

Special Review

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# **Department of Commerce**

## **American Bankers Insurance Settlement**



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## Financial Audit Division

The Office of the Legislative Auditor (OLA) is a professional, nonpartisan office in the legislative branch of Minnesota State government. Its principal responsibility is to audit and evaluate the agencies and programs of state government (the State Auditor audits local governments).

OLA's Financial Audit Division annually audits the state's financial statements and, on a rotating schedule, audits agencies in the executive and judicial branches of state government, three metropolitan agencies, and several "semi-state" organizations. The division also investigates allegations that state resources have been used inappropriately.

The division has a staff of approximately fifty auditors, most of whom are CPAs. The division conducts audits in accordance with standards established by the American Institute of Certified Public Accountants and the Comptroller General of the United States.

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- Promote Accountability,
- Strengthen Legislative Oversight, and
- Support Good Financial Management.

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May 21, 2003

Representative Tim Wilkin, Chair  
Legislative Audit Commission

Members of the Legislative Audit Commission

The Honorable Tim Pawlenty, Governor

The Honorable Mike Hatch, Attorney General

Mr. Glenn Wilson, Commissioner  
Department of Commerce

We have completed a special review of the settlement between Minnesota Department of Commerce and American Bankers Insurance. Our primary objective was to thoroughly and objectively answer the following questions:

- In negotiating a settlement with American Bankers Insurance in 2003, were officials at the Department of Commerce influenced by the company's campaign contribution to the Republican Party?
- In working to achieve a settlement with American Bankers, did officials at the Department of Commerce and Office of the Attorney General act appropriately and in compliance with the law?

We received full cooperation from the Department of Commerce, Office of the Attorney General, and American Bankers Insurance.

*/s/ James R. Nobles*

James R. Nobles  
Legislative Auditor

*/s/ Claudia J. Gudvangen*

Claudia J. Gudvangen, CPA  
Deputy Legislative Auditor

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# Special Review: Department of Commerce American Bankers Insurance Settlement

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## Report Summary

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On February 24, 2003, the Minnesota Department of Commerce and American Bankers Insurance reached a settlement that required the company to pay the state \$2 million (\$200,000 in fines and \$1.8 million in reimbursement) and to “withdraw” from Minnesota for five years. In return, the department dropped charges that American Bankers had violated various state insurance laws.

Shortly after the settlement was reached, it was criticized by former Commissioner of Commerce, James Bernstein, and Attorney General Hatch. They both suggested the company was given favorable terms in exchange for a campaign contribution to the Republican Party. A Senate committee, legislative leaders, and Governor Pawlenty requested a review by the Legislative Auditor. To conduct our review, we examined documents and interviewed people involved with the negotiations between the State of Minnesota and American Bankers Insurance.

We could not substantiate the allegation that, when negotiating the settlement with American Bankers Insurance, officials at the Department of Commerce were influenced by the company’s campaign contribution to the Republican Party. However, the settlement was more favorable to the company than any terms previously offered to it by the state. During negotiations in 2003, the new administration at the department never tried to obtain more than \$2 million from American Bankers and accommodated the company without attempting to obtain concessions in return. We are troubled that the consent order did not disclose the full amount American Bankers paid the state as part of the settlement. We also found several deficiencies in the way the department reported the settlement.

We established that, in the summer of 2002, American Bankers Insurance agreed “in principle” to a \$3.5 million settlement. Company officers backed out of the agreement on August 7, 2002, saying they feared paying a large “fine” to the State of Minnesota would trigger actions in other states. Also in August 2002, the company employed a political strategy to help resolve its regulatory problems in Minnesota. An element of the company’s political strategy was to make campaign contributions to help elect either a Republican or Democrat governor of Minnesota in the November 2002 election. The company’s ultimate objective was to help ensure that James Bernstein would not be retained as Commissioner of Commerce in 2003.

We could not substantiate the Attorney General’s assertion that, in January 2003, American Bankers Insurance made a specific offer to pay \$3.5 million to a “charity” as part of a settlement with the state. We did, however, establish that the company wanted to reach a settlement by making a payment that would not be characterized as a “fine.”

In 2002 and 2003, the Attorney General tried to facilitate a settlement that would have required a \$3.5 million payment from American Bankers Insurance. On January 8, 2003, the Attorney General appeared to be pursuing a diversion of settlement money from American Bankers to a charity. That kind of diversion is not allowed under Minnesota law. Although we do not think he violated the law, we are troubled by some aspects of the Attorney General’s actions.

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American Bankers Insurance Settlement**

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## Chapter 1. Introduction

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On March 5, 2003, an article in the St. Paul *Pioneer Press* raised questions about a settlement between the Minnesota Department of Commerce and American Bankers Insurance Group,<sup>1</sup> signed on February 24, 2003. According to the article, American Bankers agreed to pay the state of Minnesota \$2 million (\$200,000 in fines and \$1.8 million in reimbursement) and to “withdraw” from Minnesota for five years. In return, the state dropped charges that the company had violated state insurance laws.

The article focused on critical comments about the agreement made by former Commerce Commissioner, James Bernstein. As commissioner during the Ventura Administration, Mr. Bernstein had unsuccessfully tried to negotiate a settlement with American Bankers. The article quoted Mr. Bernstein as suggesting that the company obtained a favorable settlement from the department’s new administration because the company made a \$10,000 contribution to the National Republican Party that was intended to benefit the Pawlenty for Governor campaign in Minnesota. Mr. Bernstein was quoted as saying: “It’s a good example of someone paying for a favor. The campaign contribution arrives, they back off and right after the new administration takes office it’s settled for significantly less.” An official at the Department of Commerce was quoted as denying any connection between the contribution and the settlement terms.

On March 10 and 12, the Senate Commerce and Utilities Committee heard testimony from Mr. Bernstein, several Commerce officials involved in negotiating the settlement (including the current commissioner, Glenn Wilson), and Attorney General Mike Hatch. Mr. Bernstein repeated his allegations about the settlement terms being connected to a political contribution, Commerce officials defended their actions and the settlement, and Attorney General Hatch said that American Bankers “went political” and received a favorable settlement. The Senate committee ended its consideration of the settlement controversy by referring it to the Legislative Audit Commission and requesting an investigation by the Legislative Auditor.

On March 14, Governor Pawlenty, Speaker of the House Steve Sviggum, House Minority Leader Matt Entenza, Senate Majority Leader John Hottinger, and Senate Minority Leader Dick Day, signed a letter (Appendix A) requesting that the Legislative Auditor investigate the “the facts and considerations relating to the negotiations and settlement reached between the Minnesota Department of Commerce and American Bankers in February 2003.” The letter went on to say:

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<sup>1</sup> American Bankers Insurance Group includes American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida. In 1999, Fortis, Inc. acquired American Bankers Insurance Group and combined it with American Security Group, forming Assurant Group. This report focuses on regulatory issues between the Minnesota Department of Commerce and American Bankers Insurance Company of Florida and of Florida. We refer to these companies together as American Bankers Insurance Group, American Bankers Insurance or, simply, American Bankers.

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We ask that you determine whether in negotiating the settlement, state officials acted appropriately and in compliance with state law. We ask that you specifically determine whether state officials were improperly influenced by political contributions made by American Bankers Insurance Group.

After assessing both requests, we decided to conduct an investigation (or, as we also refer to such assignments, a “special review”). Our primary objective was to thoroughly and objectively answer the following questions:

- In negotiating a settlement with American Bankers Insurance in 2003, were officials at the Department of Commerce influenced by the company’s campaign contribution to the Republican Party?
- In working to achieve a settlement with American Bankers, did officials at the Department of Commerce and Office of the Attorney General act appropriately and in compliance with the law?

In Chapter 2, we provide background information about American Bankers and its regulatory problems, as well as a chronology of key events. In Chapter 3, we consider the allegation that the Department of Commerce inappropriately gave American Bankers favorable settlement terms. In Chapter 4, we address two questions raised by legislators about the Attorney General’s involvement with the case.

We did not consider an issue raised by Attorney General Hatch concerning the legality of American Bankers’ campaign contributions. We do not consider it within our jurisdiction.

