that example.

MS. GRINSTON: And when they die and
the policy pays out, they still get -- they
will never collect any benefit from that.
instance?

MS. EULER: They get the face value of
-- they get whatever the insurance pays out.

(Several people talking simultaneously.)

MR. MAHN: Hey, Kim. If it's any
simpler for you, there is no circumstances
under anything to do with insurance where the
seller retains any money up front, period.

MS. GRINSTON: Okay.

MR. MAHN: Our examples, their
examples, nobody's examples.

MR. OTTO: Yeah. However, there is an
instance where the funeral home is a licensed
-- the funeral director is a licensed
insurance agent and is selling the policies on
behalf of some company. And then that funeral
director will get a commission.

MR. MAHN: Commission, yeah. That's
not upfront money.

MS. GRINSTON: From the insurance
company?

CHAIRMAN: Yeah, but none of that
would be --

MR. MCCULLOCH: But that's regulated
under the Department of Insurance. That's a
different deal.

MS. GRINSTON: Okay. All right. So, what I'm hearing, it's not an issue that needs to be addressed. If it's insurance funded, we should never have the seller retaining anything for expenses?

(Numerous people agree.)

MS. GRINSTON: Okay. Got it. Now, then let's move on -- thank you for educating me and helping me understand. Let's move on to the next issue which is, of course, interest. Whichever number you're at, let's talk about who gets the interest on a contract, let's say, once it's paid. Let's -- we're going to go to transfers in a minute -- in just a second. But at the time of death, this contract hasn't been transferred or moved or anything else. Right now, who does that interest go to?

MS. EULER: And when?

MS. GRINSTON: Yeah. Time -- you're at-need now. I come in, I present my preneed policy. Is it my understanding that that interest goes -- 100 percent of it will go to your provider? I mean, I'm sorry. The seller
at the time.

MR. McCULLOCH: The interest belongs
to the seller, and then by contract, they can
do whatever they want with it.

MS. GRINSTON: Got it...

MR. McCULLOCH: You can give it all
away, you can give back a portion of it. In
our case, we give back a reasonable percentage
to keep up with inflation; okay?

MS. GRINSTON: Uh-huh.

MR. McCULLOCH: And that’s negotiable
so that I can be competitive with the other
businesses that are out there.

MS. GRINSTON: Let’s talk about an
at-need contract. When it goes to at-need, is
there any need to change or should there be a
change in the allocation of interest at-need
other than what John just described?

MR. OTTO: The problem isn’t at-need,
it’s before that.

MS. GRINSTON: I get it. I get it.

MR. OTTO: Yeah. What I’m saying, I
mean, I -- the position -- the majority of our
folks that have been surveyed believe that the
income other than what’s needed to operate the
trust should stay in the trust until the time
of at-need at which time, again, under the
current, there would be no change. It belongs
to the seller. If the seller is contracted,
the provider is that it goes to the provider,
and that's between the provider and the
seller, you know, if it's split up or whatever
it is.

MS. GRINSTON: Yeah.

MR. OTTO: But, so the problem isn't
the interest or income that's in there when
the person passes away. It's whether or not
you can sweep that interest off prior to
at-need, as you can under the current law.

MS. GRINSTON: And I think the crux of
this discussion, I'd like to start with the
easy one. At-need, someone dies, seller gets
100 percent of the interest. Is that
something that needs to be changed, and I'm
also looking at the consumer groups on this,
as well. I pay $5,000 on a funeral. I'm
just going to throw out ridiculous numbers.
It gains $8,000. Services are $6,000 -- or,
you know, you do services that cost you
$6,500, $7,000. Should this -- right now, the
seller retains that interest. Do I hear any
proposals or any concern with changing that
structure?

CHAIRMAN: I don't know, but I wish
you were running my program, because that's --
I'd like to give something back to the
consumer.

MS. EULER: One thing that has been a
misunderstood area of law is that right now
under other provisions of law if the amount
paid to the funeral home for the funeral is
$10,000, but the actual cost of the funeral is
-- you know, they do a cremation for $1,500
and there's that overage, if that person was
on Medicaid, that overage has to be paid to
the State as reimbursement for Medicaid, and
that is something a lot of funeral directors
aren't aware of, and I know at the Board
meetings, we've had discussions about that. I
would like to see something in the statute
referencing that other statute so that's clear
to funeral directors.

MS. GRINSTON: Okay.

MS. EULER: And, also, there's the
issue of you pay -- the consumer paid $10,000.
With interest, there's an extra $5,000, because I'm banking at your bank. And so, there's $15,000. At the time of need, the funeral costs $10,000. That extra $5,000, does that go -- that technically should go to Medicaid, or should it be reimbursed to the family, or does it belong to the seller? Does the seller have to pay it out to the provider?

MS. GRINSTON: I want to take -- can I take Medicaid out of that equation, because I think that really does complicate things because I understand it would be subject to the restrictions governing Medicaid. But what I'm hearing everyone say to the last question is that that always goes to the seller at-need and that's not an issue. That is not a concern for this group, that interest could -- let's say you've just gambled well, you know, or invested well. I shouldn't say that -- invested well, got a pretty good return. Once that is paid out, all of that interest at-need goes to the seller.

MR. OTTO: You have to do that.

MS. EULER: But what if it's a $10,000 face-value contract, and at the time of need,
the family decides to do a direct cremation, so there's $9,000 left over?

MR. OTTO: That's a different issue. That's a different issue.

MR. STALTER: That's different. You've changed the terms of the contract.

MS. EULER: Right. But that happens. Or if the contract -- I mean, I'm just using that as an extreme example. If the face value of the contract at the time of need is more than the actual cost of the funeral, does that money belong to the provider, does it belong to the seller, or should it be reimbursed to the next of kin?

MS. GRINSTON: Now, you're talking about face value plus interest; right?

MS. EULER: I'm talking about just face value.

MS. GRINSTON: Can I reserve that question so that we can do interest first?

MS. EULER: Well, I think they're connected, but, sure.

MS. GRINSTON: Okay. Maybe it is. I'm sorry.

CHAIRMAN: Hold it. Todd?
MR. MAHN: Well, I'm going to combine provider and establishment together because we're talking about that possibly being the terminology combined. But whether it's 80 or 90 or whatever percentage we decide to be invested in trust, the interest on that -- I'm going to use 80 since we're using 80 right now. It's compounded on 80 -- along with the 80 percent ought to go to the funeral home that has the funeral. I mean, we're getting people switching their funerals over from XYZ. And, again, what I said earlier, we've got funeral homes with their own trusts saying we're going to give you 80 percent of the original preneed 25 years ago. It's $3,000, the funeral is $7,500 today. That family wants to use us 200 miles away. So, they're going to keep this interest on all that, but they haven't done a thing for it?

MS. GRINSTON: And what I hear John saying is that that interest would go to the seller.

MR. OTTO: Well, two separate issues. Your first question. Let's assume there's no transfer because that's a -- no portability.
MS. GRINSTON: That's true. That's
true.

MR. OTTO: I mean, let's -- so, the
issue, simple one, number one now. Consumer
went in and gave you $10,000. Ten years from
now, it's $15,000 in the trust. Turns out the
funeral costs you $14,000, so there's $1,000
"extra." Put that in quotation marks for the
record -- "extra." That has to go to the
seller.

MS. GRINSTON: Okay.

MR. OTTO: Because, otherwise, the
whole system collapses because on that
contract, you made $1,000, the next one, you
lost $2,000.

MS. GRINSTON: Got you.

MR. OTTO: The one after that, you
broke even. So, the -- and the seller --
although in many cases it's the funeral home,
you know, through the contracts are the seller
and the provider are the same -- are taking
the risk -- the funeral home is taking the
risk of the inflation factor. So that the
interest earned has got to -- we can't -- I
don't think we can change the way it is right
now on a simple at-need question.

MS. GRINSTON: Okay. So, hearing

that, can I take the consensus of the group?

At-need, you come in, we're going to take off

portability and all that other stuff.

At-need, I come in, interest has grown, it's

larger than what the face contract services

are. That interest belongs to the preneed

seller because they assumed the risk. Do I

hear that as the consensus of the group?

(Numerous people answer yes.)

MS. EULER: Can I ask a question

before we take that vote?

CHAIRMAN: We just took it.

MS. EULER: I had my red card up.

CHAIRMAN: She actually did have her

red card up previous to the vote. Okay.

MS. EULER: You're saying that that

money belongs to the seller. Under the

current statute, Mahn Funeral Home is the

provider. The preneed contract was for

$5,000. $5,000 was put into trust because

Todd is a 100-percent truster. $5,000 put

into trust. and he sends it -- John, I'm going

to pick on you because I'm looking at you.
And he sends it to John's company. He's got $5,000. That -- John invests the money in the Bank of Kim, and it grows to $15,000.

MS. GRINSTON: Better than IndyMac -- sorry.

MS. EULER: Yeah. Better than IndyMac. So, when the person dies and it's at-need, the funeral costs Todd $10,000, and Todd says, "John, you owe me $10,000," and John says, "The interest is all mine, you just get the $5,000."

MR. ORTO: What Todd gets under the current law is based solely on the contract between Todd and John.

MS. EULER: No, that's not true.

MR. ORTO: Yeah. Yeah, it is.

MS. EULER: No, it's not. It's based on the contract or it's the amount actually deposited in trust.

MR. McCULLOCH: That's right. And I only put 80 percent, so --

MS. EULER: Upon delivery to the trustee of the provider's receipt for payment, the trustee shall distribute to the seller from the trust an amount equal to all deposits
made into the trust for the contract, and if
there is no written agreement between the
seller and provider, it's all payments made
under the contract.

MR. OTTO: That's the trustee to the
seller.

MS. EULER: Right. I know. But what
I read, "Pursuant to the written agreement
between the seller and the provider of all
payments made under the contract or an amount
equal to all payments required to be made.
The seller shall pay the provider a net amount
equal to all payments required to be made
pursuant to the written agreement or all
payments made under the contract."

MR. OTTO: So, if you don't have a
written agreement, yeah, but we've all got
written agreements.

MS. EULER: But what I'm saying here
is --

MR. STALTER: Most of us do.

MR. OTTO: Yeah. Good point.

MS. EULER: -- as -- while we're doing
this, let's say John is having a bad month --
and I'm picking on John because I'm looking at
him. John is having a bad month and he really needs that extra money, and he points to this in the statute and says, "Or all payments made under the contract." That's only $5,000, you get $5,000, Todd. It seems to me like we would want to fix that.

MR. McCULLOCH: Todd and I fix -- have already done that for you. Just let us, as businesspeople, handle that and not let the government get involved. He's not going to let me --

MS. EULER: So, when Todd files a complaint with the State Board saying John screwed me out of all this money --

MR. McCULLOCH: Then you say, "Todd, you're a businessman, why didn't you have a contract?"

MR. OTTO: Sue him under the contract.

MS. GRINSTON: That's right.

MR. OTTO: Sue him under the contract.

MR. McCULLOCH: Yeah, go to the civil areas.

MR. OTTO: They have a contract.

MS. EULER: Well, I just want to raise that as an issue.
MR. McCULLOCH: We're not here to baby-sit Todd Mahn or Marty whatever his name is or anybody else.

MR. MEIERHOFFER: I think maybe what that's relating to is if, in fact, all the money hasn't been paid in the trust.

MS. EULER: Uh-huh. That's part of it.

MR. MEIERHOFFER: So, I think that's what that particular phrase is referring to, so it's a $5,000 deal and only $1,000 of it got into trust. I think that's what they're talking about there, frankly.

MS. EULER: Uh-huh. So, but my point here is -- not to pick on John, but my point here is while we're working on this, do we want to address that issue statutorily to make sure that the funeral home who is providing the services gets fair value from the seller?

MR. MEIERHOFFER: Is that a problem, though? I guess that's the question. Is it a problem?

MR. McCULLOCH: It's not a problem.

MS. EULER: Just because it's not a problem today doesn't mean it won't be a problem tomorrow.
MR. MEIERHOFER: Has it ever been a problem; I guess that’s the other question.

MR. McCULLOCH: Is that the purpose of the Board is to take care of businesspeople, though?

UNIDENTIFIED: No.

MS. EULER: The Board will receive a complaint on that.

MR. McCULLOCH: Well, you just have to give them a good answer, and that is you need to have a good attorney and you need to read what you sign and --

MR. OTTO: The funeral home as a provider should have a contract with their seller that says at time at-need, here is what I get.

MS. EULER: But they don’t always. Currently, they don’t.

MR. McCULLOCH: That was their choice.

MR. MAHN: Kim, before we go on, I’ve got a question. Somebody please explain to me if XYZ Funeral Home has their own trust and they’re putting in 80 percent -- okay -- and that family has a preneed there and decides to move it from -- you know, to me -- or from my
place to them. I don’t care which direction.
And it’s a 25-year-old preneed. How much,
under the current law or the way we’re going
to leave it, is the funeral home providing the
funeral, the establishment where the funeral
is handled, going to be paid? That’s my
question. Are they getting the original
$5,000? Are they getting some interest on
that? Can anybody answer that?

MS. RULER: That is -- I’ve answered
the question.

MR. OTTO: Well, first off, that’s
separate than the vote we were just talking
about. I understand. But under current law,
there is no provision for changing funeral
homes. It’s not in there. The only time
changing funeral homes is mentioned is when it
talks about irrevocability where it says just
because you made this irrevocable doesn’t mean
you don’t -- you’ve lost any of your rights to
change funeral homes, but changing funeral
homes is never mentioned.

MR. MAHN: Yeah, I know that. But I
am asking how is it handled right --

MR. OTTO: So, the only thing you can
do under the law, in my opinion -- this is my opinion. The only thing you can technically 
-- of course, again, if all three -- if all parties are happy with it and sign off on it, 
that solves the problem. But all that can happen under current 436 is you cancel the 
funeral home with -- you cancel the contract with funeral home #1 and then rewrite it with 
funeral home #2, which means the consumer gets 80 percent.

MR. MAHN: So, if they've had that funeral there for 25 years and they cancel their contract, how much are they going to get?

MR. McCULLOCH: Eighty percent.

MR. OTTO: Eighty percent of the face value of the contract.

MR. MAHN: Originally -- another interest?

MS. GRINSTON: Can I come back to that discussion? As we talk about right now at-need, what I'm hearing is at-need, Sharon made a suggestion that we clarify for purposes of the record what happens if he provides and John gets more. John, I'm so sorry, but he has the majority of the interest. What I'm
hearing as the consensus of the group -- and I
would like to ask the consensus of the group
on that question. At-need, interest goes to
the preneed seller, no need to touch that,
we'll leave it alone; am I hearing that as the
consensus of the group?

CHAIRMAN: Is your comment about that?
MS. EULER: My comment is about that.
CHAIRMAN: Okay. Make your comment.
MS. EULER: In that Todd's question
asks in a much more clear manner the same
question I was raising. Does the provider of
the services -- do we need to statutorily
provide that the provider of the services is
entitled to be paid how much including some of
that interest.

MS. GRINSTON: And I hear that
question, and I think what I heard from this
end of the table was let the market control,
you negotiate your contract, don't -- possibly
don't get the State involved in that. And so,
as we talk on that issue, does anyone else
have a position on the issue of should we
allow the final provider, by statute, to get a
portion of the interest?
MR. MAHN: Well, I'm still questioning this because am I supposed to tell a family no then that comes to me for a service?

MR. OTTO: Separate that for a second.

That's if there's been a change of provider.

MS. GRINSTON: Yeah.

MR. OTTO: Right now, we're just dealing there is no -- been no change of provider.

MS. GRINSTON: No.

CHAIRMAN: Right.

MR. OTTO: But from day one, you stuck with the same funeral home all the way to the end.

MS. GRINSTON: Yes.

CHAIRMAN: And you're entitled to all the money. Yea or nay?

MR. MAHN: Who is entitled to all the money?

MR. OTTO: The sellers.

MS. GRINSTON: The seller. Interest.

MR. OTTO: And what the funeral home gets is based on the contract between the funeral home and the seller.

MS. RUSSELL: Just a clarification on
that.

CHAIRMAN: Yeah. Go ahead, Darlene.

MS. RUSSELL: We're not talking about portability, are we?

CHAIRMAN: No.

MS. GRINSTON: No, we're not talking about any portability issues.

MS. RUSSELL: Okay. No portability.

MS. GRINSTON: I go to John, I've got a contract with John, the consumer comes in and has passed away. When the interest is paid out, who keeps that interest? Now, John can negotiate with me whatever he wants to, but, legally, right now, John, as the seller, is entitled to the interest, and without changes or anything else. Now, maybe John has contracted to give me a percentage of the interest or whatever, or we've already worked that out. But, technically, legally, it is John's interest. Again -- and I'm going to call this really quickly. Is there any desired consensus to change that issue when we don't have any portability or change issues?

CHAIRMAN: And anybody from the audience want to make a comment real quick?
MR. KRAUS: I'll keep it quick. Gerry Kraus, Homesteader's. When you set your retainage level 80-20, you get the money that you need to run your trust operation. And so, what you're talking about afterwards is a drawdown that I would think from that interest, you should only be able to draw down your legitimate trust expenses for administering that trust. The rest of any interest that accrues on that balance of the money, the corpus, should go to the consumer, wherever they go ultimately to get their funeral.

CHAIRMAN: Now, you're talking about that's portability. We're going to get to that.

MR. STALTER: Yeah, that's a different issue.

CHAIRMAN: Okay. All right. So, on the question --

MR. KRAUS: And only in a guaranteed-contract situation.

CHAIRMAN: Right.

MS. GRINSTON: Got it. Now, Bob
indicated he wasn't a preneed seller. Is there something you would like to say as a preneed seller, Bob?

CHAIRMAN: Bob Baker.

MR. BAKER: Well, we are -- I guess we're registered, we're not licensed as both a provider and a seller. I have a contract with John. We have a provider/seller agreement. And it's not fictitious; we do. If John makes more money than what he has to pay me, good for John, as long as he pays what our contractual relationship is. And I think we're going back to the problem with the NPS, they're not paying what they actually contracted with the funeral homes. But as far as the seller, being the seller and provider both, which you can be, which we are, but we also have provider/seller agreements with NPS, APS, Missouri Funeral Trust, and we've got several more, which most funeral homes do. But, you know, if John makes more money, good for John, as long as he pays me what we have agreed to.

CHAIRMAN: And that's a good point, Bob. But, I mean, what Kim is trying to get
to is, like, if you’re the provider and the
seller, you get all the funds. Like, if
you’re going from $10,000 to $15,000, and the
funeral costs you $12,000, you’re not going to
give $3,000 back; is that what we’re on?

MS. GRINSTON: Yes. Pretty much.
CHAIRMAN: Okay. And we’ve all agreed
that that’s all right because you’ve taken the
risk as -- I mean, like, with the financial
institutions and investing the money and all
that.

MR. MAHN: But we’re still running
into a problem because those contracts that
they’re talking about right there, and I don’t
have a contract with them, is hanging up --
there’s a lot of people moving these -- moving
around --

CHAIRMAN: Well, we’re talking about
the individuals that stay with the same
funeral home all the way through.

MR. MAHN: But it’s the same thing.
We’re going to use those contracts to fight
what we’re talking about.

MS. EULER: So, right now, you’re
question is: Does the interest belong to the
consumer or does it belong to someone else?

MS. GRINSTON: Correct. I'm not
talking about portability or what you pay to
your provider, what your contract is. I think
Bob answered that question for me. Yes. I
think I got that.

CHAIRMAN: Go ahead.

MR. SPEAKS: Brad Speaks, for the
record. It's 1970. I've just sold this
family a preneed for $1,000. Current rules
are in effect. I keep 20 percent, so I get
$200, which I have now pocketed to pay for my
commission to salespeople, my marketing
campaign, administrative costs, so forth.
Fast forward, it's now 2008. Grandma finally
dies. It's time to cash in, if you will,
that preneed plan, and there has been earnings
growth on the trust. Your question is: What
happens to those earnings?

