

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of Database Fees Imposed by
the National Association of Insurance
Commissioners

PETITION FOR CONTESTED CASE

NOW COMES THE National Association of Insurance Commissioners (hereafter “NAIC”), pursuant to 1979 ACS 13, R 500.2103, in a petition to the Commissioner of the Office of Financial and Insurance Regulation for a contested case in the matter of the NAIC’s claim for database fees from insurers domiciled in the state of Michigan, and in support thereof provides as follows:

1. The NAIC is a nonprofit organization whose membership consists of the chief insurance regulators of the 50 states whose mission is to assist state insurance regulators in serving the public interest and achieving fundamental insurance regulatory goals.
2. The NAIC collects database fees from insurers domiciled in each state in cooperation with state insurance commissioners. These database fees cover the costs of the NAIC in the receipt, maintenance and analysis of insurance company annual statement filings, which are required by MCL 500.438a to be filed with the NAIC. Some Michigan insurers have not paid their fees in recent years,

prompting this petition. See Exhibit B for a list of insurers who have not paid database fees for 2006 & 2007.

3. MCL 500.479 provides that insurers domiciled in Michigan are not required and cannot be compelled to pay any fee imposed by the NAIC, unless the fee is authorized by an order of the commissioner pursuant to the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.
4. MCL 500.479 provides that, in determining whether to authorize the payment of a fee imposed by the NAIC, the commissioner shall consider the NAIC's annual report required under MCL 500.478.
5. On October 1, 2007 and October 1 2008, the NAIC submitted reports of its activities, including a written summary and supporting documents, with the Commissioner and the senate and house of representatives standing committees on insurance issues in accordance with the requirements set out in MCL 500.478. These full reports are attached to this petition as Exhibit A.
6. These reports of NAIC activities, as required by MCL 500.478, include a summary of activities during the preceding year; a fiscal report; a list of accreditation standards; a description of policies and procedures with respect to the accreditation process; and a description of the NAIC's open meetings policy.
7. MCL 500.479 further provides that, in determining whether to authorize the payment of a fee imposed by the NAIC, the commissioner shall consider the following factors:

(a) How the NAIC dedicates the use of the fees, including the degree to which any solvency-related revenue is improperly used to subsidize NAIC functions other than solvency oversight.

Database filing fees are entirely allocated to Solvency Regulatory Support, primarily due to the fact that the fee is associated with the insurer's filing of the Annual Statement, which is the key tool in the solvency regulatory framework. Database filing fees for 2008 are estimated at \$25,100,000, while the total expenses for Solvency Regulatory Support are estimated at \$35,908,165.

The database filing fees constitute just 40% of the NAIC's total revenue. Other resources are used to support NAIC functions other than solvency oversight.

(b) The degree to which fees imposed by the NAIC are based on an insurer's annual amount of premium volume, rather than the cost of a service rendered by the NAIC.

The annual premium volume is the best measure of the cost of services rendered by the NAIC. This approach is uniform throughout the NAIC's member states.

(c) Whether the NAIC has exceeded its legal authority, as determined by an examination of the fiscal report required under section 478, as well as any other factors considered appropriate by the commissioner.

The NAIC membership is comprised of state regulators, who drive the work and activities of the NAIC in areas such as emergency response, international accounting, financial solvency and electronic rate and form filing. The annual report submitted by the NAIC outlines these regulator-driven efforts.

The NAIC Annual Reports include the year-end financial statements, as well as the required categorization of expenditures and revenues. All NAIC members are asked to participate in the development and review of the NAIC's annual budget proposal. The annual budgets submitted by the NAIC for our regulatory member approval, as well as the Annual Reports, are included in Exhibit A of this petition. As the NAIC is made up of state regulators, its accountability to legislative entities runs parallel to that of the regulators.

The NAIC frequently responds to state or federal legislative requests for information and collaboration. In addition, the NAIC regularly testifies before Congress and submits reports on topics of national interest relating to insurance.

With regard to this petition for a contested case, the NAIC has submitted a report of activities to the Michigan legislature, as required by MCL 500.478.

(d) The level of accountability shown by the NAIC to legislative and regulatory authorities.

As the NAIC is made up of state regulators, its accountability to legislative entities runs parallel to that of the regulators. The NAIC frequently responds to state or federal legislative requests for information and collaboration. The NAIC regularly testifies before Congress and submits reports on topics of national interest relating to insurance.

With regard to this petition for a contested case, the NAIC has submitted a report of activities to the Michigan legislature, as required by MCL 500.478.

(e) The effect of NAIC standards on state sovereignty and innovation.

The accreditation program recognizes that complete standardization of practices and procedures across all states may not be practical or desirable because of the unique situations each state faces. States differ with respect to staff and technology resources that are available as well as the characteristics of the domestic industry regulated. For example, states may choose to emphasize automated analysis over manual or vice versa. Reliable results may be obtained using alternative, yet effective, financial solvency oversight methodologies. The accreditation program should not emphasize form over substance in its evaluation of the states' solvency regulation.

Accreditation standards include examination authority; capital and surplus requirement; NAIC Accounting Practices and Procedures; corrective action; valuation of investments; holding company systems; risk limitation; investment regulations; liabilities and reserves; reinsurance ceded; CPA audits; actuarial opinion; receivership; guaranty funds; filings with NAIC; producer controlled insurers; managing general agents act; and reinsurance intermediaries act.

As insurance industry practices evolve, so must solvency regulation. Therefore, the NAIC has anticipated that the Standards, outlined above, would not be static, but would be dynamic.