In conducting our review, we examined numerous documents related to the American Bankers case. But our conclusions are based primarily on interviews with individuals directly involved with the case—at American Bankers, the Minnesota Department of Commerce (from both the current and previous administrations), and the Minnesota Office of the Attorney General. We also interviewed Governor Pawlenty, his Chief of Staff, Charlie Weaver, and his Deputy Chief of Staff, Bob Schroeder, even though they were not involved in the negotiations. A complete list of the people we interviewed is contained in Appendix B.

In the interviews we conducted, we asked people to remember events that occurred weeks and, in some cases, months ago. This may account, in part, for some of the conflicting testimony we received. Some of the conflicts concern minor details and are of little importance. But some are central to our review and prevented us from reaching conclusions on some key questions. Generally, the testimony we received reflects the differing opinions presented to the Senate Commerce and Utilities Committee on March 10 and 12. Mr. Bernstein and Attorney General Hatch continued to criticize the February 24 settlement and suggest it was affected by inappropriate political influence. Commerce officials continued to deny any connection between the settlement and the contribution and to defend the settlement terms.

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## Chapter 2. Background

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The settlement agreement that is the subject of this review involved two companies—American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida. The companies are commonly referred to together as American Bankers Insurance Group, which in this report is also referred to as American Bankers Insurance, or, simply, American Bankers. In 1999, American Bankers Insurance Group was acquired by Fortis, an international group of companies involved in insurance, banking, and investment. Fortis combined American Bankers with American Security Group to form Assurant Group. When they operated in Minnesota, American Bankers Insurance Company of Florida and American Bankers Life Assurance Company sold various types of insurance, including accidental death, health, and disability policies.

In 1997, several states, including Minnesota, initiated market conduct examinations of American Bankers' insurance practices and operations. In May 1998, 43 states, including Minnesota, agreed to conduct a multi-state examination in lieu of individual state examinations. In a multi-state examination, different states undertake different portions of the investigation and rely on work performed by the other states.

On November 23, 1998, American Bankers entered into a consent order settling with the participating states the various regulatory violations allegedly discovered in the multi-state market conduct examination. Under the terms of the settlement, American Bankers agreed to pay up to a \$15 million sanction, implement a compliance plan, and comply with state laws and regulations relating to policy rates and forms. The company paid \$12 million, distributed among the several states that participated in the multi-state examinations. Minnesota received \$688,776 from the \$12 million payment. The settlement also required the company to submit to reexamination on or after November 23, 1999. It provided that the company would pay an additional \$3 million if the results of the reexamination found the company had not complied with the settlement terms.

The reexamination began at the end of 1999, and in November 2000, the Maryland Insurance Department issued a draft multi-state examination report. In January 2001, Minnesota made additional findings and comments. Based on the results of the reexamination, American Bankers agreed to pay the \$3 million “back-end” penalty provided for under the November 23, 1998, consent order. Minnesota received approximately \$67,000 from this \$3 million multi-state payment. But Minnesota also continued an examination of American Bankers as a result of the reexamination's adverse findings.

Minnesota's ongoing examination led Commissioner Bernstein, on February 5, 2002, to file charges against American Bankers with the Office of Administrative Hearings (the state agency that provides administrative law judges to preside over contested case hearings in Minnesota). Commissioner Bernstein also held a press conference on February 5, 2002, and charged that

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American Bankers had willfully violated Minnesota insurance law. Commissioner Bernstein said he would seek to stop the company from doing business in Minnesota and impose a fine of at least \$10 million, the largest civil penalty ever imposed on an insurance company doing business in the state. The commissioner charged that American Bankers had issued illegal insurance policies to Minnesota residents and failed to provide information to the department in violation of Minnesota insurance law and the 1998 consent order.

Also on February 5, 2002, American Bankers filed a complaint in Ramsey County District Court seeking to stop the Minnesota Department of Commerce from proceeding with an administrative enforcement action against it, arguing that the issues raised by the department had been settled in previous consent orders and that there was no basis for the department to bring new enforcement action against the company. American Bankers also alleged that Commissioner Bernstein had shown prejudice by making a public statement regarding his opinion of the company's guilt and his intention to put the company out of business.

From February 5, 2002, through February 24, 2003, when a final settlement was signed, the department and American Bankers had cases pending in both the Ramsey County District Court and the Minnesota Office of Administrative Hearings. In February 2002, the department sought to have the district court case dismissed, arguing that the matter was more appropriately resolved through administrative proceedings. On May 21, 2002, Ramsey County District Court Judge Tilsen issued an order stating the district court had jurisdiction to interpret the consent order as a matter of contract law. In addition, the court expressed concern that the department was proceeding without regard to the previous consent orders. The court concluded that the department could proceed with its administrative enforcement action only for alleged regulatory violations that occurred after December 31, 1999.

On May 6, 2002, officials from the Department of Commerce and representatives of American Bankers participated in an all-day mediation with Mr. Brian Short. The mediation was unsuccessful, with the department calling for a civil penalty of between \$5 million to \$6 million, and American Bankers offering a maximum payment to the state of \$3 million. However, after the failure of the mediation, the parties continued to negotiate possible terms for a settlement. The negotiations were primarily between Mr. Tim Thornton, local counsel for American Bankers, and Mr. Stephen Warch and Mr. Michael Tostengard, attorneys in the Attorney General's Office representing the Department of Commerce.

In a letter dated May 23, 2002, Mr. Tostengard wrote Mr. Thornton accepting terms reportedly presented to Mr. Warch the day before in a telephone conversation. According to the letter (Appendix C), Mr. Thornton had proposed that American Bankers would agree to:

- Pay a \$3.5 million civil penalty;
- Stop offering new insurance products in Minnesota for five years;
- Pay \$5 million and stop all business in Minnesota if the department established that the company violated the terms of the settlement during the five years; and
- Decrease rates for existing accidental death and dismemberment insurance by 40 percent and for credit insurance by 30 percent.

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In a letter dated June 20, 2002 (Appendix D), Mr. Thornton essentially reiterated these terms, but made an important addition. He said American Bankers would pay a \$3.5 million civil restitution, but would for 18 months hold back \$1 million pending the department maintaining a level of secrecy “as to the existence and terms of the consent order.” The level of secrecy required was stated as follows:

The Department of Commerce shall not disclose this Consent Order or its existence or terms to any third party, except as required by law. This commitment precludes the Department from holding any press conference, initiating any media coverage, or leaking any stories or documents about this settlement. Upon the expiration of eighteen months, if no disclosure breaching the terms of this undertaking has occurred, American Bankers will pay the remaining \$1 million of the \$3.5 million civil restitution. If the Department breaches this undertaking then the \$1 million hold back shall be forgiven.

Mr. Gary LaVasseur, who was at the time a deputy commissioner in the Department of Commerce, responded by letter (Appendix E) and said Mr. Thornton’s June 20, 2002, proposal was unacceptable, and that it seemed American Bankers was not serious about reaching a settlement. Nevertheless, the parties continued to exchange proposals and agreed to meet in the office of Attorney General Hatch on August 7, 2002. In preparation for the meeting, Mr. Tostengard prepared a draft consent order (Appendix F) with essentially the same terms he had previously presented to Mr. Thornton—American Bankers would pay a \$3.5 million civil penalty, withdraw from offering new insurance products in Minnesota for five years, and reduce its rates for existing accidental death and dismemberment insurance by 40 percent and for credit insurance by 30 percent. However, the consent order was not signed on August 7, 2002. Instead, Mr. Thornton and officers from American Bankers told state officials they feared that paying such a large fine to Minnesota would invite other states to initiate actions against the company.

On September 5, 2002, the Department of Commerce issued an amended statement of charges with the Office of Administrative Hearings. The department amended the charges against American Bankers to include only those violations that the department believed were outside the scope of the pending district court action. On September 6, 2002, the department requested a Summary Judgment on the amended statement of charges. On November 22, 2002, the administrative law judge issued an order that denied the commissioner’s request for Summary Judgment. The order also provided that the district court should determine whether certain of the issues surrounding the case fell within the earlier consent orders. The administrative law judge’s order essentially put further administrative action on hold until the district court ruled on the breach of contract issue.

