FILING MEMORANDUM

ITEM 03-WV-2006—WEST VIRGINIA DISPUTE RESOLUTION PROCESS

(To be effective 12:01 a.m. on July 1, 2006, applicable to new and renewal business only.)

PURPOSE

The purpose of this item is to provide an NCCI mechanism by which individual policyholders may obtain review of a workers compensation insurance carrier's application of NCCI classification code assignments, manual rules, and rating plans, as contained in NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance***. This will be accomplished through the implementation of an Internal Review Panel. The Panel will:

- Expedite the delivery of dispute resolution services to carriers and employers in West Virginia
- Potentially keep costs down in providing such services
- Provide for rules for the administration of dispute resolution services
- Provide a clear and concise record of the decision in such disputes in West Virginia

BACKGROUND

Prior to October 14, 2005, West Virginia operated as a monopolistic state with no affiliation with NCCI. As of October 14, 2005, NCCI was granted a rating organization license by the West Virginia Insurance Commissioner. Pursuant to NCCI's responsibilities under that license, NCCI is filing for the establishment of a mechanism by which employers may dispute the application of NCCI's manual rules by a workers compensation insurance carrier licensed in West Virginia. This current filing does not apply to the rules contained in NCCI's ***Experience Rating Plan Manual for Workers Compensation and Employers Liability Insurance***, but, at a future date, another filing will be submitted to effect this. When this occurs, disputes involving the interpretation and application of the rules of NCCI's ***Experience Rating Plan Manual*** will be heard by the Internal Review Panel.

PROPOSAL

It is proposed that effective 12:01 a.m. on July 1, 2006, the West Virginia Insurance Commission adopt the Dispute Resolution Process included in this filing, applicable to new and renewal business only.

IMPACT

The approval and implementation of this filing will not impact premium levels but will expedite the delivery of the dispute resolution process to employers and insurance carriers.

IMPLEMENTATION

Upon approval of this item, the Dispute Resolution Process will be added under the Miscellaneous Rules in NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance***. The attached exhibit details the procedures in the West Virginia Miscellaneous Rules pages of NCCI's ***Basic Manual***.

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EXHIBIT 1
BASIC MANUAL—2001 EDITION
WEST VIRGINIA MISCELLANEOUS RULES

DISPUTE RESOLUTION PROCESS

Authority, Purpose, and Scope of the Dispute Resolution Process

Pursuant to the authority granted under W. Va. Code Section 33–20–9(b), an Internal Review Panel (Panel) is hereby established to provide a mechanism by which policyholders may obtain review by the National Council on Compensation Insurance, Inc. (NCCI) of the application by an insurance carrier of NCCI classifications, manual rules, and rating plans.

1. The Panel will have authority only to hear written requests by policyholders for dispute resolution services relating to NCCI developed experience modification factors, payroll classification code assignments, and NCCI manual rules.
2. The Panel will not have the authority to interpret, apply or opine on state or federal laws, rules, or regulations, or decisions of courts or administrative proceedings; or to hear disputes brought by carriers.

Members of the Panel

The Panel will consist of three (3) employees of NCCI who will each have one vote. Each Panel member will be knowledgeable on the class codes, rules, and rating programs that are in dispute. Panel members will be appointed by NCCI. Members of the Panel are deemed not to have a conflict of interest with respect to any dispute brought before the Panel, based solely on the Panel member's affiliation with NCCI. The carrier or the employer involved in a dispute may submit a request to NCCI that a Panel member be replaced at any time prior to a review by the Panel. A Panel member will be replaced if NCCI determines, at its sole discretion, that the Panel member in question is related to any party to the dispute, or has any material interest in the outcome of any issue in dispute. The Panel is not an NCCI committee and does not report to the NCCI Board of Directors or any committee of NCCI.

Requesting Dispute Resolution Services

(1) A policyholder may obtain dispute resolution services of the Panel only after the policyholder has made a reasonable attempt to first resolve their dispute directly with the carrier.

(2) A policyholder may obtain dispute resolution services of the Panel by sending a written request for review to NCCI. Any request for review submitted under this Dispute Resolution Process must be in writing and must contain:

- (a) The name, address, daytime telephone number, and (if the policyholder has one), the Federal Employer Identification Number (FEIN) of the policyholder;
- (b) An explanation of what the policyholder is disputing;
- (c) A statement of the relief sought by the policyholder;
- (d) A statement that the policyholder has attempted to resolve their dispute directly with the carrier, but has not been able to do so;
- (e) A statement that the policyholder has furnished a copy of the request for review to the carrier with which the policyholder has a dispute;
- (f) A statement of how the policyholder wishes to appear before the Panel (by mail, by telephone, or by video conference);
- (g) The signature of the policyholder; and
- (h) A legible copy of any relevant policy of insurance, workers compensation experience rating worksheet, or audit information and any other correspondence the policyholder has received from the carrier with regard to the matters in dispute.