In March 1998, the NAIC adopted a more flexible process when adding new standards or modifying existing standards. The process seeks extensive input from public officials, consumers, academics, regulators and industry representatives when changes in the Financial Regulation Standards and Accreditation Program are considered. The procedures identify three ways in which the solvency standards may be modified:

- (1) The development of new models or amendment of existing models;
- (2) Additional or more specific requirements to Parts B and C of the standards; or
- (3) Indirect modification of current requirements through changes in manuals or books incorporated by reference in the standards, such as modification of the annual statement blank required to be filed by all companies.

The process uses a set schedule to complete the deliberation process which allows all interested parties to clearly understand the decision timetable.

(f) Whether the NAIC determines the state's accreditation status solely on the basis of its regulatory effectiveness.

The objective of the accreditation program is to provide a process whereby solvency regulation of multi-state insurance companies can be enhanced and adequately monitored with emphasis on the following:

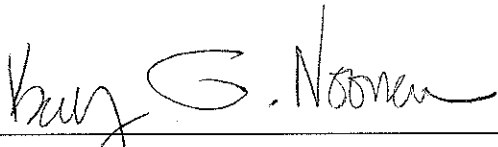
- (1) Adequate solvency laws and regulations in each accredited state to protect consumers and guarantee funds.
- (2) Effective and efficient financial analysis and examination processes in each accredited state.
- (3) Appropriate organizational and personnel practices in each accredited state.

(g) Whether NAIC proceedings and decision making are open and publicly accessible.

The NAIC has submitted its Policy Statement on Open Meetings. The Policy is also included in Exhibit A of this petition.

8. A contested case proceeding, to be commenced pursuant to 1979 ACS 13, R. 500.2104 and R 500.2105, will allow the NAIC to pursue the appropriate remedy; specifically, an order by the commissioner authorizing the payment of fees imposed on Michigan insurers by the NAIC.

WHEREFORE, the NAIC respectfully requests that a contested case regarding the imposition of NAIC fees be commenced by the commissioner, pursuant to the Administrative Procedures Act of 1969, MCL 24.201 *et seq.*, as required by MCL 500.479.

A handwritten signature in cursive script that reads "Kay G. Noonan". The signature is written in black ink and is positioned above a horizontal line.

Kay G. Noonan
General Counsel
NAIC

Dated: December 12, 2008

**STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of Financial and Insurance Regulation

**In the matter of Fees Imposed by
the National Association of Insurance
Commissioners**

Agency No. 09-736-INS

NOTICE OF ADMINISTRATIVE ACTION

On December 15, 2008, the National Association of Insurance Commissioners (“NAIC”) filed a Petition for Contested Case seeking an order from the Commissioner of Financial and Insurance Regulation authorizing insurers domiciled and authorized to transact insurance in Michigan to pay fees imposed by the NAIC. A copy of the Petition for Contested Case is attached and incorporated into this notice.

Under Section 479 of the Insurance Code of 1956 (“the Code”), MCL 500.479, an insurer cannot be compelled to pay any fee imposed by NAIC unless the fee is authorized by an order of the Commissioner pursuant to the Administrative Procedures Act of 1969, as amended (“APA”), MCL 24.201 *et seq.* In determining whether to authorize the payment of fees imposed by the NAIC, the Commissioner must consider the statutory factors contained in Section 479(2) of the Code, MCL 500.479(2). These factors are dealt with in the Petition.

A hearing will be held to receive information about the statutory factors for the Commissioner’s consideration:

**9:00 a.m., July 6, 2009
State Office of Administrative Hearings and Rules
Ottawa State Office Building, 2nd Floor
611 W. Ottawa St., Lansing, Michigan 48933**

RIGHTS AND PROCEDURES

This formal administrative hearing will be conducted by the State Office of Administrative Hearings and Rules (“SOAHR”) in accordance with provisions of the APA; Insurance Bureau Hearing Procedures, 1979 ACS 13, R 500.2101 *et seq.*; and other procedural provisions of Michigan law that are appropriate.

INTERVENTION: A person seeking to intervene as a party may file an application to intervene under 1979 ACS 13, R 500.2118. Pursuant to Section 72 of the APA, MCL 24.272, an intervening party shall have the right to present oral and written arguments on issues of law and

policy, present evidence and argument on issues of fact, cross examine witnesses, and submit rebuttal evidence.

COUNSEL: A party has the right to be represented by counsel. If a party is represented, counsel shall promptly file an appearance with SOAHR. Appearances shall contain the counsel's full name, address, and telephone number. The address provided will be the official address for service of documents regarding this matter. A party choosing to proceed without counsel will be held to the same standards as an attorney, including a reasonable knowledge of the rules of evidence as applied in non-jury circuit court civil cases, applicable provisions of the APA, and other relevant laws and procedures.

DECISION AND APPEAL: The SOAHR administrative law judge will issue a Proposal for Decision (“PFD”) when the hearing and transcripts are completed. Parties will be allowed to file exceptions to the PFD. Pursuant to Section 479(3) of the Code, MCL 500.479(3), the Commissioner’s Final Decision will include a detailed explanation of the Commissioner’s findings concerning the statutory factors. A Final Decision issued by the Commissioner may be appealed as provided in the applicable provisions of Michigan law.

Questions may be addressed to:

Karl Benghauser
Office of General Counsel
Office of Financial and Insurance Regulation
P.O. Box 30220
Lansing, MI 48909-7720
(517) 373-4484
benghauserk@michigan.gov

Two Exhibits are referenced in the NAIC petition. Exhibit A consists of 28 separate documents, grouped into 6 pdf documents for easier viewing and download. Exhibit B consists of one page with two columns.

[Exhibit A-1 items 1-5](#)

[Exhibit A-2 items 6-14](#)

[Exhibit A-3 items 15-17](#)

[Exhibit A-4 item 18](#)

[Exhibit A-5 item 19](#)

[Exhibit A-6 items 20-28](#)

[Exhibit B](#)