On November 5, 2002, Tim Pawlenty was elected governor and, shortly thereafter, set up a transition office to interview and select officials for his administration. During the transition, Mr. Glenn Wilson was considered and selected to be Governor Pawlenty’s commissioner of

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Commerce. His first day as commissioner was January 6, 2003, the same day Mr. James Bernstein left that office.

On January 6, 2003, Harry Bassett, Jr., Senior Vice President for Government Relations at Assurant Group, met with Attorney General Hatch and told him the company wanted to reach a negotiated settlement. On February 12, Mr. Bassett met with Commissioner Wilson and the new deputy commissioner of Commerce, Patrick Nelson.

On February 24, officers from American Bankers, officials from the Department of Commerce, and attorneys from the Attorney General's Office, met to sign a consent order, in which American Bankers agreed to:

- Pay \$200,000 in civil penalties;
- Withdraw from offering or issuing any insurance products in the state of Minnesota for five years (though after 20 months, American Bankers may petition the commissioner and be allowed to resume offering approved policies);
- Decrease rates for existing accidental death and dismemberment insurance by 40 percent and for credit insurance by 30 percent; and
- Reimburse the department "in connection with these proceedings."

As mentioned previously, the settlement became controversial on March 5, 2003, when an article in the St. Paul *Pioneer Press* quoted former Commissioner Bernstein's suspicion that American Bankers obtained a favorable settlement in exchange for the company's contribution to the Republican Party intended to help the Pawlenty campaign for governor. He repeated his allegation at a March 10 hearing of the Senate Commerce and Utilities Committee. On March 12, Attorney General Hatch appeared before the committee and said he too suspected the settlement terms were influenced by American Bankers' campaign contribution.

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### Chapter 3. The Department of Commerce

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To address the allegation that the Department of Commerce was improperly influenced by American Bankers' campaign contribution to the Republican Party, we focused on the testimony of Attorney General Hatch, since it encompasses the allegation made by former Commissioner of Commerce Bernstein. We determined that the Attorney General's allegation is based on the following assertions:

- American Bankers had agreed in the summer of 2002 to pay the State of Minnesota \$3.5 million as part of a settlement agreement.
- American Bankers backed out of the agreement in August 2002 to employ a “political strategy” to resolve its regulatory problems in Minnesota.
- In January 2003, American Bankers again offered to pay \$3.5 million to reach a settlement agreement with the State of Minnesota, but proposed the money be paid to a “charity.”
- At a meeting on January 8, 2003, Attorney General Hatch told Commissioner Wilson about the contribution American Bankers Insurance made to the Republican Party which was intended to benefit the Pawlenty for Governor campaign and warned the commissioner about its potential for inappropriate influence on a settlement with the company.
- Department of Commerce officials had knowledge of the campaign contribution American Bankers Insurance made to the Republican Party. In addition, in January and February 2003, they had frequent conversations with the lobbyist for American Bankers Insurance, Mr. Ron Jerich.
- Department of Commerce officials structured the settlement agreement with American Bankers Insurance to favor the company.
- Department of Commerce officials did not give the settlement agreement adequate public notice or properly report it to the National Association of Insurance Commissioners.

To reach a conclusion on Attorney General Hatch's principal allegation concerning improper influence, we reviewed each of his assertions in detail.

Our findings are as follows:

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- 1. We found evidence to support the Attorney General’s assertion that, in the summer of 2002, American Bankers Insurance agreed “in principle” to a settlement that included a \$3.5 million payment to the State of Minnesota.**

Both Attorney General Hatch and former Commissioner Bernstein argued in their testimony to the Senate Commerce and Utilities Committee that American Bankers Insurance had agreed to settlement terms in the summer of 2002. They point to the fact that on August 7, 2002, officers of the company were scheduled to sign a consent order in Attorney General Hatch’s office. The order would have required American Bankers Insurance to pay \$3.5 million to the State of Minnesota.

The officers and Mr. Tim Thornton, the company’s outside counsel in Minnesota, did come to the Attorney General’s office on August 7, 2002, but they did not sign a consent order. Instead, they rejected the terms of the settlement saying—according to all of the testimony we received—that paying \$3.5 million to Minnesota would invite other state regulators to investigate the company. By all accounts, the meeting lasted only a few minutes, and the representatives of American Bankers Insurance left without suggesting settlement terms that would be acceptable.

From the testimony we received, it appears there was no legally binding “agreement” between the State of Minnesota and American Bankers Insurance without a signed consent order. In other words, the company had the right to withdraw even from an “agreement in principle” between its lawyer and lawyers for the state. On the other hand, we think state officials had good reason to believe that on August 7, 2002, American Bankers Insurance was willing to pay the State of Minnesota \$3.5 million to settle its regulatory issues with the state. We think the letters exchanged between Mr. Thornton and Mr. Tostengard support this view. In addition, we received testimony from officers at American Bankers that the company decided only the day before the August 7 meeting to reject the terms Mr. Thornton had negotiated with Mr. Tostengard and other state officials.

Mr. Jerome Atkinson, General Counsel for Assurant Group (which includes American Bankers), told us that a few days before the August 7 meeting, he had advocated for the \$3.5 million settlement. According to his testimony to us, he told Mr. Harry Bassett, Senior Vice President for Government Relations for Assurant: “We can get this settlement behind us and go on with our lives. I would just pay the money and do that.” But according to Mr. Atkinson, Mr. Bassett was concerned the settlement would invite punitive actions from other states. Mr. Atkinson told us:

The day before I arrived at that meeting [in St. Paul], I spent a good hour on the telephone with another state insurance department because Harry Bassett came in my office and told me that he had concerns about the August proposed settlement amount. He warned me, Harry warned me that he thought that settlement amount was so large that it could lead to collateral damage in other states. In other words, other states might very well look at that large amount and want to investigate us again....

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I said, ok. Set up an appointment for me with one of your better known commissioners of insurance... I previewed [in a telephone conversation] the terms with him the day before, I believe, I flew to Minnesota. The day before, for about an hour that evening. I read to him the terms of the proposed settlement. He said to me, you guys are crazy. Don't do this deal. This is a bad deal for you. This is going to cause piling on in other states.

Given the company's decision to back out of the settlement, we asked Mr. Thornton why the August 7 meeting was not simply cancelled. Mr. Thornton said: "I wasn't going to say [to the Attorney General], never mind by mail. I wasn't going to just not show. I believe that I and my clients owed him an explanation of why the negotiations were going to be terminated and that's why we went to the meeting."

All of the state officials we interviewed that attended the August 7 meeting expressed surprise at the company's decision. Mr. Gary LaVassuer, who had negotiated frequently on the case and was then a deputy commissioner of Commerce, told us "[everyone's] reaction was shock" that the meeting ended the way it did. Moreover, Attorney General Hatch felt American Bankers and, specifically, Mr. Thornton, had broken a commitment to complete a settlement agreement that would have required American Bankers to pay \$3.5 million to the State of Minnesota. According to his testimony to us, the Attorney General's criticism of the agreement signed by Commissioner Wilson on February 24, 2003, is based in part on his belief that American Bankers should have been held to the terms that were rejected on August 7, 2002.

### **2. We found evidence to support the Attorney General's assertion that, in August 2002, American Bankers Insurance employed a "political strategy" to help the company resolve its regulatory problems with the State of Minnesota. The principal goal of the strategy was to help elect either a Democrat or Republican governor so that James Bernstein would not be retained as commissioner of Commerce.**

Prior to August 2002, American Bankers Insurance employed two strategies to resolve its regulatory problems in Minnesota—a negotiation strategy and a litigation strategy. In August, it added a political strategy. The company hired a lobbyist, Ron Jerich, and through Mr. Jerich made campaign contributions intended to help the Democratic, Farmer, Labor Party candidate for Governor, Roger Moe, and the Republican candidate for Governor, Tim Pawlenty.

When we asked Mr. Jerich and two senior officers from American Bankers Insurance what the company's objective was in adopting a political strategy in Minnesota, we received a clear and consistent response—to get rid of James Bernstein as commissioner of Commerce. In a telephone interview from Florida, the company's general counsel, Mr. Jerome Atkinson, said:

When... Governor Ventura announced he wasn't running for reelection, my view was, let's do what we can to ensure that Commissioner Bernstein goes with him. And take our chances on whomever the next commissioner is going to be, because it can't be any worse than trying to negotiate a settlement on this matter. You know, our view wasn't, you know, we wanted to influence the outcome of the

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settlement. It was to get a reasonable mind... [and] to talk to this person about this deal. The fact that it was Republican or Democrat, we didn't care [as long as] it wasn't Bernstein.

