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December 8, 2004

Commissioner Diane Koken
President
National Association of Insurance Commissioners
2301 McGee Street
Suite 800
Kansas City, MO 64108-2662

RE: NAIC Executive Task Force on Broker Activities
Comment on December 5, 2004 Draft
NAMIC Testimony

Dear Commissioner Koken:

NAMIC is pleased to offer comment on the NAIC's December 5, 2004 revised amendments to the NAIC's Producer Licensing Model Act. NAMIC believes that any proposed solution considered by the NAIC in response to broker compensation issues should:

- Be the result of careful and thorough consideration.
- Be carefully targeted to resolve an identified problem.
- Ensure access to competitive markets.

Any regulatory or legislative response that does not meet the above criteria will most probably be excessive, overly burdensome, and ineffective.

Based on the December 5th hearing, we are limiting comment to Section A of the proposed amendments, with the understanding that the NAIC will subsequently undertake a more thorough review of Section B.

Is Section A the result of careful and thorough consideration?

NAMIC remains troubled by the rapid pace of this review. We believe that a more deliberate consideration of the entire issue is appropriate. The hearings held on December 3 and 5 in New Orleans revealed that the issue has yet to be fully clarified. Comments made by some regulators regarding information that they "are seeing" as they investigate, without further clarification, leaves us at a severe disadvantage in assessing whether these amendments are adequate and appropriate. We believe that Section A requires further consideration, beginning with a clear definition of the problem that it is intended to resolve. Making a major public policy decision based on secret information

cannot lead to a good decision as such a proposal has not been subject to the rigors of a thorough public debate.

Is the proposal carefully targeted to resolve an identified problem?

Section A is too broad. As we suggested above, the scope and breadth of the problem that Section A is intended to resolve remains unclear. NAMIC supports appropriate disclosure in instances where compensation is received from the insurer and the insured, creating the appearance of a conflict of interest. As this is the one clear problem that has been identified to date, we believe that Section A should be tailored to require appropriate notice.

As the plight of captive agents under these amendments is the most obvious, we will discuss our concerns in that light. Requiring someone who works for one company to inform a consumer that they are compensated by that company will add nothing but confusion to the sale of insurance. We believe that Section A could address the identified problem by changing the first sentence in the following manner. “In any insurance transaction where any insurance producer or any affiliate of such produce receives any compensation from the customer” while acting on the customer’s behalf...

Will this proposal ensure access to competitive markets?

For purposes of the one defined problem, appropriate disclosure will ensure access to competitive markets. Yet, we do not believe that Section A’s disclosure requirements will accomplish that end.

The law must be clear and reliable. This concept is so fundamental that we rarely articulate it, assuming that it will be the case. Clear and reliable laws are necessary for open and competitive markets. When laws are unclear and unreliable, people must act defensively as they cannot predict how or when a violation will be alleged. While creating confusion is not your intent, Section A remains ambiguous. For instance, we don’t know what the notice is to look like and how it is to be communicated in all circumstances. We faced a much less complex notice problem when the Terrorism Risk Insurance Act of 2002 (TRIA) became law. To resolve that problem the NAIC drafted model notices that the US Treasury adopted, providing a safe harbor to anyone who used those notices. A similar effort, resulting in safe harbor is critically important.

Another concern relates to informing the consumer of the amount of compensation. Most insurance markets are competitive and consumers may shop to compare prices. Most consumers want to know price, and whether the policy provides the coverage they need? If one company provides a higher commission with a better product at a competitive price, the consumer is clearly not harmed by choosing that policy. Yet, knowing that the commission is higher might motivate the consumer to choose a more limited policy, or a policy with a company that is less financially sound. It is also widely recognized that it is frequently not possible to inform a consumer of the amount of a commission, which is why Section A requires a “reasonable estimate”. Yet, we don’t know what constitutes a

“reasonable estimate”. Unfortunately, brokers, agents and insurers are likely to find that the definition varies from state court to state court. Finally, we cannot ignore the fact that consumers are free to ask what the commission will be. If the agent or broker chooses not to answer, the consumer is free to go to someone who will. Requiring disclosure of specific commission amounts will provide little if any consumer protection but almost certainly impair access to competitive markets.

Last week’s hearings in New Orleans revealed that brokers, agents and insurers are unified in our condemnation of criminal activity, and our willingness to work with the NAIC towards appropriate disclosure. While we remain steadfast in our desire to work constructively with the NAIC, NAMIC believes that the issue requires further definition, and that the current proposal is over-broad and unworkable.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Peter A. Bisbecos". The signature is written in a cursive, flowing style with a prominent initial "P".

Peter A. Bisbecos
Director of Legal and Regulatory Affairs