MS. GRINSTON: Yes.

MR. SPEAKS: Okay.

MS. GRINSTON: In that pure situation,
no changes, no portability, no anything else.

MR. SPEAKS: I've already got my $200.
but now that $1,000 funeral is $7,500.
MS. GRINSTON: Right.

MR. SPEAKS: That $200 did not do it.

Those earnings are mine.

MS. GRINSTON: Got it. And on that sole issue, I think, again, the consensus of the group is that that issue doesn't need to be changed. Now, I understand that there are some questions about whether that should be, but let's talk about the consensus of the group.

CHAIRMAN: All right. All in favor of what we're talking about here --

MS. GRINSTON: Which is seller keeps interest.

CHAIRMAN: -- say aye. Nay?

(Unanimous voice vote for approval.)

MS. GRINSTON: Now, let me move on to a separate side question that Don actually brought up. Should a seller be allowed to withdraw interest prior to the at-need services? And I'm starting this up this way for a purpose because I think we've got to answer that question before we get to portability.

MR. OTTO: Like I said, that -- the
majority of the folks in our association that
have responded to our polls, regardless of
whether they're 80-20 or 90-10 or whatever,
believe that the income, less expenses,
require to be withdrawn to maintain the trust
should be left to accumulate until the time of
need.

CHAIRMAN: Everybody agree with that?

MR. OTTO: As opposed to the current
law, if anyone doesn't know, the current law
allows you to withdraw that.

CHAIRMAN: Right.

MR. OTTO: At any time.

MS. GRINSTON: So, let's get a
consensus of this. No portability issues,
interest is growing, you're getting the
statements, you see the growth going up, you
do not touch that interest until it becomes an
at-need contract, then it's paid over.

CHAIRMAN: Everybody agree with that?

(Numerous people agree.)

MR. CLINE: I vote for staying with the
current situation, just for the record.

MS. GRINSTON: Which is -- can you
please speak to the --
MR. CLINE: Which is like you said.
I'm George Cline, Kutis Funeral Home. That
the interest can be withdrawn. As a
businessperson, you're taking the risk, and
so, you can choose to do the interest as you
please.

CHAIRMAN: Okay. So, you're saying
you would like to see it as is.

MR. CLINE: I'd like to leave it as is.

CHAIRMAN: Okay. So, that would be a
nay.

How many people yea?

MS. GRINSTON: Can I affirm this
question, Mr. Chairman? Sorry.

CHAIRMAN: Go ahead.

MS. GRINSTON: I think your suggestion
was allow you to withdraw interest prior to
the at-need contract.

MR. CLINE: Not principal, but
interest.

MS. GRINSTON: Yeah. Not principal.
but interest.

CHAIRMAN: Okay. Well, let's do it
this way. How many people in favor of drawing
interest off the contracts prior to the

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contract being fulfilled? Okay. Those
opposed? Is everybody voting here? Well, it
carried, but, I mean, it wasn’t very much.

Ms. GRINSTON: Since we’re supposed to
be bringing together consensus draft, to the
extent that there is a split understanding
right now, we will note the split
understanding. This is an issue that we
didn’t come to agree on, but these are the two
suggestions: Keep it as is, don’t draw off,
and the majority vote right now I’m seeing is
to don’t draw off, but some people didn’t vote.

CHAIRMAN: Let’s do that again. Let’s
hold up your hands up that do want to keep
the interest. That was you, George, and --

Ms. GRINSTON: Okay. Keep --

CHAIRMAN: Yeah. Okay. Those who --

MR. OTTO: Allow the seller to withdraw
interest as currently allowed under 436.

CHAIRMAN: Okay. And we’ve got three
for that. How many for the other way?

Ms. RUSSELL: Keeping the interest in.

Ms. GRINSTON: For purposes of the
record so we know who we are --

CHAIRMAN: Hold your hands up again.
Did you hold your hand up.

MR. OTTO: Yeah. I'm sorry. I didn't know what we were doing.

MS. GRINSTON: Can you just state your name.

MR. OTTO: Yeah. This is ultimately dependent upon the wording of it.

MS. GRINSTON: Yeah.

CHAIRMAN: Right. Okay.

MS. GRINSTON: For purposes of our record so that we can write down who is on what side, can you just tell us who you are and what your position is. I'm sorry.

CHAIRMAN: Yeah. Jim?

MR. MOODY: I'm going to abstain.

MS. GRINSTON: Okay.

CHAIRMAN: Ms. Brown.

MS. BROWN: I say that you should be able to withdraw the interest.

CHAIRMAN: Mike?

MR. MEIERHOFER: Withdraw the interest.

CHAIRMAN: Don?

MR. OTTO: Don Otto. The majority of those who responded to the Missouri Funeral
Directors' survey and inquiries on this believe that the interest should remain in until the time at-need with the exception of that money needed to be drawn off to maintain administration of the trust.

CHAIRMAN: John?

MR. McCULLOCH: Maintain the interest.

CHAIRMAN: Maintain the interest? All right. One vote from insurance.

MS. ERICKSON: Maintain the interest.

CHAIRMAN: Okay.

MS. GRINSTON: Did you skip Rich?

MR. WEAVER: Yeah. Well, and I don't -- I'll try to clarify, you know. Earlier I voted that all the money go into trust, so if we go that route, then it's only fair, I think, that the seller should be able to get the interest. But if you do a split of only 80 going in, then I think it makes sense that the interest should stay in the account, so I'm trying to ride the fence on that.

CHAIRMAN: Joy?


CHAIRMAN: The interest stays with the account?
MS. GIRSTEIN: Well, it depends on which way you go.

CHAIRMAN: Why do you throw a curve ball in? Okay.

MR. WEAVER: Just to be complicated.

CHAIRMAN: Gary?

MR. FRAKER: I think interest needs to stay.

CHAIRMAN: Stay.

MS. RULER: Interest needs to stay.

MR. MAHN: Well, interest needs to stay, and if it don't stay, it's going to work right into the question I'm asking. If it's not there and somebody else provides the funeral, then who's going to pay that?

CHAIRMAN: We're going to get to that next.

MR. MAHN: I know, but I'm just saying.

MR. TANK: Interest should stay.

MS. RUSSELL: Interest should stay.

MS. STALTER: Some kind of income accrual, yes.

MR. CLINE: Interest should be allowed to be used.

CHAIRMAN: Okay. Stay. I'm the
MS. GRINSTON: We'll note that. Since we're getting close to lunch, there are two things that I think we can do very quickly. Number one, 436 doesn't say the money has to be placed in trust if it's trust funded. Is there anybody against putting in the statute that it actually has to get to the trust?

CHAIRMAN: Yeah. In, like, a 45-day window or something.

MS. GRINSTON: Well, don't -- we're going to do time frames in a minute.

MS. EULER: Well, don't confuse it.

MR. OTTO: Yeah. Don't do time frame yet.

MR. MAHN: Slow down, Mr. Chairman.

MS. EULER: Yes.

CHAIRMAN: I'm going to buy everybody an InBev at noon.

MS. EULER: Yes, Kim. The statute should require.

MS. GRINSTON: Yeah. I think we can do that by voice vote. Anybody opposed to saying when -- just saying that the money has to be put in trust if it's a trust-funded
plan? Anybody opposed? Everybody in favor.

(Unanimous voice vote for approval.)

MS. GRINSTON: Okay.

CHAIRMAN: A miracle.

MS. GRINSTON: Let's talk about --

after lunch, I'd like to do portability,
because I think we need to do that on a full
stomach, if we can. And it's 11:15. Do you
want to break for lunch now and then head into
that?

CHAIRMAN: Sure. Everybody ready for
lunch? Return at 1:30.

(Off the record)

MS. GRINSTON: I said that we were
going to do portability right after lunch.
Before we do that, I'd like to pick another
issue that I'm sure you may also have some
thoughts. Let's look at #1 on the July 15th
agenda because I think that may affect some
issues when we talk about portability. A
discussion of when preneed funds are to be
deposited. Right now, 436 is silent, like Don
pointed out. It's silent as to whether you
have to put it in the trust even though it's
implied. And the question is: When should it
be put in trust at whatever amount you
suggested for trusting; 80, 100, 90, whatever
amount it is. I think it might be good for
us to open the floor on when that money should
be required to be placed in trust.

CHAIRMAN: Like a number of days.

MR. OTTO: Just to throw out a number
that I suggest, but keep in mind that the
consumer has a 30-day buyer’s-regret clause
already. So, it is for many people,
particularly the ones that run their own
trust, it’s wise for them, perhaps, to keep
the checks sitting there until they know the
consumer is not going to change their mind.
So, it has to be at least 30 days.

CHAIRMAN: I think you said before
that your association is about 45.

MR. OTTO: Well, I think -- actually,
I think 90, I think, is actually. I mean,
that sounds like a long time, but when you
think about it, it’s got to be past 30 days
because of the buyer’s-regret clause. Then,
although it would be nice to work out a way,
perhaps, in rule making to streamline this, a
lot of people come into the funeral homes and
make that check out to the funeral home; okay?
Even though it might be going to a third-party
seller. So, then the funeral home has to
aggravate those and send them, usually, once a
month, to the third-party seller with an
accounting as to -- with a sheet that accounts
here's all the money that came through. So,
that's -- if you do that once a month. So, I
think, at a minimum, 60 days, but to give
everybody time to make sure you've gotten it
in, I think 90. The important thing -- I
don't think the important thing is the time
period as much as having a date certain so
that you know -- for example, you know that
you've been past that date.
CHAIRMAN: Well, everybody agree on --
Darlene?
MS. RUSSELL: I prefer just -- I
understand your thinking on how long it takes
and everything, but I think 90 days is just a
little bit further out there than most people
would prefer. I think the 45 to 60 days is a
more realistic time period.
CHAIRMAN: Bill?
MR. STALTER: We administer quite a few
trusts, but, I mean, typically, their deposits come in once a month at the end of the month.

Usually, it hits, like, ten business days after the end of the month. And sometimes some problems happen, so, basically, what we look for, that time frame is, okay, after the close of the month, really, they should be able to make a deposit within 30 days, maybe 45 days. But what we're looking at is not when it's really -- you know, if you say 90 days from the point of receipt, really, there's some time after the close of a month, you know, if it's 30 days, you know, that should give the funeral home or cemetery enough time then to get it into the trust.

CHAIRMAN: George, have you got a thought on that?

MR. CLINE: That's fine.

CHAIRMAN: What do you say, 45?

MR. CLINE: Forty-five.

CHAIRMAN: Any other --

MR. MEIERHOFFER: Jim --

CHAIRMAN: Yes.

MR. MEIERHOFFER: -- keep it simple for folks. Forty-five days is sometimes hard
for them to -- either 60 or 90 days. And the
truth of it is, we're -- most people -- 99
percent of the people want to get it in the
trust as fast as they can. So, this -- we're
picking up the outside situation here. These
are the laggards; the ones, for whatever
reason, you can't get it in.

CHAIRMAN: Sure.

MR. MEIERHOFFER: So, I would say give
it on the long side because those are the
problems you're having, so I don't want
somebody coming into the place and saying,
"Okay. Well, we've got this problem, but your
cut of sync already." So, I would stretch it
to the longer side because, in most instances,
people want to get the money in the trust.
It's the problems that we were just talking
about that you run into.

CHAIRMAN: Okay. Sixty days. And by
the way, Representative Meadows has joined us
and I want to introduce you. Appreciate you
coming. All those in favor of 60 days? All
those opposed?

(UNANIMOUS VOICE VOTE FOR APPROVAL.)

CHAIRMAN: Now, you can go to the big
issue.

MS. GRINSTON: Can we do an abstaining? Who is abstaining from --

MR. OTTO: Well, I mean, I prefer 90, but 60 is better than 45.

MS. GRINSTON: All right. For right now, we'll draft it for 60 days for you all to take a look at. Okay. Let's talk about portability. And I realize this conversation -- I don't know what's the most organized way to do it, but when we talk about portability, we are going to -- I'd like to talk about transferring providers or changing providers or changing sellers, moving the plan to someone else for whatever reason, at whatever time. Can we talk about providers first, just changing providers before we do changing sellers? I think there's a threshold question: Should the consumer have the right to change providers under a preneed contract because, right now, again, 436 doesn't clearly answer this question on a purchaser having the right to change providers. So, I would like to open up the floor for discussion on that issue and then maybe we can move to the next
issues on portability.

CHAIRMAN: Darlene?

MS. RUSSELL: I'll take this one on a personal level. My father bought a preneed contract from a funeral home and that funeral home sold to somebody he didn't like, so he wasn't able to change provider -- or get the money to transfer out to another funeral home. So, my suggestion is, you never know if that funeral home is going to change ownership or something may happen with their personnel that you just don't like them anymore. I think a consumer should always have the right to change their providers.

CHAIRMAN: Bill?

MR. STALTER: Okay. And I'm going to speak on the fiduciary part at this point, you know. That trust -- we're just talking about trusts at this point, is that the fiduciary has a trust agreement with the seller. We don't have a relationship with the provider or the funeral home. So, when you do change -- to a different funeral home, the fiduciary looks at that trust agreement in terms of protections -- how that contract is going to
be provided and so forth. We want a contract with the seller that we get promises and protections, but we don’t have that with the new provider. So, in a sense, when you say the family has a right to designate a new funeral home, you know, okay, now, is it the trustee’s obligation or duty to make sure that the contract is performed according to its terms?

MS. GRINSTON: Well, the trustee doesn’t -- wouldn’t have that obligation now. That obligation is on the preneed seller. The trustee, my understanding is under 436 right now, is over the disbursement of funds. What protections would a trustee who is just handling money need to have from the provider, since his obligation is to the seller and seller only? I don’t know. I guess my question is: How would the trustee be affected if I have to change providers?

MR. STALTER: When I -- okay. When do I distribute the funds?

MS. GRINSTON: Well, and the question of when may be different from to who because if the issue is when do funds come out, I
think that's a separate question. But if I'm
talking about being able to move from A
funeral home to B funeral home, how does it
affect the trustee if I go from Todd's to
Jim's? I think that's where we are in this --

MR. STALTER: If Jim is the seller, my
contract is with Jim.

MS. GRINSTON: Right. And so, you
deal with Jim.

MR. STALTER: So, do I pay Jim?

MS. GRINSTON: If Jim is the seller?

MR. STALTER: No. On the performance
of the contract, do I pay Jim?

MS. GRINSTON: Well, what does Jim --

I don't think I'm understanding the question.

MR. STALTER: No. In other words, you
can designate different providers, but the
trustee has a relationship only with the
seller.

MS. GRINSTON: Okay.

MR. STALTER: So, when it comes time
for performance, and it's Todd's funeral home.

MS. GRINSTON: How does it work now?

When the provider has provided a service, who
does the trustee pay?
MR. STALTER: We pay the sellers.

MS. GRINSTON: Is that the way it is, generally?

MR. STALTER: Yes.

MS. GRINSTON: So, are you telling me that if you change providers, that you may still be remitting it to the seller, and would that new provider be able to get payment from the seller?

MR. STALTER: No. I mean, I've got a contract with John. I mean, that's who I pay. In other words, if Todd is going to look for payment, you know, I --

MS. GRINSTON: I think I'm understanding, Bill. So, seller says trustee pay me for services rendered by --

MR. STALTER: Todd, in this case.

MS. GRINSTON: -- by Todd? And then Todd has to get his reimbursement from the seller?

MR. STALTER: Yes.

MS. GRINSTON: So, if I let Todd -- if I change from Todd to Jim, since I'm coming back to the seller, how would my change from Todd to Jim affect what you give -- what the
trustee gives to you?

MR. STALTER: That's what I say. In other words, just understand, I've got a contract with John, and you -- you know, basically, it is how is this new provider going to get paid? He looks to the seller.

MS. GRINSTON: Yeah. And I think that's -- I think I get it.

MR. OTTO: Yeah. I think that's my problem because the problem I -- and this came up when the legislation came up this past session. I, as a seller, have a contract with Joe's funeral home. Joe has obligations to me, I have obligations to them. If the consumer switches to Bill's funeral home, what if I don't like Bill's funeral home? What if I think they're crooks? What if I think they are going to -- there are still installment payments coming in and I don't trust them? What if they refuse to sign a contract with me? And I as a seller, as I going to be obligated to deal with any funeral home that is picked by the purchaser --

MS. GRINSTON: And see, yeah. And that's --
MR. OTTO: -- regardless of whether I have a contract with them or not?

MS. GRINSTON: Don, is that a separate question?

MR. OTTO: No, not on this one.

MS. GRINSTON: The question is: Is a seller obligated to accept every provider? Is that a separate question from can I change providers at all?

MR. OTTO: Well, you know, right now, 436, theoretically, at least, requires all sellers and providers to have a contract.

MS. GRINSTON: Right.

MR. OTTO: So, if you're going to say, well, what if you go to a funeral home where I don't have a contract, are we going to carve out an exception to that?

MS. GRINSTON: I think that may be -- I think that's a second question. I think that's a second question.

MR. OTTO: Well, I mean, it's a problem as to whether or not -- I mean, the instant reaction, and understandably so, is that the consumer should have the right to pick any funeral home. I mean, that's what a
lot of people, particularly, the public, think right away, but it's a lot more complicated than that.

MS. GRINSTON: I'm thinking of this from the insurance/HMO side, you know. If you want -- if I sign a contract with my HMO, he has a list of providers, I choose a list of providers in that deal. If a provider is not on the list, then my insurance company doesn't

MR. OTTO: Well, that's one possibility is that the seller has veto power over whether it goes to a different provider.

MS. GRINSTON: And, see, and I think that's the question I'm asking right now. Should the purchaser have the authority to designate another provider at all?

MR. OTTO: Well, if it's -- you know, I think one of the many problems is there are so many permutations. Is the seller and the original provider the same, because if the seller and the original provider are the same, and the person wants to go across the street to another funeral home within the same service area, now you've got the first seller,
the first funeral home that's done all this
work of setting up the trust, that has paid
all the money to have the trust every year,
that is paying taxes, that has administrative
fees, that has the secretary, everything from
the lights to the secretary to the
heating-and-cooling bill that they're paying
in order to maintain this, and then your
competitor across the street gets the benefit
of all that work --

MS. GWINSTON: But is that a transfer
of seller or transfer of provider?

MR. OTTO: Well, in that case, it's
just transfer of provider causes that problem.

CHAIRMAN: Mike?

MR. MEIERHOFER: Taking this a little
further along with lack of guidelines from the
State, typically, when we put these contracts
together, we determine the service radius for
ourselves, and it may be 25 miles, it may be
50, it may be whatever, which meant, in fact,
that when you made that contract with the
individual, you were assured they were going
to use your facility and not the guy next
doors. And that was important because, again,
if you're going to do the things that Don is
talking about, that was important, but it goes
one step further. Now I'm going to sell my
business, and I've got a block of business on
my books that somebody is going to pay for,
and the minute I sell it, they transfer it so
you had that runoff, and the person -- your
business wouldn't be worth what you would
think it would be because of not having -- if
you would have had that exclusion.

MR. OTTO: And like I said, I mean,
and you've got so many permutations. Was the
contract paid in full; was it not paid in
full? Are you going within the service area;
are you going without the service area? Has
ownership of the first funeral home changed --
the provider changed? Is that a reason for
doing that?

MS. GRINSTON: So, are you suggesting
that when we talk about portability, we adjust
portability for each one of those elements?

UNIDENTIFIED: No, absolutely not.

MR. OTTO: I think -- I mean, we --
and this may be jumping the gun. But I think
my position -- our position is going to be on
the portability issue, for purposes of what
this working group is doing, is that the
statute should -- the statute should simply
say that the consumer's right to change
funeral homes, if any, should be spelled out
in the contract that the funeral -- that the
purchaser signs and it's clear and conspicuous
so that the consumer, when they're entering
into this bargain, knows what, if any, their
rights are. Now, the Board may, assuming we
get you rule-making authority, may want to
flesh this out more as rule making. But it's
easy to say portability is a good thing, but
the permutations are so -- there's so many
different permutations with it. And I --
feral home Â that sells the funeral home,
even if it was just a pure walk-in, they don't
have an outside sales person, purely a walk
in, has incurred expenses in selling that
preneed.