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(3) The policyholder may also include any other information or copies of any other documentation in support of their position.

(4) This Dispute Resolution Process applies to any dispute arising out of a policy issued either on or after the approval of this item; however, policyholders seeking dispute resolution under this Dispute Resolution Process must file a written request for review with NCCI within three years of the expiration date of the policy in question. Any extension of time to file a request for review will be granted at the sole discretion of NCCI, and only in the interest of fairness to the policyholder or carrier as determined by NCCI. An extension of time to file a request for review will be granted only once.

(5) Within fifteen (15) business days of receipt by NCCI of a request for review, and no later than thirty (30) days after the written request is made, NCCI will grant or deny the request for this dispute to be heard by the Panel. If granted, NCCI will promptly give written notice to all parties of the date, time, and manner in which the Panel will consider the dispute; otherwise, NCCI will give written notice to the policyholder and the carrier that the request for review is not granted and will state the reasons the request is not granted, and will state the deadline for filing by the policyholder of an amended request for review, if applicable.

(6) "Receipt" by NCCI means the date a document is stamped as received by NCCI's Department of Regulatory Assurance.

(7) A request for review will be denied if:

(a) the request for review fails to state an issue in dispute that is within the authority of the Panel to hear; or

(b) the request for review has been untimely submitted; or

(c) any denial by NCCI of a request for review under paragraph (8) is final and the policyholder will not be given an opportunity to amend the request for review or resubmit it to NCCI.

(8) A request for review may be denied if the policyholder fails to provide adequate information for NCCI to evaluate the merits of the dispute. NCCI will notify the policyholder and the carrier in writing, if a request for review is denied pursuant to this paragraph, that the policyholder is allowed to file an amended request for review. The policyholder will be allowed to amend the request for review only one time. A denial pursuant to this paragraph is final and the policyholder will not be given an opportunity to amend the request for review or resubmit it to NCCI if an amended request for review is not received by NCCI within ten (10) business days of the date a denial pursuant to this paragraph is issued.

(9) Once a carrier is notified by NCCI that a policyholder's request for review has been granted, the carrier will have fifteen (15) business days to file with NCCI a written answer to the policyholder's request for review. The carrier is not required to file an answer; however, if the policyholder has chosen to appear before the Panel by mail, the Panel will only consider what is submitted to NCCI by the policyholder with his/her request for review; and by the carrier with its answer.

Appearances by Policyholder, Carrier, and Others

(1) Dispute resolution services under this Dispute Resolution Process are meant to be informal in nature and legal representation by either the employer or the carrier is not required. However, either the policyholder or the carrier may, at their own expense, be represented by an authorized representative, legal counsel properly licensed to practice law in any state or the policyholder's current agent of record.

(2) Policyholders must choose to appear before the Panel in one of two ways:

(a) In Writing—The Panel will only consider information contained in or attached to the policyholder's request for review, or provided by the carrier in writing as an answer to the policyholder's request for review. Either the policyholder or the carrier may submit statements by others for the Panel's consideration. All statements made by the policyholder or carrier or any other person must be in writing and signed by the person making the statement. No personal appearance before the

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Panel by either the policyholder or the carrier or by any other person will be allowed, and no oral communications by any person will be considered by the Panel in making its decisions.

(b) By Telephone or Video Conference—The Panel will notify the policyholder and the carrier in writing of a date, time, and telephone number through which both will appear before the Panel by telephone or video conference. The Panel, in making its decisions, will consider information contained in or attached to the policyholder's request for review, and provided in writing to the Panel by the carrier in its answer to the policyholder's request for review, and any oral testimony given at the time of the dispute resolution review. An authorized representative, legal counsel or the current agent of record may appear for the carrier or the employer.

The carrier will appear by the same method that is chosen by the policyholder. Each person will be responsible for their own costs associated with their participation in the dispute resolution review, except that NCCI will absorb the cost of long-distance telephone charges if the employer chooses to appear by telephone.