The lawyer for American Bankers Insurance in Minnesota, Tim Thornton, also had strong feelings about Mr. Bernstein. Mr. Thornton said to us:

I regarded Mr. Bernstein as a bully populist who lost sight of what was in the interest of the regulated community and the consumers of the state of Minnesota for his own self-aggrandizement. And almost anybody in the commissioner's office would have been an easier person to settle with than Mr. Bernstein.

Others we interviewed, including Mr. Bernstein and Attorney General Hatch, confirmed that there was strong industry opposition to Commissioner Bernstein and there were efforts during the 2002 campaign, particularly by the insurance industry, to ensure that he would be replaced after the election. According to both Mr. Bernstein and Attorney General Hatch, Mr. Bernstein's only hope of reappointment was if Tim Penny, the Independence Party candidate for governor, won the election.

Based on this testimony, we think the Attorney General's assertion that American Bankers Insurance was trying to "run out the clock" on Commissioner Bernstein in the hope of getting better settlement terms from a new commissioner is correct. However, Attorney General Hatch acknowledged to us that there was nothing wrong with American Bankers Insurance engaging in this kind of political activity, and that it is common for regulated companies to be politically active. We asked him to set aside his concern about the legality of a "corporate contribution" and address just the company's desire to remove Mr. Bernstein as commissioner. He said:

I think that people can get involved in politics. Now, keep in mind, you told me to exclude one part, and that's the corporate contribution. And I do believe there's a whole issue with regard to that. But in terms of the influence peddling, it's okay to get involved in a campaign to get a different commissioner.

It is impossible to know what impact the American Bankers Insurance campaign contributions had on the Minnesota gubernatorial campaign. Since, for legal reasons, the contributions were actually sent to the national Republican and Democratic parties, neither the Moe nor the Pawlenty campaigns can be sure that they received any benefit from the contributions made by American Bankers Insurance. Moreover, while the company's objective was accomplished—the removal of Mr. Bernstein from office—many factors led to that result.

Later in this report, we will more fully and directly address the question of whether the American Bankers Insurance campaign contribution intended for the Pawlenty campaign influenced the final settlement between the Department of Commerce and American Bankers Insurance Group.

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- 3. We could not substantiate the Attorney General’s assertion that, in January 2003, American Bankers Insurance made a specific offer to pay \$3.5 million to a “charity” as part of a settlement with the state. We did establish, however, that the company wanted to reach a settlement by making a payment that would not be characterized as a “fine.”**

An important element of Attorney General Hatch’s allegation against Commissioner Wilson and the settlement he signed with American Bankers Insurance is that the company was willing to pay significantly more than \$2 million. According to Attorney General Hatch, on January 6, 2003, Mr. Bassett told him American Bankers would settle with the state for \$3.5 million if the money could be paid to a charity.

On the evening of January 6, Mr. Bassett attended a fundraising event for the Attorney General at Manny’s Restaurant in Minneapolis. And, as arranged by Mr. Jerich, the Attorney General had dinner with Mr. Bassett at the Oceanaire Restaurant later in the evening. According to the Attorney General’s testimony to us, Mr. Bassett told him American Bankers would pay \$3.5 million to obtain a settlement with the state if the money could be paid to a charity. According to Mr. Bassett’s testimony to us, he told Attorney General Hatch that American Bankers Insurance wanted to settle its case with the state, but he did not make a specific offer. Asked specifically whether he proposed making a \$3.5 million payment to a charity, Mr. Bassett said:

No. What I did discuss with him was the fact that we were sensitive to the issue because of a larger national context, the issue of fines. Just the title of fines. And that in other states where we had other issues, it had been suggested in one case that a contribution in terms of a way of reimbursing the state for the expenses involved in the investigation and the like could be made in this particular case to a state hospital system. It was just banter, if you will. Just a chat. This was just an idea, an example of how or a way we could think about reimbursing the state without having to necessarily call it a fine.

We contacted Mr. Bassett a second time, after we interviewed Attorney General Hatch. In response to our account of the Attorney General’s testimony to us, Mr. Bassett said he told the Attorney General on January 6 that he understood that American Bankers might have to pay an amount in “seven figures.” But, Mr. Bassett again said he did not tell Attorney General Hatch on January 6, 2003—or any other time—that American Bankers Insurance was willing to pay \$3.5 million to a charity as part of a settlement agreement in Minnesota.

Mr. Jerich attended the dinner meeting at the Oceanaire Restaurant, but he told us he did not hear the conversation between Attorney General Hatch and Mr. Bassett because he was talking with another dinner guest, former state senator Karl Kroening. But he said that on a previous occasion, Mr. Bassett had indicated that American Bankers Insurance could “write a check out to a state hospital.” He also remembered Mr. Bassett saying: “We’ll give three some million dollars.”

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While it is not clear that, at his dinner meeting with Attorney General Hatch on January 6, Mr. Bassett made a specific offer to contribute \$3.5 million to a charity, it is clear he expressed a desire to obtain a settlement and explored alternative payment methods that would avoid the company's payment being categorized as a "fine." On the other hand, Mr. Bassett apparently intended his conversation to be taken as "banter...just a chat," and not as an offer—no matter how specific or general it might have been.

Nevertheless, Attorney General Hatch did interpret Mr. Bassett's conversation as an offer, and an offer that aligned with the Attorney General's position. In testimony to us, Attorney General Hatch made it clear that he felt strongly American Bankers Insurance should pay \$3.5 million as part of a settlement agreement. The Attorney General told us he believes the company breached a commitment on August 7, 2002, when it backed out of settlement terms agreed to by Mr. Thornton.

Attorney General Hatch told us that even before he met with Mr. Bassett, he told Mr. Thornton and Mr. Jerich a settlement with American Bankers had to be consistent with the August 7 terms. According to Attorney General Hatch's testimony:

...I made it clear to Jerich and Thornton that I was going to settle along the August 7th lines. So they would have made it plain to him [Mr. Bassett]. There would be no reason for that meeting other than ... They knew what I wanted. I wanted to say, the only way you can make this thing righteous was to make the same offer on August 7th. Otherwise it was a dirty deal. And I told them that. Bassett had to know that...

Attorney General Hatch uses both the summer of 2002 agreement "in principle" and his meeting with Mr. Bassett on January 6, 2003, as a basis for saying the final payment from American Bankers Insurance should have been—and could have been—\$3.5 million. In short, he is saying that in both instances, representatives of American Bankers Insurance told him the company was willing to pay \$3.5 million as part of a settlement.

We think the evidence supports Attorney General Hatch's assertion concerning the company's position in the summer of 2002. Given the conflicting testimony we received, we cannot be certain that on January 6, 2003, American Bankers made a specific offer to pay \$3.5 million to a charity as part of a settlement with the state.

#### **4. We received conflicting and irreconcilable testimony on whether Attorney General Hatch told Commissioner Wilson on January 8, 2003, about the campaign contribution American Bankers Insurance made to the Republican Party.**

Attorney General Hatch told the Senate Commerce and Utilities Committee, and he testified to us under oath, that on January 8, 2003, he told Commissioner Wilson that American Bankers Insurance made a contribution to the Republican Party intended to help the Pawlenty for Governor campaign. Before the same committee and also to us under oath, Commissioner Wilson denied that Attorney General Hatch told him about the contribution. Attorney General Hatch and Commissioner Wilson also gave us conflicting and irreconcilable statements

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concerning a letter that the Chair of the Minnesota Republican Party, Mr. Ron Ebensteiner, wrote to Mr. Jerich thanking him for arranging the contribution from American Bankers Insurance. The Attorney General told us the commissioner was shown a copy of the letter (Appendix G). Commissioner Wilson told us the letter was not discussed, nor was he shown a copy.