MS. GRINSTON: And they would keep --
the administrative expenses that the seller
retains pays for those expenses.

MR. OTTO: Well, no --

MS. GRINSTON: Well, I should say --
and I'm not talking about the inflation costs because they're not going to provide the services. But the seller has gotten an administrative-expense fee to cover those expenses.

MR. OTTO: well, not if it's a 25 -- not if it's been around for 25 years like we mentioned, you know. You might cover your initial cost of paying a commission to that person that sold it if you do that or some of your up-front costs, but every year -- I mean, setting up a trust isn't free. And whether you pay it directly or you have a third party that has a trust, that means you're getting a little bit less because they're paying those fees. So, one way or the other, the funeral home is paying to have that trust established, whether it's directly because it's their trust or indirectly through a third party. And you're paying the secretary to answer that phone every day for 25 years, and you're doing the accounting if that person is bringing in the check or cash. So, funeral home A has expenses in selling a preneed that are ongoing. Now, the question is, how do you --
the tricky part is what is a fair compensation
for funeral home A in the event --

MS. GRINSTON: But I think fair
compensation may be a definition of whether I
can just choose to pick another funeral home,
and I think that that may be later, too.

MR. OTTO: Yeah, that might be a later
question, but that's the problem.

CHAIRMAN: Darlene?

MS. RUSSELL: It already allows for --
by contract, the purchaser may designate and
redesignate the provider in the irrevocable
agreement or plan where applicable by the
terms of the contract, so it's already in the
law. The intent was to allow a purchaser to
make the change by contract.

MR. OTTO: Well, I disagree with that
because that's under the irrevocability clause.

MS. RUSSELL: That's what's in the law.

MR. OTTO: Well, what that says is just
because you made it irrevocable doesn't mean
you've lost any of your rights to change or
rechange provider. But look anywhere else in
436 and it doesn't have that. There is no
provision in 436 for changing provider, how
much -- what you should get. I mean,
basically, what that was saying was that just
because I made this irrevocable doesn’t take
away my rights I have elsewhere, but there are
no rights elsewhere. It’s not there.

MR. STALTER: Well, I’m going to kind
of use your PPO or the insurance-type analogy.
And let’s say that with your coverage, as long
as you stay within your providers, that you
have certain guaranteed rights as far as
coverage. Once you step outside of that, go
to a different city or something like that,
you don’t necessarily lose all your coverage,
but it is a substantial step down in your
coverage. And that’s probably what we’re
probably getting at at this point.

MS. GRINSTON: And I understand that,
but I think that that conversation is how much
do you get paid if you go outside the circle.
What I’m hearing Don saying is that it is too
complicated to do anything to allow you to
change at all, and that we should just leave
it up to the contract because it’s just going
to be too complicated to have any provisions
for when a consumer can change. Now, if you
say, yes, a consumer can change, but if you
change, this is what happens; if you change
and it's paid in full, this happens; if you
change and it's not paid in full, that
happens. If you change and it's -- you know,
or something else. That's a different
question than can you change at all or should
we address the change all together. And I'm
going to speak from the consumer side. I
think we've heard from the legislative side,
and what we've heard from the consumer groups
is if I don't like this funeral home, I don't
want to be buried here. I have paid my money
and, granted, it may be within an approved
list. Is it your suggestion that we should
leave that to contract on whether I am locked
into being required to use that funeral home
or else?

MR. OTTO: Now, all I'm saying is that
I think it may be too complicated to spell out
in the legislation with our legislative
mandate to get something to the joint
committee. I think there are so many
permutations that that might be beyond what we
can get done.
CHAIRMAN: Mike?

MR. MEIERHOFFER: The question would be is it worthwhile for the seller to sell something if he can't assume he's going to provide -- take the time and effort, and then you end up with the twisting situations that can go on. It will just be -- it'll be chaos. I mean, I can't imagine wanting to do that.

MS. GRINSTON: I understand that, but I'm going to put on my consumer hat again.

MR. MEIERHOFFER: I understand. I'm not talking --

MS. GRINSTON: Grandma doesn't like this funeral director.

MR. MEIERHOFFER: I understand you. I'm going to talk about the people that sell it. Why would you sell it if I sell it and tomorrow you go to another funeral home? That doesn't make any sense.

MS. GRINSTON: And I understand that. I think that this is -- and I'm just taking this as a layman, not in the business. If the question is if you go, then this is the penalty, why can't there be language that says
if you go, then this is the penalty that will cover it. For example, if you move over here to another funeral home, and I've been doing this all the time and they're going to service it, I get to keep X percent no matter what.

MR. MEIERHOFFER: Well, that's what's happening now. That's what happens now.

MR. McCULLOCH: Every day.

MR. MEIERHOFFER: Every day, that happens now.

MS. GRINSTON: And I'm not disputing that, but what I'm saying as far as clarifying the right and the options of 436, we're saying we don't think that needs to be clarified. Because what I hear at the Board meetings is portability -- we need to discuss portability. What I'm hearing Don say today is probably portability is not an issue that we could probably work out.

CHAIRMAN: John?

MR. McCULLOCH: Again, I think it goes on every day. If people want to change their provider, we let them do that. But the funds are staying in the trust and we're paying the inflation on -- but, again, it's that inside
trade area. Those are handled one way; okay?
And outside the trade area is handled
differently. So, if they go outside the trade
area, we have the right to try to find another
provider, and that's something we can
negotiate with another funeral home. So, if I
call Todd up and say, hey, I have a person
that wants to move in -- that's moving into
your area and they're looking for a funeral
home, if he knows anything about preneed at
all, he's going to ask me a couple of things.
First off, what do I have to provide and how
much money are you going to pay me, if he
knows what to ask; correct? And I can try to
negotiate that. And it can be anything that
he and I want to negotiate and come up with
currently, and then that's what we'll go
forward with. If he doesn't want to provide
that funeral because there's not enough funds
there, he can pass on that, and I will move
on to the next funeral home and I'll try to
find another provider. If I can't find a
provider and the family is not satisfied with
the one that I find, then my only option is
to refund 100 percent of their money.
MS. GRINSTON: And so -- and that process, which I understand is somewhat spelled out in statute. But am I hearing Don say that what we should do is instead, say put it in the contract and make it conspicuous because that's where it needs to be, because if the idea is, for portability reasons, to maintain the status quo because it's working, then maintain the status quo. But am I hearing Don say that what we really need to do is say put it in the contract and leave it alone -- in statute?

MR. OTTO: Well, the one confusing thing with the current statute that we can probably clear up is make it clear that if the consumer does change providers -- does want to change providers for any reason, it's treated like you canceled the contract, which is actually what's happening right now. That would be something you could do. That is something you could do in the statute without making it five pages worth of permutations.

MS. GRINSTON: Which I think is where we've come full circle because now I think we've talked about the first question of
whether the consumer should have a right at all. Now, what happens if they do or how that's handled afterwards may be step two, three, and four. But am I hearing you say that that may be an idea that if the consumer -- and repeat that again for me. If the consumer chooses to cancel, then --

MR. OTTO: Well, if the --

MS. GRINSTON: If they switch providers, you cancel one contract, it has to be rewritten?

MR. OTTO: That -- I can see you could come up with language in the statute that would do that without, like I said, taking five pages.

MS. GRINSTON: Sure. I think you could do that in a paragraph. If I could, can I open the floor for feedback on that issue? If you change providers, the first contract gets canceled and you have to rewrite that, treat it as a cancellation, the consumer has to go do another contract with the provider and that seller.

MS. DUNN: So, does the consumer then does the new funeral home get to retain
another 20 percent?

MS. GRINSTON: I don't know. That's a separate question.

CHAIRMAN: I've got one question myself. I want to ask Mr. Trimm there, Bill, what is your take on this? I mean, you're a consumer group. If you contracted with one funeral home and that funeral home sells and everybody is saying then you don't like the next owner, wouldn't you want to go out of there with 100 percent of your money plus interest so you could go get your funeral someplace else?

MR. TRIMM: I don't think the consumer should be penalized just because he changes -- because he has to move. Maybe he retires and moves into another area for retirement. I don't see why he would have to be penalized on his preneed contract. I guess what question I've got for John, if he gives the consumer all their money back when they change funeral homes, who gets the income that that money has generated? Is that in the contract? Who gets it?

MR. MCCULLOCH: I do. I keep the
interest.

MR. TRIMM: All of it?

MR. MCCULLOCH: Yes, sir, I do.

MR. TRIMM: So, all the consumer gets
back is, what, 80 percent of what he put in?

MR. McCULLOCH: No. A hundred
percent. If it was a $5,000 funeral, then I
give him back the $5,000.

MR. STALTER: Let's clarify. I mean, that's moving out of the service area.

MR. McCULLOCH: That's out of the
service area, yeah. I didn't get to the
inside the service area, but outside the
service area. If I can't satisfy them and I
cannot find them another provider, then my
only obligation then is to give them back 100
percent of their money. Not just the money in
trust, the 20 percent plus the 80 percent.

MR. TRIMM: Well, I don't think there
should be a penalty to the consumer. That
doesn't seem fair to me.

CHAIRMAN: Well, that's what we're
here for. I mean, with the consumer. And,
Representative Meadows, you had a statement.

REPRESENTATIVE MEADOWS: Go to him
first and then come back to me.

CHAIRMAN: Okay. Bill?

MR. McCULLOCH: Part of the problem is, is the consumer has set -- has had -- has a contract with a specific funeral home, and so, they're breaking the contract. Well, there's a lot of attorneys in here that can talk about contract law, but they're basically breaking that contract. So -- but that's their choice, or maybe their situation calls for that. But it would be like with the insurance, you know, if you cancel your insurance policy -- we've talked about that earlier -- you don't get back all of the money you've paid in over the last 25 years or 40 years. I think it's probably less than a third, actually. So -- but that's just the way it works.

MR. TRIMM: But I don't think they should incur the penalty on that.

CHAIRMAN: So, you're saying, like, if you got 100 percent -- if you went from Jeff City to St. Louis and you canceled your contract here and went there, you would like to have at least 100 percent of your money
back; correct?

MR. TRIMM: Correct.

CHAIRMAN: Okay. Todd?

MR. MAHN: Well, I, personally, would like to start off by just asking a question, because I'm not sure on this panel who all has, but just maybe a show of hands. Who has actually sat down with families and made funeral arrangements? Actually sat with the family and made funeral arrangements, because the thing I want to point here to, Bill, is if Bill comes in to see me and has a funeral plan in St. Louis -- and I've had this happen twice in the last couple months. And he has a funeral plan up there, one of the funeral homes has their own trust, and he wants to move down to me just because, like you said, he retired down in the southern part of the state.

CHAIRMAN: And you sit by him all day, and he's going to move down there by you; right?

MR. MAHN: We've made buddies, and I'm going to scoot a seat over here in just a minute. But on both occasions, I've been told
no. From when I contact the funeral home and
they want to move it, I'm told no. I mean,
no 80 percent, no interest, no 100 percent, no
anything. And they've used all -- things,
like, well, there's an irrevocable waiver, and
then they go call on the family the next day.
And, you know, I think until you've sat with a
family and they're sitting right in front of
you and they've lost someone and they want you
to bury their loved one -- and I'm going to
back up and say this because if you're worried
about them going to a competitor, then you're,
obviously, not a very good funeral home,
because I have two very good competitors.
They don't move around that much and, quite
frankly, I had one move the other day and I
have to give authorization for all the money
to be paid to them or I could keep the
interest and 20 percent, and I said, "No, pay
the whole thing," you know. "Pay the whole
thing to Mr. Pinyard. He's doing the
funeral," you know, "take care of him. Take
care of that family." And this -- the
insurance doesn't do it that way. They can
move insurance to any location they want, and
that policy is paid up 100 percent. So --
and I would think that's the bulk of our
business now, you know. I would think. I
don't know what the percentages are, but this
preneed doesn't belong to me, it doesn't
belong to the trust company where it's at, it
doesn't belong to the funeral home where it's
at. We're holding it there for that family
until the time they decide to have a funeral,
and when they do, wherever they have that
funeral at, that's where it ought to be paid
and be provided, and I don't believe it
belongs to anybody other than that family
right now. And all these things you can say,
well, the family bought this from you and they
should know this and read fine print and all
this other baloney, that's just baloney. They
come in and they're expecting you to help them
with the funeral, and later on down the road,
they might move, and they're not all moving
around. I mean, you know, you just get
occasion where somebody wants to move. And I
think penalizing them for moving because they
retire somewhere is absolutely ridiculous.

MR. McCULLOCH: Todd, that family
shouldn't be doing a preneed because they need
to just put the money in the bank and control
it. They're not a candidate for this if they
feel that way. And there's people like that
out there that feel like, hey, I can invest my
own money. They can do their own retirement.
They don't have to worry about Social
Security. They can do all those things. They
don't need life insurance, either.

MR. MAHN: I don't look at any of my
prearrangements that I sell as a liability
because, you know, we have to service these
contracts. We're most probably going to take
a loss on most of them. So, you know, that's
just how I look at it. But I don't think --
if he has prearrangement at XYZ for 25 years,
and he retires and moves out in the country
and that prearrangement 25 years ago was five
grand and today it's ten, and now that funeral
home can't perform its funeral? He's got to,
what, go back to that other funeral home? I
mean, what's he got to do, Don? What's he
do? Well, either one -- whoever.

MR. OTTO: You mean on the current law?

MR. MAHN: No, on what you want.
Forget the current law because we're evaporating that, and we're writing a new one. I'm asking right now, if they move to another town and want to use their funeral, what can they do?

MR. McCULLOCH: Well, in reality, I find a provider for them. You know why? Because I call you, I call both of your competitors --

MR. MAHN: Right.

MR. McCULLOCH: -- and I say I'm looking for a funeral home, and one of those guys says, "I want that business."

MR. MAHN: Right. Well, I know you will, John, and I've applauded the way you do it, and I appreciate that. The problem I have is funeral homes doing their own trust and not allowing that person to move their funeral.

MR. OTTO: That -- if -- well, again, on behalf of what the Missouri Funeral Trust does, and we've never had a situation where we've had to give the money back since I've been here because we do the same thing. I've got the yellow book on -- you know. And we
call up a funeral home that the family is
happy with because the family has to approve
it, and we say, okay, here's the statement --
we fax them the statement of goods and
services, say, "Can you provide this funeral
for this family for this amount of money?"
And to this point, I've never run into a spot
where I wasn't able to do that, so that's good.

MR. MAHN: Well, and I know you guys
are doing it that way because it would be a
black eye on your third-party business. I
understand that. When I hear it's an MPT or
APS and they want to come and transfer to me,
I feel totally comfortable. I'm talking about
the funeral homes that have their own trusts
that won't transfer --

MR. OTTO: If a funeral home that has
their own trust is not allowing the person to
cancel their contract --

MR. MAHN: Not cancel their contract
-- I'm not saying cancel their contract. I'm
saying they come to you, a person has passed
away, and they've decided, since they've
moved, they want to use your funeral home.

MR. McCULLOCH: The person has died?
MR. MAHN: Yes.

MR. McCULLOCH: Okay. You just file the claim and they have to process it -- 30 through their trustee and they get the funds and then they have to pay you. They can’t refuse that.

MR. STALTER: Yeah, but how much?

MR. McCULLOCH: How much?

MR. STALTER: Yeah.

MR. McCULLOCH: Well, if it’s outside the trade area, you would have to give them --

MR. OTTO: Yeah. Outside the trade area, outside the -- that’s the problem with 436 is it doesn’t define this. But outside the area normally serviced by funeral home #1, the seller has to do one of two things; find a funeral home that the family is happy with that will provide the funeral or pay the purchaser 100 percent of the money back, no interest, than what’s provided for in the contract, but 100 percent of the money. And if a seller is not doing that for you when a person dies outside the original provider’s service area, I would say that’s a violation of 436.
MR. McCulloch: Certainly.
CHAIRMAN: Representative Meadows?
REPRESENTATIVE MEADOWS: Thank you.
CHAIRMAN: You’re welcome.
REPRESENTATIVE MEADOWS: I never know what I missed this morning. This was an issue when I wrote the first bill, House Bill 825 when we were working on this. And then through the year or through the past 24 months, I’ve had a lot of people call me about this. They were wanting to move their -- have portability rights to move their service, especially, like, St. Louis, I’m moving to Kansas City or I’m moving to the Lake to be closer to my daughter -- my son and daughter. Or I’m moving to southeast Missouri or somewhere, wherever they’re going, and even sometimes even out of state they move and they want to be able to take these things with them. So, just some notes that I wrote down. In all honestly, stop and think about it. If we’re going to -- and I’m a consumer-driven kind of guy. But shouldn’t the consumer have the right to request, without penalty, the 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,
"No. We're keeping 20 percent right off the top and all the interest because they're moving their money from my bank." I mean, I associate it with banking because banking, you know, it's a very service-orientated industry, and I think that -- and that's a lot of the complaints that I receive from the consumers. And, again, if we are writing a bill about consumers -- and, Kim, I agree with you because I feel the consumers should have a right to move these things without penalty. Now, I draw fervor from a lot of folks in the room. Just don't start throwing the knives and eggs and the tomatoes at me yet, guys, but that's just my opinion, but I'm a consumer-friendly guy, so --

CHAIRMAN: Sharon?

MS. EULER: I'm going to echo a lot of what Representative Meadows just said. The one thing that we need to keep in mind is that rather than debating what the current law means, we're looking at totally rewriting the law and making the law say what it is we want it to say, not what it currently says. Again, with the AG's office, we're always looking
after the consumer, and from a consumer point
of view, I see no reason why there should not
be portability allowed. The consumer should
have the freedom to decide what funeral home
they want, and that money, there should be a
statutory process to allow for that so that
the money can be transferred without penalty
because it's just like moving your checking
account. You wire transfer the money to your
new account. Because consumers look at this
as like a bank. They think they're putting
their money into a bank, and they're using
their funeral home as a bank. And I just
don't see a downside. And maybe we need to
clarify that the money is held in trust on
behalf of the consumer because it is the
consumer's money. And the reason why the
irrevocable provision is in there is for
Medicaid spend down because they need to
relinquish control over the money, but they
can move it from funeral home to funeral home
without affecting that.

MR. OTTO: Well, the difference in the
bank analogy is the consumer hasn't purchased
anything with the bank. They haven't bought
anything. When they're buying -- when they're
doing a preneed contract, they've purchased
something. They've purchased a funeral that,
in most cases, is guaranteed price.

MR. MAHN: They haven't necessarily
purchased it yet.

MR. McCULLOCH: Yeah, they have.

MS. BROWN: Yes, they have.

MR. McCULLOCH: Yeah, they're buying
it.

MR. MAHN: No, they haven't.

MR. McCULLOCH: Yeah, they are.

MR. MAHN: It hasn't been provided yet.

They're just setting money to the side for the
funeral at a later date.

MS. BULER: They've entered into a
contract.

MR. McCULLOCH: They're prebuying it.

MR. OTTO: It's -- again, to use the
analogy, it's like putting something on
layaway. You're paying for it now, you're
going to pick it up later.

MR. MAHN: With all due respect,

funeral homes are not Target. Now, I know you
have made funeral arrangements, but I'm
telling you right now, I've sat with these families and I'm not going to sit here and have them compared to Target or Wal-Mart. It's not the same thing.

MR. OTTO: Well, no. But from the legal standpoint, that the consumer has purchased something is the difference. And that purchase has cost the first funeral home something. And the problem is that the difficulty is determining what that --

MR. MAHN: I've done this for 20 years. What does it cost me, Don, to do it in the first place? You talk about this cost all the time, you know. I don't understand what the cost is. What cost?