Where to Send Documents

Every request for review, answer, and every other paper submitted to NCCI under this Dispute Resolution Process will be mailed or delivered by hand by the person making such a filing to the following address:

National Council on Compensation Insurance, Inc.
Regulatory Assurance Department—Internal Review Panel
901 Peninsula Corporate Circle
Boca Raton, Florida 33487

That person must also provide a copy simultaneously by mail or hand delivery to all other parties to the dispute, or their legal counsel or authorized reprsentative.

Date and Time of Dispute Resolution Review

NCCI will set a date and time for all dispute resolution reviews and will send written notice to the policyholder and the carrier at their last address of record. No less than fifteen (15) business days notice will be given for a review unless otherwise agreed to in writing by NCCI, the policyholder and the carrier. The Panel will review each request for review within forty-five (45) business days of the date the request for review is accepted by NCCI as complete, unless:

(1) The policyholder and the carrier agree to in writing to an extension of time; or

(2) NCCI, in its sole discretion, determines that an inspection of the policyholder's business is necessary, in which case the Panel will conduct a dispute resolution review within fifteen (15) business days of the issuance by NCCI of a final inspection report.

Conferences Prior to Review

Mandatory Participation—At any time after a dispute has been submitted to NCCI, the Panel may direct the policyholder and the carrier to confer for the purpose of clarifying and simplifying issues, and attempting to resolve issues in dispute. Failure by a policyholder to comply with a reasonable request by NCCI to confer may result in the dismissal of the policyholder's request for review. Failure by a carrier to comply with a reasonable request by NCCI to confer may result in a decision by the Panel in favor of the policyholder.

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Interstate Appeals—This section applies where the resolution of the issue(s) disputed by the policyholder affect the business operations of the policyholder in West Virginia and at least one other state. In such cases, the Panel will hold a conference with the policyholder and all carriers that could potentially be affected by the disputed issue(s) raised by the policyholder. One purpose of the conference will be to determine if the policyholder and all potentially affected carriers can agree in writing that a resolution by the Internal Review Panel of the issue(s) in dispute will apply to all business operations of the policyholder regardless of the state in which the business operations are domiciled or otherwise located. The Panel decision will be in accordance with all applicable NCCI manual rules for any state in which the decision will apply. If the policyholder and all potentially affected carriers cannot come to such a written agreement, the dispute will be heard by the West Virginia Internal Review Panel, but the Panel's decision will only apply to the employer's business operations that are domiciled or located in West Virginia.

Continuances

The Panel may grant a request by either the employer or the carrier for a continuance of a dispute resolution review, but only one continuance per party will be granted. Except in cases of emergency, requests for continuances must be made in writing to NCCI at least three (3) business days prior to the date noticed for the dispute resolution review, or the request may be denied.

Decision of the Panel

(1) Proceedings under this Dispute Resolution Process will not be videotaped or audio recorded in any manner by NCCI or by any person, or witness or observer. The sole record of the proceedings will be created by NCCI in the form of a Summary of Proceedings attached to the Panel's decision.

(2) The decision of the Panel will be by majority vote of those Panel members present at the dispute resolution review, either in person or by telephone or video conference.

(3) The Panel will issue its decision in writing within twenty (20) business days of a dispute resolution review, and will issue that decision to all parties and the West Virginia Commissioner of Insurance by US Mail. The votes of the individual Panel members will not be recorded or noted in the Panel's decision or otherwise disclosed in any manner to any person. The Panel's decision will include a summary of the dispute resolution review proceedings including a copy of the policyholder's request for review, the carrier's answer, all attachments submitted with either the request for review or the answer, and a summary of any oral testimony given at the review if it was conducted via telephone or video conference. The Panel decision will state the facts in dispute (if any), the representations the Panel considered to be most credible, the NCCI classification code assignments, manual rules, and/or rating plans that are applicable to the dispute, and the Panel will provide a resolution to all disputed matters through the issuance of a Panel decision that will apply or interpret NCCI classification code assignments, manual rules, and/or rating plans.

Appeal of Panel Decisions

Pursuant to W. VA. Code Section 33–20–9(b), either the employer or the carrier may appeal a decision of the Panel to the West Virginia Commissioner of Insurance by sending a written request for an appeal to:

WEST VIRGINIA INSURANCE COMMISSION
LARRY M. BONHAM
ASSOCIATE COUNSEL

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PO BOX 50540
CHARLESTON WV 25305-0540

A request for an appeal under this section must be made within thirty (30) days after the date of the issuance of the Panel's written decision or the decision of the Panel will become final and the parties will have waived their right for further review by the West Virginia Insurance Commission.

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