Asked to describe what happened in the meeting, Attorney General said:

I go into the meeting with Wilson and Chief Deputy [Attorney General] Eiden. She gets the letter... Gives him a copy of the letter. He's reading the letter. I go over the mischief. I go over the whole nine yards... This thing is bad. They tried to influence the... this proceeding by contributing to both the Democratic and Republican candidates. You are going to get hit by political people on this thing. You make damn well and sure you don't cave in to it. This is extraordinarily unusual. This is not a good company. It's disreputable. You don't want to start off with this kind of a case.

Asked whether Attorney General Hatch discussed a campaign contribution from American Bankers to the Republican Party or showed him a letter from Mr. Eibensteiner to Mr. Jerich, Commissioner Wilson said: "I don't believe that happened." Asked whether he was sure it did not happen, he said: "It didn't happen." Asked whether it was possible that the conversation occurred as Attorney General Hatch described it, but that it did not register on him, Commissioner Wilson said: "I don't believe so." Asked if he could reconcile his recollection and testimony about the meeting with that of Attorney General Hatch, Commissioner Wilson said: "No, sir."

The only other person in attendance at the beginning of the January 8 meeting was the Attorney General's chief deputy, Kristine Eiden, and she supports the Attorney General's account. More specifically, she said she got up during the meeting, left the room to make a copy of the Eibensteiner letter, and gave the copy to Commissioner Wilson. Both Attorney General Hatch and Chief Deputy Eiden recalled that the discussion about the American Bankers Insurance case and the potential impact of the contribution was in depth and detailed.

Asked if it were possible that the discussion occurred, but Commissioner Wilson did not focus on what was being said, Ms. Eiden responded:

I would find that hard to believe, just because... it was the subject of the discussion, and what was being brought before him were some issues of very serious concern. I mean, the fact that a company may have been trying to undermine the legal process, the administrative process, call in to question how the state handles a company that violates the law. I mean, I think most people would understand the severity of that and grasp it and walk away from that meeting with a clear sense of what the problems were with what was going on.

We draw no conclusion as to which account is accurate. We are simply left with conflicting and irreconcilable testimony as to whether Attorney General Hatch told Commissioner Wilson about

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the campaign contribution American Bankers Insurance made to the Republican Party and showed him the letter from Mr. Eibensteiner from Mr. Jerich.

- 5. With one exception, the evidence we obtained does not support the Attorney General's assertion that Department of Commerce officials knew about the campaign contribution American Bankers Insurance made to the Republican Party. Nor does that evidence support the assertion that Department of Commerce officials had significant contact with the company's lobbyist in January and February 2003.**

In addition to asserting that he told Commissioner Wilson about the American Bankers Insurance campaign contribution to the Republican Party, Attorney General Hatch also asserts that other officials at the Department of Commerce knew about the contribution and had frequent conversations with Ron Jerich, American Bankers' lobbyist. For example, Attorney General Hatch told us:

And it's very clear, all of a sudden there's conversations going on between Ron Jerich and Commissioner Wilson. And it's also very clear there's conversations going on, from the newspaper, between Tim Commers, the campaign manager who is now deputy commissioner, and Ron Jerich... These people say they weren't aware of the campaign contributions until after February 24. It is impossible to have all these meetings going on with the very parties involved and not to know about it. It is just too big a contribution.

Tim Commers was the manager of the Pawlenty for Governor campaign and on January 7, 2003, he became an employee of the Department of Commerce (he is, however, not "deputy commissioner," but a "senior executive officer" with responsibility for telecommunications and energy issues). From their testimonies to us, we confirmed that Mr. Commers and Mr. Jerich talked frequently to each other during the campaign and at least once after Mr. Commers became an employee at the Department of Commerce.

Mr. Commers told us that in one conversation he had with Mr. Jerich during the campaign, Mr. Jerich told him he wanted to help an insurance company based in Florida make a contribution to the Pawlenty for Governor campaign. According to both their testimonies, Mr. Commers told Mr. Jerich that the Pawlenty campaign could not accept the contribution, and the money would have to be sent to the National Republican Party. Mr. Jerich was put in touch with the Minnesota Republican Party office for further guidance.

Mr. Jerich and Mr. Commers agreed that they had at least one conversation after Mr. Commers became an employee at the Department of Commerce, although they have different recollections of what was discussed. According to Mr. Jerich, he called Mr. Commers to arrange a meeting between Mr. Bassett and Commissioner Wilson (a meeting that occurred on February 12, 2003). According to Mr. Commers, Mr. Jerich called to complain that Deputy Commissioner of Commerce Nelson was blocking "the charity deal." Mr. Commers said he did not know enough to understand that Mr. Jerich was referring to the American Bankers case, but he had heard that Attorney General Hatch presented "a charity deal" to Commissioner Wilson (in fact, Mr. Commers said he assumed that Mr. Jerich was calling on behalf of Attorney General Hatch).

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According to Mr. Commers, he was not contacted by Mr. Jerich again about “the charity deal” or anything else.

Beyond Mr. Commers, all of the other Department of Commerce officials we interviewed indicated they had no knowledge of the American Bankers Insurance campaign contribution to the Republican Party until a reporter made inquiries in February 2003. In addition, Governor Pawlenty, Mr. Weaver, and Mr. Schroeder all said they too had no knowledge of the American Bankers Insurance campaign contribution to the Republican Party until a reporter made inquiries in February 2003.

Also, except for the contact between Mr. Commers and Mr. Jerich previously discussed, and Commissioner Wilson’s contact with Mr. Jerich in Attorney General Hatch’s office on January 8, 2003, we found no evidence of contacts related to American Bankers between Mr. Jerich and officials in either the Governor’s office or at the Department of Commerce.

- 6. We found that the settlement agreement between the Department of Commerce and American Bankers Insurance was more favorable to the company than any offers previously made to it by the state. During negotiations in 2003, the new administration at the department never tried to obtain more than \$2 million from American Bankers and accommodated the company without attempting to obtain concessions in return. We are troubled that the consent order did not disclose the full amount American Bankers paid the state as part of the settlement.**

The central and most serious allegation in the controversy is that American Bankers received favorable settlement terms in exchange for the company’s campaign contribution to the Republican Party. The controversy over the American Bankers settlement began when former Commissioner Bernstein said in a newspaper article that the deal was “tit for tat.” Attorney General Hatch supported that allegation in his interview with us. He said: “They [American Bankers] made those contributions for the purpose of getting a favor, and they got one.”

We could not substantiate Mr. Bernstein’s and the Attorney General’s allegation, but we did establish that American Bankers obtained settlement terms that were more favorable than any previously offered to it by the state. The lowest previous offer relative to the amount American Bankers would be required to pay the state was \$3.5 million. While the department might not have been able to obtain that amount, it never tried. In fact, the new administration at the department never asked the company for more than \$2 million. In addition, as the date for signing a consent order approached—and even on February 24, 2003—the department made accommodations to the company without seeking any concessions in return. For example, a clause was added that allowed American Bankers to petition the commissioner to wave 36 months of the five-year “withdrawal” period. In addition, as we will discuss in Finding 7, the department gave the settlement very little public notice.

Finally, we are troubled that the department did not disclose in the consent order the total amount the company was required to pay the state. Nor did the department require officials from American Bankers Insurance to sign any other document to establish that the company was

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legally obligated to pay the state an additional \$1.8 million.<sup>2</sup> Admittedly, everyone involved in negotiating the final settlement seemed to accept that American Bankers Insurance would make a \$1.8 million “reimbursement” to the state in addition to the \$200,000 in civil penalties. In fact, several days after the settlement was signed, the department sent the company an invoice for \$1.8 million, and we have verified that the invoice was paid. Nevertheless, given how important it was to American Bankers not to be seen as making a large payment to the state, leaving the amount of “reimbursement” unspecified in the consent order opens the department to criticism that it was too accommodating to the company.

In reviewing how the new administration at the Department of Commerce handled the American Bankers case, we learned that Commissioner Wilson decided soon after taking office that he wanted to settle the case. He told us that, as a “new commissioner,” he did not want to spend a lot of time and the department’s resources “fighting with these guys [at American Bankers Insurance].” The commissioner was briefed on the case by Gary LaVasseur and Scott Borchert (who served as the department’s director of enforcement from January 1992 until February 2003) and concluded the department faced protracted and expensive litigation with American Bankers Insurance. And, he felt that even if the department prevailed in court, the company would continue to do business in Minnesota for many years while lower court decisions were appealed. According to the commissioner’s testimony, based on the briefings he received from department staff, he formulated three objectives he wanted to accomplish in a settlement. He told us he wanted to “close the door” on the company doing business in Minnesota, impose a large enough payment that it would get the attention of the company’s board of directors, and structure the payment so the full amount would be reportable.