MR. MEIERHOFFER: Let me put it plainly. He gets paid for his time, you don't, but you probably should as a funeral director. When you say --

MR. MAHN: Well, I'm paid for my time, but I feel like we also owe families some respect and taking care of them in the right manner. And this whole argument about the fact that they can't move their prearrangement -- all we're asking for is maybe, you know, 80
percent plus the interest, you know, to be
paid. But to tell a funeral home that they're
not going to get that, I mean, is just
ridiculous.

MR. OTTO: I said, well, the
difference -- I just wanted to point out the
difference from the legal standpoint, in my
opinion, is a consumer -- the purchaser -- we
call them the purchaser. They're buying
something. And you mentioned that you can
move your stuff from one bank to another
without penalty. Well, you know, you can't
cash in a five-year CD in year one without
there being a penalty. So, the problem that I
see is I think we could -- I mean, I think
you can come up with a portability situation.
The problem is there -- I see just from the
practicality of writing it in the statute is
that there are so many permutations on the
portability -- inside the service area,
outside the service area, paid in full, not
paid in full, guaranteed contract, not
guaranteed contract. Is the seller a
third-party seller or is the seller the same
as the first funeral home? With all of those
permutations, I'm just, from a practical standpoint, seeing it difficult with amending 436 to come up with a portability scheme that's workable. That's why my -- you know, my -- the time I've had to deal with consumers with portability problems, their biggest problem has been they didn't realize that's what the law was. They didn't realize what they were getting into. They didn't know that.

CHAIRMAN: Jim has a question.

MS. GRINSTON: Can I have a question?

Since we're talking about expenses, and I do understand the consumer issues. Whether you're a third-party seller or you're selling for yourself, you know, for your funeral home, can you help me understand the downside of saying, "Consumer, you took out a contract. I had an expense element built in. If you change providers" -- if you're a third-party seller, you know, maybe a provider that I have a contract with that is acceptable to the family, which is what it is now. If that's not acceptable or I sold for myself and you just want to change it all together, why not say go -- treat it like a cancellation, you
keep what you got for your expenses, and you
give the family back the rest? So,
technically, you're not out of any money
because this expense element was supposed to
last you the life of the contract. You're
getting out of the continuing expenses, you've
got your expense money in your pocket, you do
a formal cancellation, they go to the provider
they want. Now, when the consumer goes in,
will they get a 100-percent check back?
Probably not. But they knew that they were
going to be paying, and this is with the
scheme everyone talked about with expenses,
whatever that expense element is, but I get
what I signed for when I signed the dotted
line. I knew I was paying this, you were
going to deduct an amount for expenses. When
I walk away, I get what I paid minus the
expenses that you told me you were going to
deduct. And then, Mr. Meierhoffer and Mr.
McCulloch, you guys still have your
administrative-expense element that was
supposed to last you the life of the contract,
which you don't have the expenses, but you
still have the expense money paid in. Why
wouldn't that work in compensating a seller on
a cancellation? It would also allow a
consumer to walk away with what they were told
at the table; "This is what you paid, but I'm
going to take an expense fee."

MR. McCULLOCH: What if it's not paid
in full, how do we handle that?

MS. GRINSTON: Well, right now, let's
say the expense element is X percent, you
know. Let's say it's not paid in full, you
take the -- and I'm just using a number -- 10
percent, 20 percent, or whatever that expense
element is, and, again, you give the rest of
that back, because if you're talking about
pooling expenses, remember, you are getting
out of this contract. There are going to be
no forward expenses. So, what you take is for
the expenses you've already had, which will be
a portion of what it is, and then everybody
walks away. The consumer gets what he signed
for, and you have something to cover some of
your expenses, because what I'm hearing is
that under the scheme, the preneed seller runs
the risk of taking a loss. And I think if we
-- what I'm hearing on portability issues, it
sounds like we want to run the risk of taking
a loss, but we don't want to run the risk of
losing our expenses and interest.

CHAIRMAN: Mike?

MR. MEIERHOFER: It goes a little
further than that, I think. From the business
side, if you're running the calculus of
running a business, it's complex. You put on
your books a number of contracts that you plan
to service, and that would simply be something
that you could probably sell, typically, and
be assured of that block of business. We're
introducing a wild card here that really makes
the calculus even more difficult to run a
business and plan for your future plan. If
something should happen -- and that can happen
to any business where you have an employee or
a staff member who gets in trouble, it hits
the paper, and all of a sudden, you say, "My
gosh. I'm going to lose all this business."
And that can happen. Is that right or wrong?
I'm not sure.

MS. GRINSTON: And some of it, I think
of it as a risk element, you know.

MR. MEIERHOFER: It is.
MS. GRINSTON: Whenever you sell a product or you sell a promise, if you will, whenever you sell it, there's a risk always that you'll lose money. And in any margin factor, I think a business plan would always have this module built in. But if you're guaranteed to retain a portion for expenses, the hit that you would take would not really be as large because you would have already retained a portion for your expenses that was supposed to last a little bit longer for the contract. And so, I think that -- I don't know if in that business module what could be addressed is the expense element of it, but, still, we have consumers able to walk away with what they signed for.

"I signed for a preneed contract, I paid this money minus these expenses. When I walked away, they took the money they told me they were going to take for expenses, and I walked away with the rest of it to go take it to someone else."

MR. MEIERHOFER: Okay. But one other element to look at --

MS. GRINSTON: Yes, sir.
MR. MEIERHOFER: -- and that is you
still have to have somebody out there
promoting the product or service.

MS. GRINSTON: That's true.

MR. MEIERHOFER: So, if you neuter
this thing to the point where it is of no
value for that individual or that company to
do it, then the consumer doesn't have that
opportunity, as well. So, really, what you
have to evaluate is a capped preneed, what we
really want in this business, or should you
let the market work on the basis of no cap
with people walking and take it from you
rather than put it out there and let people
have an opportunity to purchase it earlier or
maybe where they would never have an
opportunity otherwise. That's really --
that's the fine line you write here with
writing this legislation, from my standpoint.

MS. GRINSTON: But, respectfully,
let's say I sell a $5,000 contract and I get
to keep 20 percent. You all help me with the
math; I'm an attorney. That's $1,000. That
means $4,000. Let's say someone shows up
under the scheme I just talked about before.
I've gotten $1,000 for my expenses. They walked away with the other $4,000 because that's what I told them I would provide for. So, now I have $1,000 on the books. I have no other obligations. I've already, you know, paid within the structure and/or it was the max that I was allowed to have anyway, so my commission is already built in to what I was going to do. And so, I get that -- I don't know. And I guess in weighing those interests, I don't know if that's the way to protect the consumer as well as protect your business plan.

MR. McCULLOCH: That's currently there now if it's inside trade area.

MR. MEIERHOFFER: I guess, if it's a trade area --

MS. GRINSTON: Inside the trade --

MR. McCULLOCH: Inside a trade area, that's exactly what happens.

MS. GRINSTON: And if it's inside the trade area, why can't we make that outside of the trade area?

MR. OTTO: Well, that would actually be worse than --
MR. MCCULLOCH: Outside the trade area
-- potentially.

MS. GRINSTON: Why?

MR. OTTO: Currently, outside of the
trade area -- I mean, you have to wait till
the consumer passes away -- or the beneficiary
passes away. Although John does something
nice for the consumers, he does it even before
then. But after -- if the consumer passes
away outside the service area, they get 100
percent. If you can't find a funeral home
that will do it with the amount you have in
the trust, the consumer gets 100 percent of
the money they paid in.

MR. MAHN: Minus interest?

MR. OTTO: Interest --

MR. MCCULLOCH: Yeah.

MR. OTTO: -- well, it depends on the
contract. Your contract can allow the
consumer to get the interest or not.

CHAIRMAN: Sharon?

MS. RULER: I have several comments.
If we are saying the consumer has no
portability, does that also prohibit
rollovers? It would seem to me it would. If
the consumer doesn't have the ability to move
to a different seller, then it would seem to
me that there could be no rollovers from --
the funeral home could not change sellers
because what's good for the goose is good for
the gander. So, that's an issue that I see
which could cause problems. Funeral home goes
out of business, funeral home that was
provider and seller, if there's no
portability, what do those people do, you
know? There's no option there. The third
thing is the idea about canceling the
contracts. If the person bought the prepaid
funeral plan as part of their Medicaid spend
down. they cancel the contract, that money
comes into them, they get kicked off Medicaid.

MS. GRINSTON: Yeah. And I think we
probably need to treat Medicaid as an entirely
different animal.

MR. OTTO: Yeah, you're right.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: Yeah. I'd
just like to say -- and, again, I got in this
argument with a funeral director, and I'm
going to bring this up. The funeral director
told me the way that he looks at this, if I
go to Circuit City and buy a $5,000 plasma TV
and I take that $5,000 plasma TV home, and
three months or six months or a year later, I
don't like that plasma TV. I take it back,
then, by God, as a consumer, Representative
Meadows, I should get 100 percent of my money
back. And that's the way he equates preneed.
Now, first of all, it's a damn shame that this
specific person equates buying a TV set with a
prearrangement because we're talking about
people. We're talking about people, not TV
sets. And the difference is, is that that
consumer, that little old woman or little old
man, purchased this thing. They have not used
it. The family has not used it, that's why
they should be entitled to their money back.
That's my soapbox. I said it, and, you know,
someone once told me you better watch what the
heck you wish for because you just might get
it. And, by golly, if I have the rights to
do it, I'm going to push it, because the
people that are buying these prearrangements
should be entitled to get what they are
expected to get back. It's just that way
because they have not used it. You're saying they're purchasing something. Yeah, they're purchasing the right to use that, but the industry should say, okay, you know, let's take the blinders off here and stop trying to protect it. Let's give them back what they're entitled to get back, for crying out loud, and let's don't get into this big fight, folks. I mean, it doesn't have to be like this. That consumer -- and to be equated to a $5,000 plasma TV is not the way that I look at it, and that consumer has not used it. Someone taking a $5,000 TV -- plasma TV home and using it for six months, yeah, I can see it. There would be a difference. But that little lady or that little gentleman or whomever they are, if they have not used it, then should be entitled to move it and/or get -- and like Kim said, if it's going to be specified that they're going to get 80 percent, then put it in writing. And a lot of senior citizens, when they go in on third-party sellers -- and I'm not talking about scrupulous people in this room. You all are of fine scruples and moral capabilities, but there are people out
there that will cheat and that will dupe and
will do these things, and that little old lady
did not know that she was only going to get
80 percent back because they've called my
office and complained. They've called the
State Board and complained. They've called.
So, the bottom line is, is I'm not saying we
can legislate morality; no, we cannot. But
the bottom line is is that either that or
you're going to have to put in bold letters so
they can see it, so they know flat up what
they're doing, and maybe that's something --
another thing that we need to look at, that
all contracts will be the same if we do this
here, but everyone has to sell off the same
contract, everybody has to sell, not that my
AXYZ company has this contract, and it's in
this big writing down in very mumbo jumbo of a
contract; do you know what I'm saying? So,
let's -- if we're going to do it, then let's
be fair. Let's get it out there, because I
know all these gentlemen, ladies in this room
are all of fine moral character and they
wouldn't do that, but you do have some out
there. We've had it happen, and that's why --
I'll get off my soapbox now. Thank you.

MR. MCCULLOCH: What you're saying is they should get back 100 percent of their money, we just need to put it in writing specifically what they should get back?

REPRESENTATIVE MEADOWS: Well, I -- John, to be quite honest with you, I think they should get back 100 percent of their money. But, I mean, you're already keeping the interest off the top of it, but, you know, that's just me, but --

CHAIRMAN: Go ahead. I'm sorry.

REPRESENTATIVE MEADOWS: No, that's fine. I'm done, Jim.

MS. GERSTEIN: I would like to just say something.

CHAIRMAN: Joy?

MS. GERSTEIN: And I appreciate your comments. And this is -- I'm listening to you all and this is a very personal thing with me. I live in Missouri; Missouri is now my home. I don't have any relatives here. My relatives are all on the West Coast or in Florida. Let's say in a few years, my mother wants to move up here to be closer; this is where my
home is. The way you all are talking, if my
mother passes away when she is here, I can't
call Florida and get her money to bring it up
here to get her buried without -- that's what
you're saying to me; right?

MR. OTTO: That would depend on
Florida.

MS. GRINSTON: Well, but she's talking
about under Missouri's -- under the scheme
you're proposing in Missouri, because if she
put the person back the other way.

MR. McCULLOCH: That's not true.

That's not the way it works at all. We
haven't said that.

MS. GERSTEIN: You're telling me that
I could not transfer --

MR. McCULLOCH: No, ma'am, we're not.

MS. GERSTEIN: Yes, you are.

MR. McCULLOCH: No, we are not.

MS. GERSTEIN: You just said I can't
cancel from one to the other.

MR. McCULLOCH: We did not. We are
not; we did not.

MS. GERSTEIN: Well, that's what I
heard.
MR. McCULLOCH: You should transfer them now. The law says you can do that.

MS. GERSTEIN: Without a large penalty.

CHAIRMAN: All right, folks. We've come -- I want some of the public members, let you all have a chance. Brad actually held his hand up before you, Bob -- about two hours ago.

MR. SPEAKS: This is a great topic, isn't it? Meadows, you missed the big discussion this morning on the 80-20 rule, so -- when we're talking about portability, you know, to me, it always comes back to the agreement. If Becky and I have entered into an agreement, I am promising -- back to our $1,000 analogy. It's 1970, Becky comes and says, "Mr. Speaks, when I die, will you handle my services," and I say, "Of course, Becky, I'd love to." Here's $1,000, I keep 20 percent, so there's my 200 bucks, it goes in my pocket. Fifteen or twenty years later, services now are $7,500, and Becky comes and says, "Well, I've changed my mind. I want to end the agreement"; okay? That's fine. By law, currently, I give her back $800. The issue to the consumer is that they cannot
understand how -- and, believe me, we have
heard all the arguments that Representative
Meadows, that the State Board has heard.
Probably every funeral director in here has.
But let me ask you this: So, in a sense,
what the consumer -- what Becky is now saying
to me is, I want to end the agreement. I
want to terminate the agreement. Is everybody
with me? I want to terminate the agreement.
There is no problem with that. She can
certainly do that. It's all spelled out,
here's how that works if you terminate the
agreement. Conversely, what if I was to
suddenly appear at Becky's doorstep and say,
"I don't really want to follow through on
this. I realize that was really kind of a
bad deal for our funeral home. I just
realized I'm on the hook for all this money,
the difference between $1,000 and $7,500, and
the way I'm going to cure that is by providing
you a graveside service instead of the
full-boat funeral service that I promised
you." What do you suppose Becky would say to
me? "Oh, no. It's in our agreement. No,
you have to do that." You know, I'll submit
to the group it can't be only one way, it has
to be good for both parties. Whatever the
agreement is, that's the agreement, you know.
We're -- I think -- personally, I'm fine with
portability in the sense that I will refund
the money, whatever it was. But to say I
should give back more or should assume the
risk and retain nothing, you know, frankly, no
funeral home in their right mind would ever do
that. I mean, that would essentially end the
sale of preneed in Missouri.


MR. BAKER: Thank you, sir. I think
what Brad said is great. We need to protect
the consumers, there's no question about it.
But somewhere, we need to protect the funeral
homes, as well, you know. We've got the
scenario going on right now that there's going
to be some people that may go out of business
because of what happened. I guess what I
wanted to say earlier, I want to throw two
more monkey wrenches into the gears here.
We're talking about trust. What happens if we
have a joint account, it's at the local bank,
it's in a CD. The president of the bank gets
replaced, the consumer doesn't like the new one, they come in and say, "I want my money out of that bank." What are they going to do? They're going to give it to them, but you're going to penalize them. The same situation comes up, we have a new insurance salesperson in town. Nobody likes him. So, all of a sudden, they say, "I do not like company XYZ, but I like the other guy down the street, and I want him to take over, so I'm going to take my insurance policy, cancel that, take it over to the new guy." Again, the money is going to come back in lesser proportions as they cancel the contracts, whether it's a CD, a trust, or insurance. So, you know, again, I think I made the statement the other day that when we're talking about CDs, trusts, or insurance, you know, I just look at them in the light that it's a funding mechanism. And like several people I've said before, you have a risk whether you are a consumer and that funeral home goes out of business. You have a risk as a funeral director to be able to have the money there to service that contract. So, I think portability is great, but somehow
along the line, we have to be able to
stipulate under certain conditions on what
happens. Kim's analogy with the PPO is
probably a real good situation, too. Thank
you.

CHAIRMAN: Mike?

MR. MEIERHOFFER: Jim, along with
cancellation, is everybody aware of why --
especially our consumer advocates -- the
irrevocability clause was put into the
Medicaid? Do you know why that's there? Do
you understand that at all? Here we are
saying you can't have your money back. Does
that make any sense to you? Why would
Medicaid say to your mother, who had to
qualify for Medicaid, she doesn't get her
money back? Why does that make any sense?
The reason is people were coming to the
funeral homes after they qualified for
Medicaid and withdrawing their funds, putting
it in their pockets, and then not having any
money for their funeral service later on. So,
the government had to act in that respect.
So, the point I make to you is, if people had
the ability to have a run on the bank for
whatever reason, they could, and then they
would up with no funeral, the funeral home may
be out of business, whatever. There has to be
some quid pro quo for putting a contract
together so the person can't just walk up,
take all their money, and go wherever they're
going to go -- maybe not even to a funeral
home -- maybe the local bar. The point is,
these things happen, and there's a reason why
Medicare and Medicaid did that. That's
exactly the reason.

CHAIRMAN: Folks, I think we've beat
this horse to death, and what we're going to
do is we're going to take your comments on
this topic and put them in there and say we
couldn't reach a consensus. I think that's
the way we're going to have to do it.

MR. OTTO: This isn't on the list, but
can we reach -- I mean, one thing I would
like, regardless of what the law on
portability is, what about making sure that
that is clear and conspicuous in the consumer
contract so the consumers are aware of
whatever the law is because, literally, most
of the times where I have had a problem with
a consumer, it's because they didn't know what
the law was. Does that fit in?

MS. GRINSTON: It does fit in, and I
think we need to add that to the list under
-- it's another agenda item, but I do think we
can keep a running list of those, because,
actually, some of you have made a lot of
suggestions today about mandatory disclosures
that I think will probably be good to talk
about at that time. Understanding with the
issue of portability -- I'm sorry.

CHAIRMAN: Todd has got one question,
and we're going to go on.

MR. MAHN: Yeah. One question.

Insurance, there's no problem with
portability, and that's primarily what I have
on my books. So, if they want to go to one
of my competitors, that's fine. I mean, I
feel confident enough that they're all not
going to take off, and if I've done something
so horrendous that it makes all my clients go
down there, well, then they need to go there,
you know. So, if that's not a problem with
insurance, I'm just curious. If somebody
could tell me why this is such a big deal on
trusts, because I don't get it. I don't understand why this is a big deal with trusts.

MR. McCULLOCH: Well, first of all, if you're allowing the insurance companies to keep all the profits, charge whatever they want to; okay? But we have fixed costs and you're making us pay back all of the money, so you're not giving us the same playing field.

That's one reason.

MR. MAHN: Well, I don't know about the playing field. What I mean is --

MR. McCULLOCH: Well, it's not the same.

MS. GRINSTON: Well, there are restrictions for insurance, too.

MR. OTTO: With insurance, one of the reasons I think possible with insurance is because although, you know, it varies from consumer to consumer, but on a whole, the consumers are going to be -- I'm just throwing out numbers; okay?

MR. MAHN: Right.

MR. OTTO: -- is going to be paying $10,000 for a $7,000 funeral with insurance; okay?
CHAIRMAN: All right. I respect all of you and you're great thinkers, and we've just got to move on. So, go on, Kim.

MS. GRINSTON: Well, while we're in the fire, we might as well stay here. Let's go to #18, rollovers. We've talked about portability, what happens if I want to -- if I'm a seller and I want to change or move a contract to another seller. First of all -- and this is, again, I'm not going to address this from the consumer side just yet, from seller. I am a seller, I have contracts written with one group and I'm a seller, let's say -- or, actually, you're right, Becky. I'm sorry; you're right. A provider. If a provider has contracts written with one seller, should there be an allowance for having that seller change to another entity? And maybe Sharon can help me frame that question better.