Commissioner Wilson said that in deciding how much payment to require of American Bankers Insurance, he asked for historical information and got some, but was basically told that he had discretion to set the amount at whatever level he thought was appropriate. In response to a question, he told us:

... from my background...having been a CEO and working with boards...it appeared to me that two million dollars was one...if they paid 3.5 to a charity, they may...were, were made to look good when their behavior.... They shouldn’t be allowed off the hook. ... But after a deduction of any kind, why it was really about two anyway. And, ...when I knew that we couldn’t get the 3.5, which had been discussed in the in the summer months, we had lost ground and ... lost

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<sup>2</sup> In addition to the \$1.8 million in reimbursement the department received as a result of the settlement, the department also billed and collected approximately \$2.6 million from American Bankers during the course of its market conduct examination. Minn Stat § 60A.03, Subd.5 requires the department to charge insurance companies being examined for the necessary expenses of the persons engaged in the examination. Nearly \$2.3 million of the charges assessed to American Bankers were for fees and expenses incurred by Insurance Logic, Inc., a consulting firm under contract with the department to conduct examinations of insurance companies. The department also billed American Bankers approximately \$300,000 for time and expenses incurred by department employees working on the examination.

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leverage in all the court action... And like I say, my experience was such that if it were two million, the CEO would be aware of it. The board of directors would likely be aware of it. And that was ...a big number. It was...a number that I was told that would be among the, the top that any state ever has levied against any insurance company. The five years...was extraordinary. The two million would be...300 percent higher than...than we had ever gotten before.

According to Mr. Bassett's testimony to us, at his meeting with them on February 12, 2003, he told Commissioner Wilson and Deputy Commissioner Nelson the following:

... I essentially related the same thing that I had talked to the Attorney General ... that we were very desirous to try to close this chapter of long ago and move on.... And we would like to try and find some way to do that. And that I also related to him our problems with the issue of a ...fine, but that we were receptive to any other fashion to reimburse the citizens of Minnesota.

Mr. Bassett indicated that Commissioner Wilson responded by saying he was not comfortable with the "charitable" contribution idea put forth by Attorney General Hatch. According to Mr. Bassett, the commissioner invited him to "rework" the last proposed consent order and submit possible settlement terms. Mr. Bassett did submit a proposal on February 18 (Appendix H). Among other terms, the proposal contained a civil penalty payment of \$200,000 and reimbursement of expenses to the state in an amount that was left unspecified. According to both Commissioner Wilson and Deputy Commissioner Nelson, Mr. Bassett's proposal was not acceptable. Mr. Nelson told us that he felt the amount proposed for civil penalties was "woefully short," and he was concerned that the proposal did not have the "five-year death penalty clause."

Deputy Commissioner Nelson was primarily responsible for negotiating with American Bankers after the February 12 meeting with Mr. Bassett. The attorneys who had been involved in the negotiations during the prior summer, Mr. Warch, Mr. Tostengard, and Mr. Thornton, had a very limited role in the final negotiations. Mr. Nelson did ask the Attorney General's Office for a copy of the most recent draft consent order and received one dated July 18, 2003. He used that draft as a model when negotiating the final settlement, but significantly changed some terms as the negotiations progressed.

Mr. Nelson submitted a counter proposal to Mr. Bassett on February 20 (Appendix I). That proposal retained \$200,000 as a civil penalty and provided that, in addition, the company would reimburse the Department of Commerce in an amount agreed to by the parties, with \$1.8 million noted in parentheses. Mr. Nelson told us that the \$1.8 million amount was added based on the commissioner's determination that a \$2 million total settlement was enough to get the attention of the company's management. Mr. Nelson's proposal contained language that prohibited the company from doing business in Minnesota for five years. However, it also contained a clause that allowed the company to petition the commissioner after 20 months and request he waive the final 36 months of the prohibition.

Deputy Commissioner Nelson sent a copy of the draft consent order via email to Mr. Warch from the Attorney General's Office on the evening of February 21. Mr. Warch said he reviewed

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it on February 23, and on the morning of February 24, he and Mr. Tostengard had a telephone conference with Deputy Commissioner Nelson concerning the settlement, during which a number of minor language changes were discussed. Mr. Warch also said he spoke to Mr. Bassett and Mr. Thornton about a number of minor corrections to the consent order. Other than discussing these modifications during the morning of February 24, Mr. Warch has said that neither he nor Mr. Tostengard had any involvement in the negotiations that led to the consent order.

At least three draft consent orders were prepared on February 24. The first draft consent order (Appendix J) removed a provision that American Reliable Insurance Company, an affiliate of American Bankers, would be prohibited from offering accidental death and dismemberment or credit life insurance products in the state for a period of five years. The draft also increased the reimbursement amount that American Bankers would pay to the department from \$1.8 million to \$2.8 million.

We asked Mr. Nelson about those changes. He said:

Mr. Bassett had indicated to me that the American Reliable Insurance reference in the five year clause was basically a deal breaker...So I sat down with Mr. LaVasseur and Mr. Borchert and asked them basically why are they in there....They had indicated to me that they were in there so that the two companies that were, couldn't get around the five year prohibition by ceding their business to American Reliable....I asked them was there another way to achieve the state's goal at the time without actually naming the company? And they worked out some language that was acceptable from their perspective and that's in there. Scott indicated well, now let's get more money...because we're giving 'em something that...is of value to them. So that's where the ...2.8 came from.

Mr. Nelson indicated, and Mr. Bassett confirmed, that the draft order with the \$2.8 million reimbursement amount was never submitted to American Bankers. The referenced amount was changed back to \$1.8 in a second draft (Appendix K) later in the morning of February 24. When asked why the change occurred Mr. Nelson said:

I'm only surmising, but...1.8 was on the table and I didn't have authority to go any higher. And I, I never discussed the other with...with the commissioner. That was a Mr. Borchert idea that ...that didn't go anywhere.

The third draft consent order prepared on February 24 (Appendix L) became the final version and was signed by the parties. It contained the wording changes that Mr. Warch and Mr. Nelson had discussed with Mr. Bassett and Mr. Thornton. In addition, the reference to a specific dollar amount in the reimbursement section was removed. That section of the final order provided:

IT IS FURTHER ORDERED, that Respondents shall reimburse the Minnesota Department of Commerce in connection with these proceedings.

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Mr. Nelson told us that it was never his intention to include a dollar amount in the reimbursement section. He said:

American Bankers had all along represented that they didn't want to pay a large amount of money to the State of Minnesota. So it, it's not in the order...because it's in...the reimbursement clause.

When Mr. Warch was asked about this point, he said:

...the negotiations on this were not handled by me... I had absolutely...I don't know what the give and take was. I don't know what was said to the department in terms of persuading them to do that. I was, I was not invited to participate in that process and so I'd, I'd really be speculating to try to...to tell you what other people were thinking about that.

To its critics the settlement the Department of Commerce reached with American Bankers Insurance is not acceptable in large part because American Bankers paid the state \$2 million rather than \$3.5 million. And, an argument can be made that Commissioner Wilson might have obtained more from American Bankers if the initial amount he requested had been higher (Commissioner Wilson did, after all, obtain his opening position—\$2 million). It can even be argued that, if the payment had been structured or characterized to its advantage, American Bankers might have been willing to pay \$3.5 million in a settlement.

On the other hand, if \$3.5 million is set aside as a fixed standard by which the final settlement is judged, the settlement can be seen as reasonable even by people who advocated for a large fine in earlier negotiations. For example, Mr. LaVasseur said:

I think that although the state ended up with two million on this rather than three point five million, I don't think the state would have ever gotten three point five million out of these folks. I mean, I just have no confidence in their [American Bankers Insurance] commitments, their agreements, their whatever you want to call it. And I found it a little troubling that in the Legislature, there were several questions like, we gave up, or we gave away all this money. And having been in this business, as we said at the very beginning, you don't have it until it's in your pocket. And in this case, we have a company that has a history of coming to the edge in negotiations and agreeing and then withdrawing and then agreeing and then withdrawing. It's, you know, I think it's an agreement that accomplishes what we really needed to get accomplished here. I don't think there is ever an agreement I didn't think we should get more money for, but two million dollars is, as I said, the largest civil penalty we had ever assessed in the history of the state.