CHAIRMAN: Sharon?

MS. EULER: Sure. I'm going to intersperse a comment in amongst the framing of it, though. The consumer issue on that, if the consumer has a contract, their contract
sends I have a preneed contract with Joe Blow Funeral Home as the provider. It says right here on my contract the money is going to be held in trust at Becky's Bank or Kim's Bank. Kim's Bank gives a better rate of return. And that's what the consumer has. The consumer goes on their merry way, and ten years later, they think, you know, I need to check on my account. So, they call up Kim's Bank and said, "I want to verify that my money is in the preneed account, you know. I bought the plan from Joe Blow Funeral Home." And the bank says, "We haven't done business with Joe Blow in eight years." The consumer has no idea where their money is because the Joe Blow Funeral Home has taken and rolled that over from Kim's Bank, went to Becky's Bank, rolled over to Jim's Bank, and now it's at Don's Bank. All the consumer has is the contract that says money is in trust at Kim's Bank, and I think that's a real problem from a consumer point of view.

MS. GRINSTON: I think we're merging #18 and #19 together on that issue, but I think it's the same issue. Again, looking at
sellers or a provider or anyone moving a
contract from one company to another company,
should that be allowed in the state?

MS. EULER: One of the things that
could help clarify that, which is not clear in
the current law at all, the money is held in
trust, but on whose behalf? Is it held in
trust on behalf of the funeral home -- i.e.,
is it the funeral home's money to decide what
to do with -- or is it held in trust on
behalf of the consumer?

MS. GRINSTON: I think that's a good
point.

MR. OTTO: Well, I mean, I think,
again, to keep in mind that the consumer's
contract is that the funeral home is going to
provide the funeral, the attachment of goods
and services. If you start putting
restrictions on the transfer of the funds
above and beyond, I think it could get very --
again, very complicated, and I'm not sure we
could reach a consensus. I don't -- I can't
imagine there being anybody that would have a
problem with notifying the consumer that
you've changed in trustees, for example. If
you're currently -- for one thing, under 436, if the provider -- if the seller doesn't provide the funds they're supposed to provide, the purchaser can go around the seller and straight to the trustee to get payment. That's in there. If the seller doesn't pay the funds, but if the consumer doesn't know who the trustee is, you can't do that. So, the consumer has got to know who the trustee is to be able to exercise their rights under 436.

MS. GRINSTON: Since we're merging #18 and #19 --

MR. OTTO: Yeah, I know.

MS. GRINSTON: -- should a seller be allowed to transfer trusts without my agreement? And I'm going to tell you this from several perspectives. There are financial entities that I will not do business with for various reasons. And if my money is held in trust -- maybe because, you know, I just don't trust them, you know -- IndyMac, I'm going to use as an example. I signed up for this to go to U.S. Bank. You switch it to IndyMac and you don't even tell me. Should
I be the one to say who I want or who I agree
to trust my money with? And that's just a
question. That's a question on the floor.

CHAIRMAN: Sharon?

MS. EULER: And it goes back to the
fact if the funeral -- if the consumer can't
change providers, why should the funeral home
be able to change sellers without that consent?

MR. MCCULLOCH: Again, it's not your
funds. You purchased the funeral; it's out of
your hands now.

MS. EULER: And that's the key
question there, John. Whose money is it?

MR. MCCULLOCH: And you've got the
funeral home that's going to provide that
funeral for you.

CHAIRMAN: Bill?

MR. STALTER: Sharon, the thing -- you
know, when the funeral home -- the most common
transaction when a funeral home changes hands
is an asset sale, you know, not a stock sale.
So, when a funeral home has its own trust, you
know, how -- if you're say you're going to
prohibit rollovers, how are you going to
effect the transfer of the liabilities of
those contracts without a rollover?

MS. GRINSTON: And let me -- I'll tell

you, and I'm using this as an example of the

some of the things that I think I've heard

throughout the years. I don't do business

with Kim's Funeral Home. I don't do business

with them. You get bought out by Kim's

Funeral Home, and now I've got a new seller

and it's in their trust. I don't want to do

business with Kim's Funeral Home. I don't

trust Kim, I don't like Kim. As a consumer,

regardless of whose money it is, it's who's

got control over my contract, over the funeral

that is going to given for Grandma, for me.

I don't -- let's just reserve the issue for

whose money it is. Who should be the one to

say this is the entity that we have agreed to

trust my funds with?

CHAIRMAN: Mike?

MR. MEIERHOFFER: Okay. A couple of

things from the standpoint of being realistic

to the point. I mean, you could offer a vote

to your people as you do in a stock company.

I'm not sure that you would have any problem

if you went by majority that they wouldn't do
what you ask them to do. But I have a
grantor trust; most of us do, and we reserve
the right to be able to change the trustee at
any time. If you don't, you're in trouble.
Any organization is going to reserve the right
to change, so we want to be able to change if
they're not performing or not doing their job
correctly. Would you not agree with us in
that respect?

MS. GRINSTON: Possibly.
MR. MEIERHOFER: No. Now, forget
about individual where we're going. Just
wouldn't you want to have the ability to
change?

MS. GRINSTON: I don't -- possibly.
MR. MEIERHOFER: Their return is 10
percent below everybody else.
MR. STALTER: I think it's a different
issue. We're talking about sellers here; in
other words, a rollover of sellers.
MR. MEIERHOFER: Okay. I'm not
talking about -- I'm talking about me running
--
MS. GRINSTON: Moving -- transferring
trust funds.
MR. MEIERHOFER: -- moving the whole block of --

MS. GRINSTON: Yeah. Possibly. It depends on what the --

MR. MEIERHOFER: Well, here's the point. You've got to trust somebody somewhere to make that decision for you.

MS. GRINSTON: Okay. Well, why can't I trust myself?

MR. MEIERHOFER: Well, because in a grantor trust, you can't have people spread out all over everywhere.

MS. GRINSTON: I understand.

MR. MEIERHOFER: They've got to be together. You can't run a trust with one person or ten people in it. You just can't. It's a great thing from theory, but it won't work.

MS. GERSTEIN: Do you notify your people when you do that? Do you notify --

MR. MEIERHOFER: No, we do not. Now, I don't have a problem with notifying people. If that becomes an issue, I don't think that's a problem. But they're relying on us to invest their money and do the best thing we
can for them. So, when we have a situation where we notify somebody and then we have the situation where I don’t want to move it, then I don’t know what you do.

MS. GRINSTON: I’m not taking a position. I’m just saying that the Board has a stack of complaints from people who said I never knew that they put my money in that bank, or I never knew that person was going to be the seller. I want to know how it got there and I never agreed to that.

MR. MEIERHOFER: Well, I don’t have a problem with that. I think they can be notified. I don’t think there’s any problem at all. I think if you withhold your vote and say I want to be there, then you need to cancel your contract. That’s what I’d do with that.

MS. GRINSTON: Which is -- yeah.

Which is the second question.

MR. MEIERHOFER: Cancel your contract.

MS. RULER: And if you’re on Medicaid, you can’t cancel your contract. You’re stuck.

MS. GRINSTON: Yeah.

MR. MEIERHOFER: Well, if you’re on
Medicaid --

MS. GRINSTON: And Medicaid is a whole different animal.

MR. MEIERHOFFER: -- why would want to do that?

MS. EULER: Because you would want to take it to Becky's Funeral Home --

MR. MEIERHOFFER: If you're on Medicaid, the State is taking care of you anyhow at that point. I mean, I don't get the relationship there.

MS. EULER: But for your --

MR. MEIERHOFFER: Oh, the person -- you're taking this to the second or third degree.

MS. EULER: No.

MR. MEIERHOFFER: Yeah, you really area. The chances --

MS. EULER: I'm just saying that if the funeral home has the right to change seller to move to a different bank, then the consumer ought to have the right, at that point, to say, "No. I don't want my money going to that bank."

MR. MEIERHOFFER: Okay. Okay. Now,
wait a minute. Your Medicaid person could, in fact, do that. They have an irrevocable contract, but it can go to another funeral home.

MS. BULER: Right. But what we just finished talking about was that they can't go to another funeral home, that you don't want the statute to allow them to be able to go to another funeral home.

MR. MEIERHOPFERN: I really don't. I would prefer they not, but the chances of that happening are one in a billion. I take my chances on that one.

MS. GRINKSTON: Well, the question is --
MR. MEIERHOPFERN: I mean, we're talking -- we're splitting hairs here.
MS. GRINKSTON: So, am I hearing from the people who have talked that the issue is allow the transfer of trustees, but you would agree to consumer notification as opposed to consumer consent?

(Numerous people answer yes.)

CHAIRMAN: Bill?

MR. STALTER: No. You're a fiduciary, now. Now, are you saying that the fiduciary
has to give notice to all those people? I have no problem with doing it as a regular --

MS. GRINSTON: I would say the seller.

No. I would say the seller.

MR. MCCULLOCH: The seller?

MR. STALTER: Okay.

MS. GRINSTON: The seller.

MR. OTTO: Yeah. If the seller -- I mean, that makes perfect sense because, for example, the purchaser has the right to request from the seller a statement of the payments made into the trust that the seller has to respond to within 15 days. If the consumer doesn’t know who the seller is, that’s kind of a useless right. So, it sure makes sense to me that if the seller changes or if, likewise, the trustee changes, notification should be sent to the consumer, and if the consumer doesn’t like that, they have the right to cancel their contract.

MS. GRINSTON: What about that idea?

If transfer the trust -- and I’m talking about a consensus. I’m going to reiterate what you said Don and Mike -- I’m sorry. But, yes, you can transfer the trust, consumers should
be notified. If they object, they have the right to cancel?

MR. OTTO: They have the right cancel, anyway.

MR. McCULLOCH: They can cancel, anyway. If they don't like the institution, they cancel.

MR. MEIERHOFER: Yeah.

MS. GRINSTON: Okay.

CHAIRMAN: Everybody agree on that?

All in favor, say aye. Those opposed?

(Numbers of people agree.)

MR. STALTER: One opposed. I mean, and I think, basically, it comes down to burden, and most -- and in this case, maybe it is that notice of a change should go to the Board. I mean, to say that you have to get everyone's approval or notice, but, you know, some of these folks you lose track of over ten or fifteen years. You can't find them.

CHAIRMAN: Well, I mean, make a dutiful attempt.

MS. GRINSTON: Yeah. I do think -- and this is just -- I am now stepping into my peer-board role -- if we're changing trustees,
I think the Board needs to know that your trustee is changed.

MR. STALTER: Oh, yeah. No doubt.

MR. OTTO: Yeah. That makes sense.

(Numerous people agree.)

CHAIRMAN: All in favor of that?

MS. GRINSTON: All in favor of that, telling the Board that your trustee is changed?

(Unanimous voice vote for approval.)

MS. GRINSTON: Becky is going to love me for that one. Okay. We just did #19.

Now, #18, this is my legal hat; all my attorneys help me. The Board has had issues where the sellers on the policies have changed. And I'm putting this -- I'm opinionating here. I don't think it's ever appropriate for anybody to rewrite a contract with the seller without the consumer's consent because you are changing the contract that was negotiated. Does anyone -- and maybe I'm wrong here. Should it be allowed for someone to change the seller on a contract? And I realize that, a lot of times, we're talking about third-party contracts.

CHAIRMAN: Mike?
MR. MEIERHOFFER: Do you mean an active contract?

MS. GRINSTON: Yeah. And I’ll tell you the complaint we’ve seen. It was written with MFT. I come in, I buy it, and I decide I don’t want to do MFT, I want to do John’s group. And so, then someone at this funeral home rewrites all of the stuff so that now that they’re John’s contracts. MFT didn’t consent to it, most likely. Now, all of a sudden, they’re APS contracts, and sometimes we’ve seen the transfer of the money moving over, as well. But at no time am I, as consumer, brought into the deal to know that what I bought was an MFT contract, and now it’s an APS contract. We got a call the other day, someone said, “I never bought this contract. I bought this contract with this entity, and now six entities later, I’m in another seller.”

MR. McCULLOCH: They would have to cancel and then they’re going to write it on our paper, and it’s going to tell exactly who the trustee is.

MS. EULER: But that’s not what’s
happening.

MS. GRINSTON: Yeah. And the customer sometimes doesn't even know that it's been transferred. I'm still thinking I've got MFT.

(Several people talking simultaneously.)

MR. MEIHEROFFER: That's not right.

That isn't right.

MR. McCULLOCH: You're not going to fix everything that's going on out there.

MS. GRINSTON: Yeah. And I'm not saying stopping it from being transferred if the consumer is brought in. But what I'm saying is, we have literally had consumers say, "Look at my contract. It says MFT. How in the world did it get to APS," and then we hear a funeral director say, "Oh, I just rewrote it."

MR. MEIHEROFFER: Well, you can't do that. No, that's wrong.

MS. DUNN: And we don't know those things until --

MR. OTTO: The only time I can see of a seller changing where you might -- I mean, the one exception is what if, again, funeral home A is their own seller and they're going
out of business or they sell out to somebody, and they’ve got 500 contracts and you’re going to have to get 500 -- that’s the only complicating factor is if the seller is going out of business?

MR. MCCULLOCH: What if I decide to sell the business.

MR. OTTO: Or selling. Or selling their business.

MS. GRINSTON: Yeah. Can we save that thought for when a preneed seller goes out of business and the cease-doing-business process, because I know that there are a lot of Board administrative issues on that. But for the first issue, the idea of changing sellers on a contract --

MR. MCCULLOCH: Without consumer consent.

MS. GRINSTON: -- without consumer consent, am I hearing that no one in this room agrees with that concept?

CHAIRMAN: Okay. Everybody in favor of that, say aye.

(Unanimous voice vote for approval.)

MS. GRINSTON: And you would be
surprised how many times you see that happen
and we get calls on that.

CHAIRMAN: That got the average up a
little bit per hour on topics.

MS. GRINSTON: Yeah. We're doing
pretty good.

CHAIRMAN: We're getting three per --

MS. GRINSTON: Well, I'm getting ready
to sink it again. I'm getting ready to sink
it again, and let me know if this is an issue
where we're just not going to be able to meet.
Refunded preneed funds. This is away from the
portability issue. Let's say I cancel, I come
in to cancel a contract. I think we need to
discuss what do I get back. And we're not
going to talk about changing providers. I've
just come in to cancel. Don't want it
anymore. I need the money or something. What
should I be getting back, if anything --
that's not a suggestion -- when I come in to
cancel a preneed contract that is, of course,
obviously, hasn't turned to at-need yet.

MR. MAHN: Kim, I've got a question.
Chairman, a question?

CHAIRMAN: Yes.
MR. MAHN: I don't want it to sound like I'm beating a dead horse, but I do have a question because I know you're kind of writing this up. But a minute ago, we just kind of jumped from a discussion about it to let's go to the next number, and I don't know what we really decided. I think Representative Meadows feels the same way.

REPRESENTATIVE MEADOWS: What did we decide on the portability?

MS. GRINSTON: I think we decided to highlight it as an issue that there wasn't a consensus on, and we'll provide the comments for review -- for just review because I don't think that there was a consensus.

CHAIRMAN: Yeah. Well, if you want to take a vote here, let's take a vote.

MR. MOODY: I have a question. Kim, the items that you're going to say there was no agreement on, does that mean you're not writing any language for them, also?

MS. GRINSTON: Yes. Yes.

MR. MOODY: Okay. So, you'll only have language on the consensus?

MS. GRINSTON: On consensus items.
Now, we have talked about summarizing the comments for the areas that did not have an agreement, and you guys can talk about how you would like to do that a little bit later on because the transcripts will be available. My understanding is that we will only be giving language to you on the items that you all agreed on. Now, should the Board decide separately to address some of those items, the Board may, but that was my understanding.

MR. MAHN: Well, I would say that if we end up going to 00 percent, then 80 percent plus interest ought to be portable. That's just my -- that's just how I feel. I mean, if you want to take a vote on it.

CHAIRMAN: Well, I mean, I think we were -- you know, we wrote down all the comments.

MR. MEIERHOFER: Todd, the problem for that, and I don't -- I'm not saying I disagree with it, is a lot of these contracts are written over time, anywhere from one to I know of people writing ten years. Some require no interest payment, some require interest payment, and then some are put into a
pool trust, so they aren’t tracked
individually. So, finding a finite figure for
these things is going to be impossible the way
it’s set up. There may be some imputed
interest rate or something, which will
probably come back and bite us later, but
that’s where you’re going with that. So, I
just wanted to tell you --

MR. MAHN: Oh, absolutely, that’s
where I’m going with it because these guys do
have these trusts.

MR. MEIERHOFFER: Sure.

MR. MAHN: And a person has had a
preneed in there for 25 years --

MR. MEIERHOFFER: I understand. I’m
just saying it’s different --

MR. MAHN: -- and they’ve moved and
they’re getting three grand on a $7,500
funeral because this fat cat wants to keep the
interest. I just don’t agree with it.

MR. MEIERHOFFER: Well, okay. There’s
just got to be a way of tracking it, and I’m
not sure exactly how that is done.

MR. MAHN: Set up a 2 percent or
whatever, you know, rate that you would use.
you know. John, don't you guys use a minimum percentage that you use that you pay on preneeds?

MR. McCULLOCH: Well, I was going to say, because I'm sitting here thinking, how in the world would I ever track that, you know, going back 25 years on a contract and trying to figure out -- you know, there were years where we didn't earn any interest at all; okay? Well, you know, you had bonds and stuff like that. But, yeah, we tell the funeral homes we're going to pay you a specific amount; 5 percent, 3 percent.

MR. MAHN: Right. And I understand the work it could do to you guys, the hassle it could be on a trust. I'm not trying to argue that point. The thing I'm looking at here is Bill moves down to my town and wants to move his 25-year-old prearrangement and expects me to provide it, and I would like to help him; okay? But if it's 25 years old, and it's only worth 80 percent, and 25 years ago it was $2,500, and it's a $7,500 funeral, someone just please explain to me how I service Bill. And maybe the answer to this --
and I don't want to tick anybody off, but, you
know, maybe this is why some states are 100
percent insurance. I mean, you know, I'm just
saying that. I mean, I'm just saying, is that
an issue? How do I service Bill if he comes
to me? Just somebody please tell me how I --
you know, and I'm getting several of these,
you know, coming out of the St. Louis area.

MR. McCULLOCH: Well, you can service
it, you just may not be happy with what you
received. But you can also turn it down, or
you can have him pay the difference. Those
are the options that are available today;
right? I know those aren't the ones you like
--

MR. MAHN: No. Well, I don't think --

MR. McCULLOCH: -- but I'm just saying
those are the options.

MR. MAHN: Whether I like them or not,
I just don't think they're fair to Bill, the
consumer. That's just my opinion.

MR. McCULLOCH: It's fair to him if
you accept the funeral.

MR. MAHN: Well, sure it is.

MR. McCULLOCH: You may not say it's
fair to him if you make him pay the
difference; okay?

MS. GRINSTON: Now, I don't know when
we talk about refunding of fees on
cancellation, will this be in the same issue
of portability? And from the portability
discussion, I can sort of glean that we may be
in the exact same area. We will have to put
that on the other list of no consensus. Let
me know if I'm wrong on that, or if we are
hearing what the consensus --

CHAIRMAN: Don?

MR. OTTO: I doubt we'll reach a
consensus. And one of the problems is we did
not reach a consensus on 80-20 or 90-10.

MS. GRINSTON: That's true.

MR. OTTO: Or 100.

MS. GRINSTON: That's true.

MR. OTTO: And so, the answer to the
cancellation question, in large part, depends
on whether we're 80-20, 90-10, or 100.