Asked whether he was troubled by how payments from American Bankers Insurance were structured, Mr. LaVasseur said:

...it may then in the fine print say two hundred thousand in penalties and an additional one point eight million or whatever. But what's communicated at the

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macro level is the aggregate amount of the payment. And as I said, the payment is, for all intents and purposes, is to penalize the company and to try and deter future misconduct. And how it's structured or how it's defined or how it's described, I don't think is really that significant an issue. I think in this case, attention has been deflected to that issue, and it seems like everyone is focused on, you know, was it called a penalty, or was it called this or was it called that. I think people are ... missing the point. The point is, the company paid as a result of all of this over four million dollars in examination fees and costs and civil penalties. And I think we've made a lasting impression.

With the exception of Mr. Bernstein, the people we interviewed shared Mr. LaVasseur's view that the structure of the settlement payment—with most of the money called a "reimbursement"—was not a problem. Even Attorney General Hatch acknowledged that his criticism of the settlement was focused on the overall amount and not how the payments were characterized. He said: "And had they paid the three and a half million to the state, called it an investigative fee in the thing, I'd be fine."

But, as he has made clear, the final settlement is not acceptable to Attorney General Hatch. To the Attorney General, the settlement terms were not only too generous to the company, they were influenced by the campaign contribution American Bankers made to the Republican Party. But, as presented to the Senate committee and to us, the Attorney General's central allegation is based on circumstantial evidence and inferences. We sought more substantial evidence, but found none.

We established that some of Attorney General Hatch's assertions are correct. In August 2002, American Bankers backed out of an agreement "in principle" to pay the state a \$3.5 million payment in a settlement agreement. The company hoped it could obtain better terms from a new commissioner of Commerce. In short, the company decided to "run out the clock" on Commissioner Bernstein. And, the company initiated a political strategy to help elect a new governor who would not reappoint Commissioner Bernstein. That strategy included making campaign contributions to both the Republican and Democratic parties. However, we could not establish a connection between the campaign contribution American Bankers made to the Republican Party and the terms the company received in the settlement signed on February 24, 2003. That connection—made by Attorney General Hatch and former Commissioner Bernstein—continues to rest on circumstantial evidence and inference. For us, these are not enough to substantiate such a serious allegation.

### **7. We found that the Department of Commerce gave the settlement agreement very little public notice and only after it became controversial. Also, the department mistakenly reported the settlement to the wrong national database.**

In his testimony before the Senate Commerce and Utilities Committee, Attorney General Hatch suggested that the Department of Commerce kept its settlement with American Bankers secret until the media made inquiries. It is true that the settlement was not given public notice through a press release or press conference. In fact, we found that the only public notice the department

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gave the settlement was on its website on March 14, several days after the settlement became controversial.

We asked Commissioner Wilson why he did not give the settlement greater public notice, if for no other reason, to achieve some deterrent effect. He said:

A couple reasons. All the previous negotiation [with American Bankers] had some level of secrecy or finding another way to resolve it without having a lot of notoriety given to it. So, I, I had thought about it. And...the fact that they would be out of the state for five years gave me ...the comfort that the consumer was going to be protected whether we ... held a news conference... or whatever. Secondly, I had only in recent years been involved in one news conference and that was my announcement day. And I was so nervous...given my comfort level...I just didn't think that it was necessary.

We asked whether Mr. Bassett (or anyone else from American Bankers) conditioned signing a consent order on the department not issuing a press release or holding a press conference, the commissioner said:

No, but ...he [Mr. Bassett] asked what ...my intention was relative to a news conference. And...I said it wasn't my style. I didn't think that it was necessary in this case.

We also found that there was some confusion regarding the department's reporting of the settlement to the National Association of Insurance Commissioners (NAIC). The NAIC is the organization of insurance regulators that assists states in the development of uniform policies and by providing support to protect the interest of insurance consumers. *Minn. Stat.* § 60A.26, Subd. 2 requires the commissioner of Commerce to report public regulatory actions, investigative information, and complaints to the appropriate reporting system or database of the National Association of Insurance Commissioners. The department thought it had reported the American Bankers settlement to the NAIC, but later found its reporting process had failed. In addition, the department subsequently reported the settlement to the wrong NAIC database before eventually correcting the error.

The department and American Bankers signed the consent order on February 24, 2003. The department posted the American Bankers' civil penalty and reimbursement on its Enforcement Actions' website on March 14, 2003, as follows:

American Bankers Life Assurance Company of Florida  
American Bankers Insurance Company of Florida  
Action: Consent Order  
Signed: 2/24/03  
\$200,000 Fine  
\$1,800,000 Other  
Allegation: Consent Order settle as charges arising from 02-05-02 SOC, the 09-06-02 Amended SOC and the market conduct exam order issued on 02-24-02.

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The department first reported the terms of the consent order to the NAIC on March 20, 2003. We were told that the delay in reporting to the NAIC was due to employees believing the information posted to the department's enforcement website would automatically be transferred to the NAIC database. Due to these misunderstandings, the department had not consistently reported regulatory actions to the NAIC for the past year and a half.

The NAIC maintains two databases, the Regulatory Information Retrieval System (RIRS) and the Special Activities Database (SAD). RIRS is a nationwide database containing adjudicated regulatory actions against producers. This system enables state insurance regulators to track the regulatory history of an individual firm seeking licensure in their state. According to NAIC representatives, state insurance regulators are to use the RIRS database when reporting formal legal action, consent, and settlement agreements. The RIRS data and reports are publicly available and include detailed descriptions of the regulatory actions taken. The SAD database collects information used for investigative purposes. This database tracks investigative or other suspicious activities that are of a regulatory concern. The SAD database is for regulators only.

On March 20, 2003, the department, based on advice from a NAIC representative, reported the American Bankers consent order to the NAIC's SAD database. A department investigator later questioned the appropriateness of reporting the incident on the SAD database, and the department again contacted the NAIC for clarification. Based on these discussions, on April 3, 2003, the department correctly reported the following information on the NAIC's RIRS database for each company involved in the American Bankers Insurance settlement—American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida:

- Consent Order resulting from market conduct exam
- 5-year voluntary withdrawal
- \$900,000 costs plus penalty
- \$100,000 Penalty/Fine/Forfeiture

In isolation, these reporting mistakes and the department's lack of publicity for the settlement may seem inconsequential. But in the context the controversy over the American Bankers case, they add to the suspicion that the department inappropriately favored American Bankers. The company was sensitive about publicity and did not want it reported widely that the company had paid a large fine to the State of Minnesota. During negotiations in 2002, Mr. Thornton, the attorney for American Bankers in Minnesota, had even proposed a "secrecy clause" in a draft consent order. By his own testimony, Commissioner Wilson knew the company wanted as little publicity as possible. And, even though American Bankers reportedly did not make an explicit request for secrecy to Commissioner Wilson, the commissioner approach to publicity can be seen as accommodating to American Bankers on an issue of importance to the company.

# Special Review: Department of Commerce American Bankers Insurance Settlement

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## Chapter 4. The Attorney General

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While our primary focus was on the Department of Commerce, we were asked by legislators to address the following two questions concerning Attorney General Hatch.

- Did the Attorney General violate state law when he brought forth a proposal for American Bankers to make a charitable contribution as part of a settlement?
- How did the Attorney General obtain the letter from Ron Ebensteiner to Ron Jerich concerning American Bankers contribution to the Republican Party?

As in the preceding chapter, our findings on both questions are based principally on the testimony we received.

**1. We do not think Attorney General Hatch violated state law in bringing forth a proposal for American Bankers to make a contribution to a charity as part of a settlement, but we found his actions troubling.**

As discussed previously, Attorney General Hatch claims that on January 6, 2003, Mr. Harry Bassett, representing American Bankers, made a specific offer to pay the state \$3.5 million in a settlement if the company could make the payment to a charity. Given the conflicting testimony we received, we could not establish whether Mr. Bassett made that specific offer, but it is clear that Attorney General Hatch brought that specific proposal forth and presented it at a meeting on January 8.