MS. GRINSTON: Well, then maybe that's
the way to handle this. Maybe, just like the
amount to be trusted, maybe we should poll the
room on what you think the refund should be on
cancellation, we'll note the numbers and the
comments, and just leave it at that, because
that may be better because I really don't
think we're going to convince anybody.

CHAIRMAN: Mike?

MR. MEIERHOFER: Let's look at this
in the big picture. I'm going to address this
to Representative Meadows. We're an advisory
group. This is going to go to the Board, and
the Board is going to go to the legislature,
you're going to have some meetings. I guess
the question I'm asking this group is, it
seems to me, as a group, we better figure out
what we want rather than just throw something
out there. These folks are asking for
direction --

MS. GRIMSTON: That's true.

MR. MEIERHOFER: -- and we're giving
them none on some of these important points.
I know what he's looking for, and I think we
need to figure out somehow -- and it may not
be today -- but we better take this back and
smoke it in our pipe and figure out where
we're coming from. You're asking for
direction. Our job is to give them some.
So, that's my counsel, is we need to figure out these tough ones and punt the ball over to you, and then let you see that they're--

REPRESENTATIVE MEADOWS: I like that idea, Mike.

MR. MEIERHOFFER: I mean, otherwise, we're not helping you a bit or ourselves.

REPRESENTATIVE MEADOWS: That's exactly right. That's exactly right. Because I'm back in the same boat where I was the last couple years because I get -- I've got the consumer over here telling me in this ear, yelling in this ear, but I'm not hearing anything over here, but I'm hearing--

MR. MEIERHOFFER: Sure. Yeah. Well, we also know where the majority of your votes come from.

REPRESENTATIVE MEADOWS: Right. They're coming from that person I represent.

MR. MEIERHOFFER: So, we've got to figure this out. So, I think that behooves us to get on the wagon and get going.

CHAIRMAN: Don?

MR. OTTO: I mean, Mike, I see where you're coming from. If that's possible, let's
MR. MEIERHOFER: Well, I don't know that it is, but we've got to try.

MR. OTTO: But I can tell you what Senator Scott asked this group to do. Since the committee, assuming the governor signs the bill, which I don't think he has as of yet, but did he? Did he sign ??

REPRESENTATIVE MEADOWS: Uh-huh.


Excellent. But since the committee doesn't go into effect until August 28th -- that's when the legislative committee kicks in -- they're worried about how much time they have. It's a very short time period. So, when we were in his office -- and anybody that was there, jump on me if you think I'm misstating it -- but one of their main concerns was they didn't want to waste time arguing about things that we could all agree on, you know. For example, if we're going to get to it at some point saying no term insurance to fund a preneed contract --

MS. GRINSON: That's next, Don. Very good.
MR. OTTO: Okay. Isn't that a good one? If we can all agree to that, and nobody is going to object to that, then there's no reason for the committee to waste time on that.

MR. MEIERHOFFER: Right.

MR. OTTO: So, what he wanted, I think -- my opinion of the meeting was he wanted out of this group a base legislation that nobody is going to complain about. This one would go through without any complaints, so that then irritative issues that they're going to have to spend their time on, for which there's going to be controversy or not a consensus. So, if this group comes up with a proposal that when it gets to the legislature, you've got two or three big insurance companies that are opposing it or two or three big funeral homes that are opposing it or advocacy groups that are opposing it, then we will not have given the committee what I think they wanted.

MS. DUNN: But we have an opportunity here to put something before them that -- and, you know, if we could come to an agreement on some of these items, they're going to say, well, we pooled the industry and the public --
MR. OTTO: Well, we can -- but, yeah. But giving them something out of this group that is going to create an opposition -- a large opposition block, in my opinion, is not what Senator Scott and Representative Wasson asked for.

MR. MEIERHOFFER: Well, I'm not suggesting that, either.

CHAIRMAN: Okay, Todd?

MR. MAHN: Yeah. Just real quick. You know, Representative Meadows is sitting there telling us what consumers are aggravated about, are not happy with about this, everything. I mean, he's sitting there telling us everything. He's almost spoon-feeding it. And then we're back to arguing to keep it the old way that has stunk, has been terrible, has been not consumer friendly, the Board can't do anything about anybody. But you know what, when we can't do anything about anybody, we've got the whole entire funeral directors in this state crying and whining that it's our fault about NFS -- you know, it's the Board's fault. Well, you know, you can't have your cake and eat it, too.
CHAIRMAN: Can you sugar coat it a little better than that?

MR. MAHN: When it's no good, it's the Board's fault, you know, but let's keep the old law because we like it the way it is.

MS. EULER: Mr. Chairman?

CHAIRMAN: Okay. Sharon?

MS. EULER: Might I make a suggestion that we continue on with the list and at least get through the stuff and figure out what we can agree with. And then once we're done with what we can agree with, go back to those things we can't agree on and maybe we can come to some consensus?

MS. GRINSTON: You must be psychic.

That's exactly what I just told Jim.

REPRESENTATIVE MEADOWS Well, I'm just going to just end it on this part. And, Mike, thank you very much, and everyone, again, for the comments -- Becky. Back when I -- from the best that I can tell -- and I've been in the legislature five years. So, from the best that I can tell, and what we have to realize and I think what you all have to realize -- I liked and I agree very strongly
with what Mike is saying. If you can provide
us some guidance, especially on these really
tight issues, I think would be better off
because back in -- and I know Jim Moody would
remember this. In 1990 -- I think it was '95
-- '93, '95, Senator Jay Howard, they were
working on the same thing on trying to get
some legislation passed. And, supposedly, I
heard that there was a lot of agreement and a
lot of movement, but then in the end, I think
there was a company called NPS that had some
very powerful lobbyists that walked in and
just turned up the apple cart, turned it
upside down. So, I think in my conversations
with Senator Scott, although I wasn't there
that specific day when you all were there, I
think what Senator Scott is saying is that we
need -- you need to really tell us. That's
kind of like what I told you before, watch
what you wish for because you just might get
it. And please don't leave those decisions up
to the legislature because if you do that,
then we're going to be fighting over it and
then you may not even get a bill at all, and
here we are. We're still stuck. So, you
know, the bottom line here is, is that the
whole idea was, I think, to bring everybody in
the industry together, to play very well in
the sandbox, and give us something -- give us
direction, and even on the tight issues, and I
think Becky knows that full well. And I think
that, as the State Board, you guys realize it
probably more than others, but -- because we
want to give the State Board what they need to
provide you all with the tools to do your job
to the fullest, to streamline the measures
that you guys have got to take care of, and,
Connie, you know this as well as I do. And
so, yeah, on these tight things, and Mike is
right. Give us some direction on it. That
would be -- because even though I might be a
100-percent guy, but if the consensus of the
industry 90-10, well, then I don't need to
even open my mouth on the issue. Why would I
upset the apple cart to get legislation? You
guys were the ones that decided what was best,
even though I may disagree, but -- but you
know what I'm saying? But -- so, I'll get
off my soapbox again.

MS. GRINSTON: Having said that, and I
think that my understanding my recollection is
the same as Don's about what we were tasked
with doing, may I make a suggestion that we
take portability and refunds back home? We
take it back to our members, our associations,
our constituents, maybe really give some
thought about -- and I would encourage
everybody -- I'm speaking not just for the
Board -- to not just Board members or to
industry people, consumer people, to try to
come up with something that does take into
consideration all of the needs of these
people, you know. The consumer groups, I
think consumers are important. They have to be. Not just consumers, but the funeral
homes, they are important. They provide a
valuable service. Think about the sellers.
They are important. They provide a valuable service. And maybe as you formulate that
discussion back in our separate camps, next
meeting maybe, maybe as we give it more
thought, there may be some other issues that we can agree on even if we don't work out a
100-percent deal.

MR. MEIERHOFER: Can I ask one
question?

CHAIRMAN: Do you want to go to the bathroom?

MR. MEIERHOFFER: It's not a bad idea. And this is directed to Representative Meadows, again. Are we thinking about this proactively and not retroactively as far as this law? I mean, because that makes -- that's a big difference.

REPRESENTATIVE MEADOWS: Sure.

MR. MEIERHOFFER: And that's where we --

REPRESENTATIVE MEADOWS: I think Kim could answer that. I think we're going proactive.

MS. GRINSTON: Well, I think that's the reason why we've asked people to please keep your focus broader than what we're dealing with right now, because I think for some of the issues that we're dealing with right now, to be honest, we are reacting to an issue. But there is -- I think that the majority of what we talked about are proactive issues that have been issues in 436 that we have an opportunity now to go up and fix.
The department has a special counsel who is going to be looking at legislative issues, legislative fixes, but there are some proactive steps outside of the immediate crisis that need to be fixed. And I think that as we -- when you talk about coming to a consensus, which is the reason why I appreciate this group being patient with me and hitting some of those areas that you have expressed, because I think that's where 436 is going to get fixed, because I think I can speak for everybody, it is hardly broken right now.

CHAIRMAN: And on that note, we're going to take a break.

(Off the record)

CHAIRMAN: All right. Folks, what we have talked about is you've been out of the room, and we've got to make some hard decisions here. In the next meeting, we are going to take up the amount in trust and we're going to address that and take a vote on it. We're going to take the refunding issue, take a vote on it, because we've got to make a stand here someplace and turn this over to the
legislature -- and portability. So, those three issues. You go home, have a come-to-Jesus meeting about them, because Kim said that, and we need to do those things. So, talk to your constituents and talk to your -- you know, the association and talk to Baker. Yes, Mr. Baker?

MR. BAKER: Clarification on the next meeting date. We've got two dates, next Tuesday and next Thursday.

CHAIRMAN: Thursday, I believe.

MS. DUNN: Next Thursday.

MR. OTTO: Okay. The stuff -- the one that was on today's says next Tuesday.

CHAIRMAN: You're welcome to come Tuesday and stay till Thursday.

MS. DUNN: Oh, the one that says on today says next --

MS. GRINSTON: If you come Tuesday, you'll be a real estate appraiser.

MR. OTTO: Yeah. Well, now, the one that says July 15th -- we've got two different pieces of paper, in other words.

CHAIRMAN: But it's Thursday -- next Thursday. (Several people say the
24th.

MR. OTTO: Twenty-fourth. Okay.

Well, we got one piece of paper that said Tuesday and one that said Thursday.

CHAIRMAN: Kim has got some comfort issues that we can finally take --

MS. DUNN: It's July 24th and 29th.

MS. GRINSTON: As we start wrap-up, because I know the hour is getting late, maybe it would be a good idea for us to start with some of the things I think we can probably handle pretty quickly. Number 15, location of trustee/trust accounts. It was suggested -- and this is not a suggestion from the Board. Someone suggested that we require that the trustee, as well as the actual trust account, be housed in the state of Missouri. So, if you had a financial institution that actually was maintaining the account from Florida or some other state, that wouldn't be acceptable. But the suggestion was or the question was, should we require that both the trustee and the trust account be in the state of Missouri?

MR. OTTO: Assuming they had Missouri trust powers, I'm not sure you can restrict
it. It would be a violation of the interstate commerce laws.

MS. GRINSTON: It might be.

MR. STALTER: Some states, they do actually require it, yeah.

MS. GRINSTON: Yeah, some states do.

There are some states that say that the trustee, the trust account, and the trust records have to all be housed in that state. And that's not a suggestion. I'm just saying it was what was presented.

CHAIRMAN: Sharon?

MS. RULER: Perhaps Rich can help us. If there is a bank -- an out-of-state bank that holds the trust, does Missouri have cooperative agreements with other states so we could still reach that?

MR. WEAVER: To give you a little bit of clarification on that, let's say if you said it has to be in a Missouri financial institution, then if you have a bank that's actually chartered in another state -- and to give you an example of there's one right here in town, Regions Bank is actually an Alabama state chartered bank, they would not qualify
under the banking definition of a Missouri
financial institution. If you say, as Don
mentioned, if you have trust powers to operate
in the state of Missouri, then a bank that is
chartered in another state that actually has
trust powers here in Missouri then would meet
that definition. Under the current definition
of the law, Regions could do that if they have
trust powers to operate in the state.

MS. EULER So, we wouldn't have any
problem reaching a bank if it was in another
state if there were problems?

CHAIRMAN: Mike?

MR. MEIERHOFER: We use Forethought
National Bank out of Batesville, Indiana.
They specialize in that type stuff, so there
are -- and they have trust powers in the state
and you can reach them.

MS. CRINSTON: So, the current
language says state or federally chartered
financial institution who can exercise trust
powers. Any thoughts that that needs to be
changed?

CHAIRMAN: Okay. Yes. All in favor,
say aye. All opposed?
(Unanimous voice vote for approval.)

MS. GRINSTON: And in line with that
location of trust records, this has come up
from another context, but should we require
that the records be maintained in the state of
Missouri versus accessible in the state of
Missouri? What's the consensus?

MR. MEIERHOFER: Well, I guess the
question becomes whether you're electronic or
paper. Anymore, most of this stuff is
electronic and is available by a push of the
button anywhere in the world. Now, if it's
paper records, I don't know why that would be
any different, to tell you the truth.

CHAIRMAN: Bill?

MR. STALTER: Yeah. I mean, we've got
lots of electronic. I mean, the banks are
even trying to avoid the paper records. So, I
mean, really, accessibility is much easier.
And to the extent that we have to -- I mean,
we have special service and process where we
agree to provide records within so many days
of a request, so --

MR. MEIERHOFER: I think that's
exactly right. The accessibility and time.
MS. GRINSTON: So, am I hearing consensus that they just must be made available, which should be upon request -- in a reasonable amount upon request?

CHAIRMAN: All in favor? Those opposed?

(Unanimous voice vote for approval.)

MS. GRINSTON: All right. Let's skip to #14, which is another big topic that I think is interesting. And as we go into #14, I'd like to point out that the department does have a special counsel. Oh, before I do that, I have been advised by a very well-respected person that I need to quit saying a 436 scheme. In light of current events -- so, thank you, Representative Meadows. So, we're not doing a scheme here because it will be on the first page of "The Post" that the Board is cooking up a scheme. Number 14, I do want to remark that the department does have a special counsel who will be looking at a lot of these trust issues versus insurance issues and making recommendations to address some of the problems we have now. I just wanted to make sure everyone was aware of that. When we talk
about investment of trust funds, as we go into that calculation and for that consideration, as well as for consideration by the joint committee, when we talk about investment of trust funds, last session there was, the language included a provision that said you cannot use term life. Is there anyone here who would like to take a position on allowing or prohibiting, or does the group want to take a position on allowing or prohibiting insurance -- a preneed contract funded by insurance?

MR. OTTO: No.

MS. GRINSTON: No, I'm sorry. That's wrong. Allowing funds that are in a trust to be invested in a term-life policy. And I'm sorry, I just -- I lost my train of thought there.

MR. OTTO: Yeah. That was the distinction I wanted to make. There's a difference between I buy a term-life-insurance policy with Prudential and I make the beneficiary of that my funeral home --

MS. GRINSTON: Yeah.

MR. OTTO: -- versus I have a trust
fund with $300,000 in it and my -- I can
invest that in certificates of deposit,
money-market accounts, mutual funds. I choose
to invest in term life. That's the issue.

MS. GRINSTON: And I'd like to start
that issue. When I have monies in the trust
fund, should I be allowed or prohibited to
invest in term-life policies?

MR. OTTO: No.

MS. RUSSELL: Prohibited.

MS. GRINSTON: I think I could
probably take a real quick vote on that one,
Mr. Chairman?

CHAIRMAN: All in favor of prohibiting
it, say aye. All those opposed?

(Unanimous voice vote for approval.)

MS. GRINSTON: There was a
recommendation -- I'm sorry.

MR. MEIERHOFFER: Coming from the
devil's advocate, is there any reason why it
would be of help to the consumer to have it?
Are we overlooking something here? Are we
missing something about term that we're --

MS. GRINSTON: The only thing I'm
going to suggest from the insurance
standpoint, and I don’t know if this is
actually right, term life may be cheaper than
some of the other insurance options out there,
but I don’t know if it’s radically cheaper.
But that is not a defense at all.

MS. RUSSELL: We’re talking about
trusts, too, though.

MR. STALTER: I’ve heard of a funding
mechanism where they said that with the cash
that’s in the trust, apply a portion of it to
term to cover during, like, a pay-in period or
something that, but not as the exclusive
investment of the trust.

MS. GRINSTON: Got it.

MR. MEIERHOFER: I guess that’s where
I’m coming from is there may be a reason that
it could be used to the benefit of the
consumer and the trust. Now, obviously, if
you just go to that, in the latter years, you
have no problem, but I’m not smart enough to
know. Can somebody help me with the insurance
part of that?

MS. GRINSTON: I don’t know.

MR. MEIERHOFER: Okay.

MS. GRINSTON: I don’t know.
MS. DUNN: Do you want me go get somebody?

MS. GRINSTON: Okay. Last year's language, there was language that said that those funds in a trust account can only be invested in a whole-life policy. I know there were some issues that were raised with that. Let's talk about that issue, whether whole-life-insurance policies should be the only allowable insurance investment for trust funds.

MR. OTTO: Yeah. That was my thing. I think you meant if you use insurance, it could only be whole life.

MS. GRINSTON: No. That's the second question. Funds in a trust account, can I use those funds to invest in a whole-life policy?

MR. OTTO: Yeah. But, no. The way you stated it first was that that's the only investment option available to a trust was buying whole life.

MS. GRINSTON: I'm sorry.

MS. ELLER: If the trust is going to buy insurance.

MS. GRINSTON: Yeah. Yeah.
MR. OTTO: Yeah. If the trust is --
MS. GRINSTON: It's the only insurance

--

MR. OTTO: -- the only insurance vehicle --

MS. GRINSTON: -- investment option available. The only insurance -- and I can tell you what we heard, and this is not a position. Some people asked us about annuities, some people asked us about things like variable life. And the insurance people, you're going to have help me. Whether the restriction to whole life only was appropriate.

MR. STALTER: In other words, what you're asking is to exclude annuities or variable life?

MR. MEIERHOFFER: Or universal, all these other things, and the things that --

MS. GRINSTON: Yeah. Because my understanding is that universal wouldn't fall under the general -- the definition of what a whole-life policy is. The idea of saying investing in whole life only if you invest in insurance, is that necessary or is it --

MS. EULER: I have a comment on that.
And insurance is not my area of expertise, although I’ve learned a lot about it in the last six months. Rather than restricting that, would it be better to define the kinds of investments that the trust can invest in so that they are investments that are designed to be asset producing, because the problem with term insurance is that it doesn’t gain in value. Whole life may or may not be a good investment because it has a potential to increase in value. So, rather than tie into a kind of life insurance that is in use now, because somebody is going to come up with another permutation and call it something else, tie it to investments that have a potential to gain value.

MS. GRINSTON: And I think we had some language floated last year that said that, and I think, if I hear your suggestion, no to term life as an investment, but the investment must be an income-producing investment?

MS. EULER: Have the potential to produce income.

MS. GRINSTON: Have the potential.

Sorry.
MS. EULER: Some investments have the potential, but they don’t really work out so well.

MS. GRINSTON: Yeah. Have the potential. With the market the way it is now, I understand. Have the potential. Is that something -- I think that’s what was probably drafted last year. Is it something that this group still has a consensus on?

CHAIRMAN: Well, public?

MR. OTTO: You would have to be careful how you worded it, but --

MS. GRINSTON: Yeah.

CHAIRMAN: Bob?

MR. BAKER: Bob Baker. I think I made the statement the other day, if the investment is eventually going to get to a whole-life policy, why not sell it as the insurance product to start with?

MS. GRINSTON: I don’t know. That’s for the --

MR. BAKER: And if you’re going to sell it as a trust, we’re dealing with cash only.

MS. GRINSTON: I don’t know if that’s...
the issue of just choice for the
practitioners. I don't know the answer to
that question.

MR. STALTER: In some states, you
actually see -- I mean, the rollover is being
required for approval, they have a process for
that. I mean, the thing that you want to
guard against is, okay, let's say that we stay
at 80 percent, and then you take the first 20
percent off. Then you put the trust into
insurance, is there a commission that's being
taken? There's a liquidity issue as far with
a whole-life policy or the annuity. So, it
gets down to -- also, I mean, do you define
the investment standard by the prudent-person
or the prudent-investor rule because the
latter suggests diversification as opposed to
a single asset.

MS. GRINSTON: Well, and I don't know
if those issues can be stacked, whether you
address the -- you know, should there be a
limit to whole life, and also I think the next
one is this reasonable-person/prudent-person
standard. Do we need to couple those issues
together as we talk about the allowable
investment of trust funds? Is the standard --
and I'm going to -- well, before I skip to
Bill's issue -- and, Bill, if you could just
not let me forget that thought. On the
whole-life standard, though or -- well, I
think we did that pretty much -- income
producing. Well, then I'm going to skip to
Bill's issue, too, and bring that in. Is the
standard for a trustee's fiduciary
responsibility too low, is it standard, does
it need to be fixed? Should we refer back
to, you know, the Missouri Uniform Trust Act,
which has a procedure incorporated into it,
even though I understand that there are some
problems with the definitions of income in
there?

CHAIRMAN: Don?

MR. OTTO: Well, another thing I think
we should at least discuss real quick is what
Bob just mentioned. Should we allow insurance
in any flavor to be the investment choice of a
trust fund? Should we allow that, given that,
like you said, if you're going to do that, why
not just sell the insurance policy in the
first place?
MS. GRINSTON: It's a question.

MR. OTTO: And the answer to that might take care of other questions, too.

MS. GRINSTON: That's a good question.

CHAIRMAN: Discussion? Sharon?

MS. EULER: I have a comment. At one point, the position of the Board was that insurance was not a permissible investment of a trust. All of that has kind of changed with time. It seems to me, to make sense then, instead of reinventing the wheel, that we refer back that the trustee of a preneed trust shall make its investments in accordance with the Uniform Trust Act because that statute already talks about that a trustee must diversify, you know, a trustee must do all of these things, and why reinvent the wheel?

MR. OTTO: Well, we've had this discussion with the cemetery folks. There's definitional problems with some of the things in the Uniform Trust Act which don't quite mesh up with 436, at least right now. I'd have to do --

MS. EULER: But we're changing 436.
MR. OTTO: I know. I know. We'd have
to -- that's one of the ones I'm going to
have to go back and research on and get my
notes from when we discussed that with the
cemetery folks.

MS. EULER: And from a bank-examiner's
audit -- and, Rich, you can correct me if I'm
wrong on this -- wouldn't it be easier to have
the preneed trust law mirror the Uniform Trust
Law so everybody knows what they're looking at?

MR. WEAVER: I could see arguments on
both sides of it, and I know I sound like I'm
waffling there, but, you know, you're talking
about insurance. To me, from my perspective,
if it's going to be funded 100 percent with
insurance, there's no need for a trust. So,
if you look at, as Bill mentioned, the
prudent-investor role is going to stress -- I
mean, you're going to look at the cash needs
of the trust, you're going to look at
diversification of those investments. They're
going to be conservative, and so, you wouldn't
load up in any one vehicle or investment
either way, so I could see arguments, really,
on both sides of that.
CHAIRMAN: Don?

MR. OTTO: I think one of the problems with the Uniform Trust Act, if I remember right in discussing with the cemeterians was the definition of income in the Uniform Trust Act. It had a definition that was causing problems.

MR. STALTER: Well, that's the endowed care. That's a different issue. I mean, with preneed, you basically -- you know, we're going to get to that issue about accrual and so forth, but, you know, just leave that -- you know, 214 endowed care off the wall. It's just a whole different thing.

MR. OTTO: Hold on. I'm just saying that the problem was that the definition of income in the Uniform Trust Act was causing a problem with the endowed-care definition of income, and I don't know if it causes a problem with the 436 definition of income.

MR. STALTER: Well, the position I've taken with the banks is that, you know, preneed laws are a special type of trust law. You've really got to throw the Uniform Principal and Income Act out the window
because the State prenaed law will define how
the principal and income are to be
administered. So, basically, you know, by the
State law, we'll -- you know, it's just a
totally different trust accounting method as
opposed to what the bank usually handles with
trust accounts.

CHAIRMAN: Darlene?

MS. RUSSELL: I was just going to say,
you know, it's going to be impossible to
really tell a trustee what their duties are.
I think they're going to have use some of
those guidelines of the trust requirements and
everything else. For instance, I know this
funeral home -- I know a funeral home that
thinks investing in their own personal real
estate, their own farm or whatever, is prudent
man. They've convinced their trustee. So, I
think that what Kim and Sharon were saying
about saying, you know, it must be done in
investments and tie the hand to the trustee a
little bit in regards to what the language
should say.

CHAIRMAN: Todd?

MR. MAHN: Can't we just simply, if
they want to put it in trust, that it goes in
trust, stays in the bank, period. If you want
to sell insurance, then sell insurance. It's
this whole flipping little scheme stuff that's
the problem.

MS. GRINSTON: No insurance

investments. Are you saying no insurance

investments?

MR. MAHN: Well, they wanted to put it
in trust. Your whole day has been a big deal
on trusts, so, you know, leave it in the bank,
put it in trust, then, I mean --

MS. EULER: In some instances, it may
be reasonably prudent to have insurance, and
in other instances, it may not. But it seems
to me -- and we're going to talk about this
in #9 -- that preneed trusts should be a
trust. The trustee should control the assets,
not the funeral home.

MS. GRINSTON: So, what I'm hearing,
I'm hearing two things; that there are some
concerns about using the Uniform Trust Act,
the reasonable-person standard versus the
prudent-person standard, and a lot of us have
legal definitions. Is the group looking to
adjust that, or do you think that addressing
that the investment must have income-producing
potential will address the other standards, or
do we need to clarify, again, reasonable
person versus prudent person?

MR. OTTO: I just feel like -- I mean, keep in mind one of the concepts we talked
about last time was having, okay, here is your
basic rules on 436 contracts, and then we've
got different funding vehicles that you might
get licensed for separately -- selling
insurance, selling trusts, selling joint
accounts. When you have -- and if somebody
could tell me why there's a good reason to do
this, I would be willing to stand corrected.
But when you have the trust buying a
life-insurance policy on the purchaser as the
investment decision of the trust, right there
we've got -- we're now kind of sort of, in a
way, mixing two of those categories. And I
still don't know why -- and, again, I could be
-- you know, there might be a good reason for
it that somebody can explain to me. But why
not just sell the insurance policy? If that
is going to be your investment decision, why
not just skip that complicating factor and
sell the insurance policy straight up?

MS. GRINSTON: So, I hear you saying
what Bob just said, which is what I think Todd
said, and possibly just restricting insurance
investments with trust money. And let me know
if I'm summarizing that incorrectly.

CHAIRMAN: Baker, why don't you just
pull your chair up there by the podium?

MR. BAKER: Believe it or not, this
time, I don't have a comment, I've got a
question. It's been several years since I
have taken the insurance test. But, insurance
people, if you do not sell a policy to a
consumer directly, can you go behind that from
the trust funds and purchase an insurance
policy on anyone?

MR. MCCORD: I have no idea. I'm not
an insurance agent.

MS. RUSSELL: I can talk about --
well, I can say what Missouri Funeral Trust
used to do. Missouri Funeral Trust did
insurance investing for -- as a mechanism for
investments. Don, are you familiar with that?
And how they did it was a power of attorney.
MR. BAKER: Yeah. It was sold as an insurance kind of product.

MS. RUSSELL: It was sold as -- but the individual signed a power of attorney allowing the trust to invest it, and what the trust did was take that commissions and use it to help offset the cash value.

MR. KRAUS: Gerry Kraus, Homesteaders'. The Iowa legislature just, I think in response to what happened down here with this marketing company, banned the investment of trusts in insurance, and they are very strong insurance-funding advocates, but they did not deem insurance to be a prudent investment for the trust.

MS. GRINSTON: Consensus of the group?

CHAIRMAN: Yeah, Bill, to ahead.

MR. STALTER: Why you see that happen in some states, though, is that my clients, the fiduciaries, are such poor asset managers. You see a return on the trusts of being 2 or 3 percent. And they turn around and look at what Homesteader's and say, well, I mean, why can't I get a higher return, 5 or so percent? And, basically, it just -- the trustee is
doing such a poor job, I mean, they'll just
roll it over into insurance.

MS. GRINSTON: So, is that the
consensus? No investment in insurance with
trust-fund monies?

MS. EULER: I'm good with that.

CHAIRMAN: All in favor? Well, let's
just go around the room. Start with Jin, yea
or nay.

MR. MOODY: I'm going to have to
abstain again.

UNIDENTIFIED: What's the question?

UNIDENTIFIED: I'm sorry; what's the
question?

CHAIRMAN: The question is that no
monies from a trust will buy an insurance
policy; is that right -- pretty close?

MS. GRINSTON: It can be invested in
insurance?

MR. MEIERHOPPER: I would disagree
with that.

MS. GRINSTON: Disagree?

CHAIRMAN: So you think that's fine?

MR. MEIERHOPPER: Well, I just hate to
put something restrictive to the point where
you can't for whatever reason.

CHAIRMAN: Don?

MR. OTTO: Unless someone explains to me why you should do that instead of selling the insurance policy straight up, I would say -- agree with that statement. My mind can be changed.

MR. McCULLOCH: I think you should be allowed to purchase insurance.

MR. WEAVER: Yeah. I guess I have the same comment that Don does. If you've got -- if you're 100 percent -- fund them 100 percent with life insurance, then you don't need the trust. But if you're going to have the trust, then I don't think you should restrict the trust from what an investment should be, that that 5 percent or 10 percent can go into life insurance, then I would -- that's why I disagree with that.

MR. MCCORD: I would concur with that statement, but my position would be a reasonable and prudent investor should be the standard.

CHAIRMAN: Joy?

MS. GERSTEIN: I agree with him. That
was good.

MR. FRAKER: I agree.

CHAIRMAN: With him?

MR. FRAKER: Uh-huh.

MS. GRINSTON: Sharon?

MS. EULER: I don't remember what he said, so I don't know if I agree with him or not. How's that for honesty.

MR. MCCORD: I'll repeat it. What the comment over here was that if you're going to fund it with insurance, why do you need to use a trust? And while I said I don't disagree with that statement, I still believe the standard should be a reasonable and prudent investor, what that person would do should be the standard. And if that includes insurance, again, a situation I don't know. It depends upon the factors at play. But, again, reasonable and prudent investors should be the standard that trust is evaluated upon.

MS. EULER: I agree that reasonable and prudent standard should be -- don't check me in the box yet -- that reasonable and prudent standard should be the standard, but I'm also okay with saying that insurance is not a
reasonable and prudent investment.

CHAIRMAN: Representative?

REPRESENTATIVE MEADOWS: If I'm hearing right, and I was listening to what Mike Meierhoffer had to say, what if you put -- and, again, here we go, we're putting more permutations out there. But what if you put a certain cap on amount of percentage that a person, that a trust could do that. Let's say, okay, we'll allow you to do it, but do it up to 10 percent. Then that way, each individual trust or each individual group would have the opportunity to go that far, but no more; you know what I'm saying? And then when you audit, you could see that if they're really, really out there using insurance and where they're going with it, if they're more than what the 10 percent is, then you could say, hey, whoa, whoa, what are you doing here, you know. But maybe a cap of a certain percentage. I mean, that's just an idea. But Iowa has closed the door all the way because there might be a case where a person could have invested there, so, I mean, I guess it's a trick question. I don't mean to be a
politician and opt out of this here, but the
bottom line is, I think that they ought to at
least have the opportunity to a certain
percentage.

MS. GRINSTON: Okay.

MR. OTTO: Yeah. Well, perhaps the
reasonable investment standard takes care of a
problem because you have to have
diversification, you know. The concern -- one
of the concerns I have is with a trust that
does nothing but buy insurance policies on its
consumers, that's all they do, not only is
that arguably maybe not a good investment
because you don't have it diversified, but
also in the event of a meltdown as we're all
experiencing, now you have a very complicated
factor of how you're treating those
investments with the possible situation where
you -- are you treating it like an insurance
investment? Are you treating it -- you know,
when somebody goes into receivership, are you
treating it like insurance? Are you treating
it like a trust, you know? Is the fact that
Mrs. Smith had an insurance policy that was
good, does that mean Mrs. Smith's funeral is
going to get taken care of, while Mrs. Jones, her funeral -- you know? It really gets -- I think it really starts causing a lot of issues that we're dealing with right now when you're 100-percent funded with life-insurance policies on the beneficiaries' lives, but maybe the prudent-investment standard takes care of that to some degree with diversification.

UNIDENTIFIED: I think it does.

MR. STALTER: But when you say that, it almost makes it mutually exclusive. I mean, how can you be diversified and have insurance, because one thing is you're looking to have 10 percent. When you go to a trust that holds life insurance, you're basically buying an insurance policy for each purchaser, you know. So, I mean, you're just buying lots of little policies. But the feature about that with the prudent investor is then -- let's talk about liquidity. What's the liquidity of that trust once you've done that? And, really, it's almost, again, mutually exclusive about the diversification once you put it all into insurance.
CHAIRMAN: Joy?

MS. GERSTEIN: I'm sorry, but aren't we in the middle of taking a vote?

CHAIRMAN: Yeah. Todd?

MR. MAHN: I think we could fix this whole problem. Why don't we just do joint accounts with everything, and, that way, the consumer still has part control of their account?

MS. EULER: There's a problem with that.

MR. MAHN: And then you can calculate the interest on their joint account, and then we don't have the problem when the transfer comes up of how much interest transfers with it.

MS. EULER: But we can't do joint accounts anymore.

MR. MAHN: So, maybe, you know, it seems like this whole trust thing is a monster. Every time we bring something up, there's 15 things why we shouldn't do it a certain way. I don't know. I'm not an attorney; I don't know whether insurance ought to cover it or not.
MS. EULER: So, we could go 100 percent insurance.

MR. MAHN: I mean, I'm not -- you know, I bury people, but, you know, I don't -- I'm not a --

CHAIRMAN: Was that a yea or for or against, or I didn't quite get it.

MS. GRINSTON: That's a third category.

MR. MAHN: A third category. I'm for joint accounts.

CHAIRMAN: Bill?

MR. TRIMM: Prudent-investment strategy is what I think.

CHAIRMAN: And let them put insurance in trusts? Okay. Darlene?

MS. RUSSELL: I agree with what Bill just said.

CHAIRMAN: Which Bill?

MS. RUSSELL: This Bill.

CHAIRMAN: Okay.

MR. STALTER: She's not going to agree with me. I say no insurance.

MS. RUSSELL: No.

CHAIRMAN: No insurance?

MR. STALTER: Yeah.
CHAIRMAN: Well, I guess I have to break this tie. Okay. You can put insurance in trust, and you're going to have to do it -- we'll write it up as a prudent-man investment or something.

MS. GKINSTON: I think the majority is reasonable and prudent, no term life, must be income producing, have the potential of being income producing.

CHAIRMAN: Yes. Brad had a comment.

MR. SPEAKS: Well, I just want to address Don's question, you know, about -- if I'm understanding the question right. Why would you do insurance; why don't you just sell insurance to begin with? It may be as simple as either the health questions that the family can't answer -- the person can't answer appropriately to get insured, or it could have to do with the commission structure. Perhaps this person's age is such -- maybe they're 90 years old, they come in, they want to buy a preneed, commissions, and go that's 4 percent; that doesn't cut it. Let's give this person -- put them in trust. So, I think that may answer that question.
CHAIRMAN: Gerry?

MR. KRAUS: Don also mentioned an important point that we learned in Illinois. Their trustees thought that they could buy, through the prudent-investment rule, policies on other people, their executives. We need to limit this to policies purchased on the life of the intended funeral recipient.

MS. RUSSELL: Yeah, good idea. Key man.

CHAIRMAN: There you go.

MR. MEHRHOFFER: And nonrelated, meaning good -- (inaudible) -- rated companies.

CHAIRMAN: Good point. Thank you.

We'll note that. All right. Go on to the next topic.

UNIDENTIFIED: Was that a yea or a nay?

MS. GRINSTON: Yeah. That's what I'm -- not on the life, has to be on the life of the intended beneficiary. Is that a consensus?

(Several people answer yes.)

MR. McCULLOCH: For those that are concerned about insurance, can I talk about that?

CHAIRMAN: Uh-huh.
MR. McCULLOCH: It's not the fact that
the companies have purchased a life policy.
That's not where the problem is, I don't
think. The problem appears to be that the
cash values were taken out of it. It's not
the purchasing of life insurance. Life
insurance is regulated very highly, and so,
that's the problem.

MS. EULER: It has to do with who the
owner is.

MS. GRINSTON: Can we move to John's
point, though. If we're going to say
reasonable and prudent standard that, you
know, possible this investment mix may include
insurance, should we address loans against the
policies, which we did address last year.
Should anyone be allowed to take a loan
against a policy that is being held in trust?

Yes, I do.

MR. McCULLOCH: I think these folks
are going to fix that. These folks are going
to fix that, I think. I don't think we'll
have to worry about that.

CHAIRMAN: Sharon?

MS. EULER: If we're going to have a
section that talks about funding with insurance, it would seem to me that it would be appropriate to have some guidelines about insurance, whether it was funded -- insurance-funded preempt or if the trust purchased insurance, things like that. Like, who is the owner, who is the beneficiary, what kind of notice needs to be given, who has the authority to borrow against the policy, if anybody, does it need to be paid up, all of those sorts of things would apply --

MS. GRINSTON: Can I take that suggestion and put it on another agenda so we can send it out as a think item?

MS. KULAR: Yes.

MS. GRINSTON: Because I think that that's a good point, but I think we probably -- I think it's a good point.

MS. KULAR: That's why I'm saying, I think it is another agenda item because there needs to be guidance for insurance, regardless of how it falls.

MS. GRINSTON: Well, on that note, while we're here, #28 on the agenda from July 8th. When you're doing insurance-funded
plans, we just talked about prohibiting investment of trust funds in term life and certain insurance products. What about should there be a restriction on the type of plans that can be used to fund a preneed contract, and I'm going to start with the biggie -- term life. Should there be a prohibition on using term life to fund a preneed contract? I see everybody nodding.

MS. RUSSELL: Yes.

MS. GRINSTON: Consensus?

CHAIRMAN: Everybody agree with that?

Say aye. Those opposed?

(Unanimous voice vote for approval.)

CHAIRMAN: Okay.

MS. GRINSTON: Sharon?

MS. EULEX: Well, I was just going to have a question. And like I said, my knowledge, I'm on the edges of my knowledge here, so I'm looking at Larry. With insurance, for somebody who is 95 years old who is buying a preneed plan, if you're funding it not through a trust, not as an investment, but if you're just funding the life insurance, does it make sense to buy a
term policy on somebody who is 95 if the term
was a year, because you couldn't buy a
whole-life policy on somebody who is 95, I
don't think.

MR. McCORD: Well, I don't know
whether you could or not. Policies, across
the board, Sharon, in regards to what
companies will sell. Typically, you will not
see that for an individual that age.

MR. MEIERHOFFER: Yeah. The answer is
no, you probably can't buy one.

MS. EULER: A whole life, but could
you buy --

(Several people talking simultaneously.)

MR. McCORD: You could buy a paid-up
policy.

MS. EULER: So, I guess my question
is: So long as you're not looking at it as
an investment, but if you're looking at it as
insurance-funded preneed, there may be
situations where term is appropriate? I throw
that out.

MR. McCORD: I would agree with you,
Sharon. I'm sorry. This is Larry McCord. I
would agree if it's a paid-up-front policy; in
other words, not a series of payments, but paid up front, paid in whole.

MS. EULER: Right.

MR. McCORD: Then a term policy, I believe, could be -- could be a funding vehicle if used in that manner.

MS. GRINSTON: What about that idea? Fund it. If term life is used, it must be fully paid?

MR. MEIERHÖFFER: You just wouldn't use it through a trust, though, would you? Wouldn't you just -- going back to -- I mean, it's --

MS. EULER: Right. As an insurance-funded plan.

MS. GRINSTON: Yeah, as an insurance-funded.

MR. OTTO: Well, if I buy a term-life policy on myself -- all right -- and I feel like making the funeral home the beneficiary, and my contract with the funeral home is that when I die, this insurance is going to pay for the things on this thing, what's wrong with that?

MR. McCULLOCH: Nothing.
MR. MEIERHOFER: Nothing, but I wouldn't guarantee it for you.

MR. OTTO: Well, you may not -- I mean, what's wrong with that? I currently have a term-life policy on myself; okay? I take a look at it and I say, well, look, that's -- I can lock in my insurance, I can hopefully lock in -- and it may be guaranteed or may be not -- but I want to work out my funeral right now so my family doesn't have to take care of it. Now, obviously, there's a situation where if I stop making payments on that term policy, it's going to go away. There is no money to fund the preneed.

MR. McCORD: That's why he was saying he wouldn't --

MR. OTTO: Well, yeah. It's just no different than a contingent beneficiary where I can change the beneficiary any time I feel like it.

MS. GRIINSTON: What I'm hearing everyone say is that the insurance funding, that option is okay. The question is: Should that term-life policy that you use, should it be required to be paid up before you use it
as a thing on the policy, and I don't know.

CHAIRMAN: Gerry, you had a comment?

MR. MCCULLOCH: I think it's just this. If the funeral home would want to say, yeah, if you have a policy, it'll apply towards your funeral, but we're not freezing the costs. I wouldn't think anyone would want to do that. That's where the risk would be.

MR. MCCULLOCH: Yeah.

CHAIRMAN: Gerry?

MR. KRAUS: As a final-expense policy, I don't see anything wrong with the term life. But for funding a preneed contract, it doesn't make sense. It's a temporary coverage. If you're looking at it as ultimately being there when you die, the premiums are going to be prohibitively expensive in older years, and it's just naturally going to fall away, so it doesn't make any sense to allow term on a guaranteed-contract situation.

MR. MCCULLOCH: Exactly.

CHAIRMAN: Thank you.

MS. GRINSTON: So, no term on guaranteed?

MR. MCCULLOCH: Well, that's -- I
mean, to some -- you don't have to do anything about it, it'll take care of itself.

MR. CTTO: Yeah. But the funeral home shouldn't be guaranteeing something on a term.

MS. GRINSTON: Is there a need at all to restrict the type of insurance plans that can be used to fund a preneed plan?

(Several people respond no.)

MR. McCULLOCH: That's up to the individuals and the funeral homes.

MS. GRINSTON: Take the consensus.

CHAIRMAN: Do you want to go vote it individually?

MR. BAKER: How do you buy a paid-up term policy unless it's a whole life that's converted to a reduced paid up?

MR. MCCORD: You can buy a term policy in a single lump-sum payment, sir.

MR. BAKER: You can?

MR. MCCORD: Yes, sir.

MR. BAKER: But it's capped the number of years that it's --

MR. MCCORD: Yes. Yes, sir. The amount and years is capped.

MR. BAKER: Right.
MR. McCORD: Yes, sir.

CHAIRMAN: What if you get some dumb undertaker that does that?

(Numerous people talking simultaneously.)

MS. EULER: Well, then they can. The market will take care of itself.

CHAIRMAN: Yeah, then he's lost his money. He's paid his policy.

MR. MAHN: Boy, Don made a point. I was, like, if Don wants to come over to my funeral home and use his term policy to prearrange a funeral and, you know, he ought to be able to do that. But you've got to both understand that the term policy will run out which will null and void the prearrangement. I mean, that's what you're saying; right, Don?

MS. GRINSTON: So, if what I'm hearing...

MR. MEIERHOFER: Well, that's great, except you're talking to his kids who said it was paid up. That's the problem with these things.

CHAIRMAN: Good point there, too.
MR. MAHN: Well, they're going to say
a whole-life policy is paid up, too, and what
if it's not paid up?

MR. MEIERHOFER: Well, that's what a
life-insurance policy is for; it should pay
when he dies.

MR. MAHN: Right.

MR. MEIERHOFER: But the term policy
could have run out; that's my point.

MR. MAHN: Right. But what about a
whole-life policy that they quit making the
payments on and you find out they haven't been
making the payments on that, either?

MR. McCulloch: And they don't have the
policy.

MS. GRINSTON: Well, am I hearing
everyone say that there may not be a need for
us to restrict the type of insurance funding
that can be used, but that maybe we may need
to address this from the notification issue on
what is being used as opposed to restricting
what is being used?

MS. EULER: Yes.

MS. GRINSTON: Meaning requiring
disclosure in the contract or something of
what is being used?

Ms. Euler: Yes.

Mr. Kraus: And maybe a simple suggestion. I would go toward enabling just permanent whole life -- permanent life insurance and annuities that are designed to help you with your contract promise of keeping up with inflation.

Ms. Grinston: What about the potential of producing income?

Mr. Otto: Well, we're mixing up trust investments versus --

Mr. Kraus: This is just for outright insurance purchases.

Ms. Grinston: Okay.

Mr. Otto: Yeah. I've got a life-insurance policy that's term life that pays me $10,000 if I die in the next ten years. I've got it through work, you know. I decide I want to make the beneficiary my funeral home, and I make a deal with my funeral home that this is how I'm going to fund it.

Ms. McCulloch: But if you die in 11 years --
MR. OTTO: But if I die in 11 years, I don’t have any. I don’t see anything wrong with that.

MR. MAHN: But, most likely, as young as Don is, he’s going to have a couple hundred thousand dollar policy, because you always buy more in term and his family has got an opportunity to buy you an even nicer funeral.

(Several people talking simultaneously.)

MS. GRINSTON: Having said that, Mr. Chairman, can we vote the consensus?

CHAIRMAN: I don’t think they should sell term. Because I’m saying, like, what if you have a commission. What if the commission sale to some undertaker that has -- however you’re doing this. And he goes -- you get $1,000 on a $5,000 policy. The woman dies at 80 years old, the coverage ends at 75. It’s like he’s saying the family comes in and says, "Mother has got a policy with you." "No, she doesn’t." "Well, where is it?" You know, "It lapsed, or it didn’t lapse, it’s just -- that was the end of the policy. At age 75, it expired." Okay. I’ve still got a thousand bucks in my pocket, going, "Hey," you know.
MR. OTTO: That's how insurance works.

CHAIRMAN: And I'm telling you, people don't do this. They're going. "I know undertakers and if they can get a dollar, they're going to get a dollar out of something."

MR. OTTO: That's how insurance works.

CHAIRMAN: You know, if you're going to do something for a person, put it in term where they're going to have something. When they come in there, they've got some -- whole. I mean, whole. You'd have a policy that's paid up in full and you've got the money, and everybody is happy.

MR. MAHN: But you're saying the funeral home -- like, Don Otto walks into a funeral home and he wants to just work out a deal where if something happens to him while he still has young children and everything, he wants his term policy to pay for his funeral, does that funeral home have to say, "Well, I can't accept it"? I'm going to take all these shortfalls over here where I'm getting smoked, but I like your couple-hundred-thousand-dollar policy, but I'm not going to take that?
CHAIRMAN: How much commission do I get?

MR. MAHN: He already owns the policy, he just wants to use it --

CHAIRMAN: We're talking about buying --

MR. MAHN: He was talking about he already had the policy, he was just wanted to come in and fill out --

CHAIRMAN: What funeral home do you normally use, Don?

MR. OTTO: Yeah, but I do -- through my job, I've got, like, it's about a $10,000 term-life policy that's good, and I can name the beneficiary. What if I wanted to go to a funeral home and say --

MR. BAKER: Chris and I have them because we're the ones that pays.

MR. OTTO: Yeah.

(Several people talking simultaneously.)

MR. STALTER: Yeah. But your point is whether the funeral home should be selling term as a way of funding up these contracts.

It's just a little different from what Don has. I mean --
CHAIRMAN: Okay. Are we going to restrict it, yea or nay? Bill?

MR. STALTER: Yeah. Restrict it from -- that the funeral home cannot sell term.

CHAIRMAN: Okay. Darlene?

MS. RUSSELL: You're talking just term right now? We're not talking of the whole -- just restricting term? I have no problem with that.

MR. TRIMM: Yea.

CHAIRMAN: You want to restrict it; correct? Okay.

MR. MAHN: And you're talking about the guarantee a funeral price or nonguarantee?

CHAIRMAN: Well, you would be guaranteeing up --

MR. MAHN: Well, if I'm an insurance agent, also, and somebody comes in my funeral home, a young person that has four or five kids, you're telling me I can't sell him a term policy because I own a funeral home?

MS. GRINSTON: That's the vote.

CHAIRMAN: Right.

MR. MAHN: Even if it has nothing to do with the guaranteeing the funeral?
MS. GRINSTON: No. No. No. If it's
connected -- if it's going to be used to fund a
term life just because --

MR. MAHN: To guarantee the contract?

Okay. Whole life.

CHAIRMAN: Okay.

REPRESENTATIVE MEADOWS: I'm the same
way as the rest of them.

CHAIRMAN: All right.

MS. ZUEHR: Ditto.

MR. FRAKER: Same way.

MS. GERSTEIN: (Inaudible.)

MR. McCORD: Yes.

MR. WEAVER: Yes.

MR. McCULLOCH: I don't understand the
question.

CHAIRMAN: What we're saying is we're
going to -- you cannot -- a person is not
going to be able to walk in your funeral home
and you sell them term insurance on a funeral.

MR. McCULLOCH: If I'm an insurance
agent, I'll sell whatever I wish to sell them.

CHAIRMAN: No. I'm saying, like, to
guarantee a plan.
MS. GRINSTON: To fund the preneed contract.

CHAIRMAN: To fund the preneed contract.

MR. McCulloch: And if I'm a funeral director, I'll fund it if I want to.

MS. GRINSTON: Got it.

MR. McCulloch: You see what I'm saying?

MS. GRINSTON: I got it.

MR. McCulloch: So, why would you guys say no to that? You can do whatever you want. It's your business. If you want to fund it, fund it. If you want to take that risk, take it. I'm not sure why you would without some specifics in there, like if it drops off in ten years, you say if you die in '11, this deal is no good. But up until that point, what's wrong with that? Think about it.

CHAIRMAN: Well, we're taking a vote.

Yea or nay?

McCulloch: I'd say that you should be able to buy the term.

MR. Otto: If I'm a funeral director --

CHAIRMAN: Yea or nay?
MR. OTTO: And that's -- I understand that. If I'm a funeral director and I have --
CHAIRMAN: Well, we're not questioning.
You've got to vote like a ballot.
MR. OTTO: Well, I'm about to be a hanging chad here, I think. I don't think you should restrict an insurance agent from selling an insurance product with the beneficiary the purchaser of the policy wants to have.
CHAIRMAN: But we're talking about guaranteeing a funeral.
MS. GRINSTON: Yeah. He's saying either way.
CHAIRMAN: Either way, yea or nay?
MS. GRINSTON: I think that's a no.
MR. OTTO: I think that should be allowed.
CHAIRMAN: Okay.
MR. MEIERHOFFER: Nay.
CHAIRMAN: Okay. The nays have it.
MS. GRINSTON: No, they don't.
CHAIRMAN: I mean, the ayes have it.
All right.
MS. GRINSTON: He's got it. Okay.
And, again, we'll pull the language in so everyone else can take a look at that. Since we're getting close to our release time, if you will, can we just do something. I don't know how long this will take, but let's just start the discussion. Thirty-one on the July 8th agenda. We're going to move out of trust for just a second. Thirty-one on the July 8th agenda, and we are skipping topics, but I think we need to. When this bill went through, I think if it wasn't last year, it was the year before that, I think, there was a suggestion about requiring bonding or insurance for preneed providers. I'm talking about providers right now. The suggestion was that in cases of them and if they went out of business or something else happened, or if the provider collecting payment did something with the money, there may be a bonding or an insurance something to back that up. Should there be a requirement for bond or insurance for preneed providers?

CHAIRMAN: Don?

MR. OTTO: No.

MS. GRINSTON: Thank you, sir.
CHAIRMAN: That was the last question, damn it.

MR. OTTO: As we discovered, although that sounded good to start with, the entity that was pushing that bill a couple years ago was NPS. The reason being is that would have prevented funeral homes from selling preneed as a seller. They would have had to have gone to NPS. That bond, it sounds good, something if you just throw it out there, but you can't get it. The bond does not exist.

MR. MAHN: No. You can't get it.

(Several people talking simultaneously.)

MS. GRINSTON: No.

CHAIRMAN: All right. No. Everybody agree?

(Unanimous voice vote for approval.)

MS. GRINSTON: We're going to switch this over to the other side. Preneed sellers, I think it's the exact same discussion.

MR. OTTO: It's the same -- exact same thing.

MS. GRINSTON: Consensus of the group, binding insurance for preneed sellers?

(Numerous people say no.)
CHAIRMAN: Everybody say no?

(Unanimous voice vote for disapproval.)

CHAIRMAN: Okay.

MS. GRINSTON: Let's do #4, the last one today, on the July 15th agenda.

Notification to consumers of preneed-fund payments -- and I'm sorry. July 15th -- yeah.

Number 4. Notification to consumers of preneed-fund payments, deposits, interest, or account statements. The suggestion was made that consumers should know, number one, when a payment has been made into trust for their contract. On that issue, when the seller has put money into trust on their individual contract.

CHAIRMAN: Comment? Don?

MR. OTTO: I think what the concern was is that the consumer needs to make sure that the money that they have paid, perhaps dropping it off right at their local funeral home, has made it into the trust that's located or that's listed on their contract.

Perhaps you should split this out. I think it's dangerous if you necessarily report interest income, particularly on whether or
not we reach a consensus on whether that
income and interest would be sloughed off or
not. But as to the consumer's payments being
received by the trust, the Missouri Funeral
Trust will likely do that anyway, whether
that's the -- but I'm not sure it's -- we'd
like that clarified in the law, that that's
permissible. Whether it's required or not, we
want to make sure that it's permissible.

MS. GRINSTON: Okay.

CHAIRMAN: Mike?

MR. MEIERHOFFER: I think it's great
that we do that. It's just not practical to
do it every time that a payment is made.
You're talking --

MR. OTTO: Oh, I'm thinking once a
year.

MR. MEIERHOFFER: That's my point.

MR. OTTO: Yeah.

MR. MEIERHOFFER: Do you want to do it
maybe once a year, and even that will confuse
a lot of people, but it's not a bad thing to
do.

MS. GRINSTON: So, the suggestion is an
annual report to consumers of what has been
put into trust --

MR. MEIERHOFER: What has been placed
into trust or the balance.

MR. OTTO: Excuse me. What has been
received.

MS. EULER: No.

MR. OTTO: Well, here's the problem
I've got is the way we're worded right now,
$5,000 funeral -- a $5,000 funeral where
you're paying $100 a month; okay? Make it a
$6,000 funeral -- $6,000 funeral, the consumer
is paying $100 a month. One year later, zero
would have been put in the trust; okay?
Because the seller gets the first 20 percent
of the money. So, if you just tell the
consumer how much money has been put into the
trust, they'll say zero has been put in the
trust. But what the consumer needs to know is
my payments for the past year have been
received by the seller and accounted for, not
just deposited into the trust.

MR. WAHN: Shouldn't 80 percent of each
payment be put in trust, 20 percent of the
payment kept out?

MS. EULER: No.
MR. MEIERHOFER: That's not the way the law works.

MR. OTTO: That's not how the law is.

MS. EULER: Right now.

MR. MAHR: The working law. Okay.

CHAIRMAN: Sharon?

MS. EULER: I think it's important that the consumer receive notice when money is deposited into the trust. There are going to be some situations where people are paying $100 a month, but there are going to be a lot of situations where people have written a check for $10,000 or for $20,000, and I think they need confirmation that that money has been placed into trust.

MR. OTTO: I think they need more.

I'm not saying -- I agree that if money is deposited in the trust, they need an account, they need a notice. But I'm saying we should step -- do more than that. Not just the money that's been deposited into trust, but any money that has been paid to the seller, the consumer needs to know, I got the check.

MS. EULER: And that's a separate issue.
MR. McCULLOCH: Well, who's going to notify and who's going to pay for that notification?

MR. STALTER: We do that. Our administration company does that from one of the banks. And, I mean, it is a cost to it. And, you know, sometimes we try to figure out who should bear that, whether it be the seller or the consumers. And, actually, we have a push-back from consumers. We're charging $3.50 a statement. They still don't want to pay for it. And, truthfully, you know, they outsource it to us because they don't have the software to do that. So, I mean, it is -- it's a problem.

CHAIRMAN: Well, it's getting close to 4:30. Let's table this and we'll take this up first at the next meeting. You all can think about what you want to do. Maybe we can get some -- Gerry?

MR. KRAUSE: Just one quick comment.

We have dealt with this issue because of funeral scandals in four different legislatures during this session. And where we ended up on most of them was on the
insurance side, we allowed -- we wrote the
requirements such that if the -- when the
insurance companies delivered the policy, that
would satisfy as notice that their money got
into the insurance company. And the
subsequent billing, if they were making
payments, was sufficient notice that they were
keeping track of what was going on on the
modal pay side. On the trust side, we set an
initial deposit requirement and thereafter a
periodic report. Some of these states went to
quarterly reports, but most of them went to
annual.

CHAIRMAN: That gives us some idea
about what the --

MR. OTTO: We already do the initial
one. We do an initial one right now.

CHAIRMAN: Okay.

MR. OTTO: We'd like to do an annual
one, as well. We'd like to make it clear in
the law that we're not breaking our fiduciary
duty to our providers by doing that directly
to the purchaser.

CHAIRMAN: Bill, would you be able to
get some costs on what that would be, like per
MR. STALTER: I think it's going to differ, you know. We will make some inquiries and see what other people charge. I've heard, like, from $16 a statement, you know. We charge $3.50, but we don't make any money off of it when we do it that cheap.

CHAIRMAN: Yeah. You know, you're talking a financial burden. All right. John?

MR. MCCULLOCH: Just so you know, and I assume everybody does it the same way, you have to have on there who the trustee is on the -- and they can call and check on their account any day -- every day, if they want to.

MS. GRINSTON: That's a suggestion.

CHAIRMAN: Okay. Well, let's think about that and I appreciate that. I appreciate everybody's time, energy they put in. Those notebooks are huge and you've got to go read those, and that's a time-consuming effort. Once again, thanks each and every one of you, and we'll see you a week from Thursday.

MS. DUNN: Okay. Clarification -- the next meeting is next Thursday, then the 29th, 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. MEIERHOFER: 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.
MS. DUNN: Yes.

CHAIRMAN: All the rest is like --
yeah. The meetings -- the next three meetings
are all here.

MS. DUNN: Right. The 24th is a
Thursday, the 29th is a Tuesday, and August
12th is a Tuesday, and August 20th is a
Wednesday.

MS. GERSTEIN: What's happening August
12th?

MS. EULER: The meeting.

MS. DUNN: The meeting here. It's all
the 416 meetings.

MS. GRINSTON: Not the Board meeting.

CHAIRMAN: Yeah. And it's an optional
meeting. We may not need it.

MS. DUNN: See, we have to keep
meeting until we get done.

MR. OTTO: I would suggest -- I mean,
there is confusion about whether next week's
meeting is Tuesday or Thursday because one
piece of paper that was handed out said
Tuesday.

MS. DUNN: I've got them on the Web
site, too.
MR. OTTO: I know. But I'm going to send an e-mail out to all our folks --

MS. DUNN: Okay.

MR. OTTO: -- to make sure that they understand it's Thursday.

MS. DUNN: Okay.

MR. OTTO: If you have -- I mean, whoever has the capability of e-mailing it out saying -- they should do that.

MS. GRINSTON: Thank you, everyone.

CHAIRMAN: Nine-thirty. Thank you.

(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