We were asked to examine the Attorney General's actions because state law prohibits a diversion of settlement money to a charity (Appendix M). Moreover, *Minn. Stat.* §16A.151, Subd. 1(b) makes it illegal for state officials—including the attorney general—to even “pursue” such a diversion. The key provision of law says:

(b) A state official [defined to include the attorney general] may not commence, pursue, or settle litigation, or settle a matter that could have resulted in litigation, in a manner that would result in money being distributed to a person or entity other than the state.

On January 8, 2003, two days after the Attorney General's dinner meeting with Mr. Bassett, Attorney General Hatch reportedly told people attending a task force on mental health access that

## Special Review: Department of Commerce American Bankers Insurance Settlement

he might have a donor for the Community Behavioral Health Trust Fund.<sup>3</sup> The Attorney General asked Dick Niemiec, a senior vice president at Blue Cross and Blue Shield of Minnesota, and Mary Brainerd, Chief Executive Officer of HealthPartners to come back to his office to discuss the possible donation to the trust fund with the new commissioner of Commerce.

Although there are some differences in recollection about some details of the January 8 meeting, there is general consensus that Attorney General Hatch presented a proposal for American Bankers Insurance to make a \$3.5 million contribution to a charity. The Attorney General told us he asked Mr. Jerich to attend the meeting and present the American Bankers proposal. And, initially, Attorney General Hatch said Mr. Jerich made the presentation. Later, the Attorney General acknowledged that he helped Mr. Jerich. Specifically, the Attorney General said:

He [Jerich] was supposed to make the presentation. To be candid, he is not one that gets really involved in his issues as a lobbyist. So he was not well prepared to go over the terms. I don't think he would have understood it. I did repeat the terms for him. And I also said it's along the lines of the August 7th settlement. He agreed. But I went through it. You know, he said it was three and a half million. I think I actually said it. The company agrees, three and a half million dollars, yes. The company says it is going to a charity, yes. The company is going to go out of the state for five years, yes. The company is going to, you know, I knew the terms better than I do now, reduce it's premiums by x number and he basically said yes, yes, yes, yes.

But exactly how much Mr. Jerich participated in the presentation—or talked at all—is in doubt. Mr. Niemiec told us: “I have no recollection of Mr. Jerich saying anything in the Attorney General’s Office while I was there [on January 8, 2003].” Ms. Brainerd did not have a clear recollection of Mr. Jerich even being present during the discussion, but thought he might have come in later. Commissioner Wilson also recalled Mr. Jerich coming in as the meeting was breaking up. Mr. Jerich remembered being present during the discussion, but said he did not make a presentation

Attorney General Hatch told us that on January 8, 2003, he was fully aware that it was not legally possible for American Bankers to make a contribution to a charity as part of a settlement, but he did not disclose that fact to those attending the January 8 meeting. According to Attorney General Hatch’s testimony to us, he did not make more of the legal problem associated with a charitable contribution from American Bankers Insurance because he wanted to get the proposal “on the table.” And he said he invited Mr. Neimeic and Ms. Brainerd to the meeting with Commissioner Wilson and Mr. Jerich so there would be “witnesses” that the offer had been made.

Asked whether he understood that he might be in conflict with *Minn. Stat.* §16A.151 just by putting forth the proposal to the group he had brought together, Attorney General Hatch said:

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<sup>3</sup> The Community Behavioral Health Trust Fund was established by several Minnesota health plans, including HealthPartners and Blue Cross Blue Shield, to help develop community mental health services. The fund is administered through the Minnesota Foundation.

## Special Review: Department of Commerce American Bankers Insurance Settlement

Well, I didn't put forth the offer. The company makes the offer. Lawyers are like realtors. All offers have got to be presented to the client. It was important to me that they make their offer to the client immediately. I wanted to get the bar set. I wanted to get it in front of people, and they did it on January 8. It's not in violation to do that. I'm not the one hustling for the charity. They were the ones making the offer for the charity. All I'm trying to do is get the offer out there.

We do not think the facts are that simple. First, Attorney General Hatch has not been a neutral agent in this case; rather, he has been an active participant with strong opinions on various matters of substance. Second, by his own testimony, the Attorney General knew the proposal was not legally permissible, but did not disclose that fact to the people he assembled in his office on January 8, 2003. In short, he decided to leave the impression that the proposal being presented was legally permissible. Finally, by bringing together Commissioner Wilson and Mr. Jerich with representatives of a charity, the Attorney General made the proposal look like a real possibility. According to his testimony to us, he told the people he had assembled:

This company [American Bankers] is about to make a three and a half million dollar offer. They want to give it to a charity. Maybe they can give it to this group [the Community Behavioral Health Trust Fund]. What a fine thing.

Since Attorney General Hatch says he knew the proposed contribution from American Bankers was not possible, we presume he could not have been "pursuing" it. Therefore, we conclude that he did not violate *Minn. Stat.* §16A.151, Subd. 1 (b). Nevertheless, we think his actions in the January 8 meeting certainly gave the impression that he was pursuing the diversion of settlement money from the state to a charity. We also find his actions troubling and confusing.

Given his involvement with the case and his position as Attorney General, it was certainly appropriate for Attorney General Hatch to discuss the American Bankers case with Commissioner Wilson and to advocate for a \$3.5 million settlement. But it was, at the very least, inconsiderate of the Attorney General to raise such a serious and complex case with the commissioner at their January 8 meeting. It was the commissioner's second day on the job, and he had been told that the meeting with Attorney General Hatch was simply a "meet and greet" occasion. The commissioner went alone and with no knowledge of the American Bankers case.

In addition, we think it was particularly inappropriate for the Attorney General to bring Mr. Neimeic and Ms. Brainerd into the meeting under a pretext; knowing the possible contribution being discussed would never happen. By his own testimony, the Attorney General knew there would be no contribution to the Community Behavioral Health Trust Fund from American Bankers, yet he led Mr. Neimeic, Ms. Brainerd, and others to believe a contribution was possible.

If Attorney General Hatch's goal was to get Mr. Bassett's \$3.5 million charity proposal "on the table," he clearly had more direct and less deceptive methods available. For example, he could have asked Mr. Bassett to simply make the proposal in writing. Then, it would have been

## **Special Review: Department of Commerce American Bankers Insurance Settlement**

unnecessary to use Mr. Jerich to present a proposal he did not understand or to use Mr. Neimeic and Ms. Brainerd as “witnesses” to a proposal that was not legally permissible.

### **2. According to his testimony, Attorney General Hatch obtained the Eibensteiner letter from Mr. Jerich.**

At the Senate Commerce and Utilities Committee meeting on March 12, Attorney General Hatch discussed a letter from Ronald Eibensteiner, Chair of the Republican Party of Minnesota, to Ron Jerich. The letter thanked Mr. Jerich for obtaining a \$10,000 contribution to the Republican National State Election Committee from American Bankers Insurance Company of Florida. The Attorney General was asked how he came into possession of the letter and responded: “from Ron Jerich.” We were asked to pursue the question further.

We asked Attorney General Hatch and Mr. Jerich about the letter. The Attorney General told us that in October 2002, he attended a “door knocking” event for Senator James Metzen and Representative Thomas Pugh at Ron Jerich’s home. Prior to going out door knocking, the Attorney General was talking to Mr. Jerich in his office. The Attorney General told us:

And there was a bust of Ronald Reagan on his desk. And I said...that’s an interesting bust. Why have you got Ronald Reagan? And he said he just got it from the Republican Party for a ten thousand dollar contribution. I asked him, “why were you making a ten thousand dollar contribution?” and he said that he had been retained by American Bankers Insurance Company, that they wanted to get involved in Minnesota. And that they wanted to make contributions to the Moe campaign and to the Pawlenty campaign...So... I say how ...does the Republican Party send you a bust if you send corporate contributions to the Pawlenty campaign? And he hands me this letter. Pulls a letter out of the desk and hands it to me and it’s a letter from Ron Eibensteiner, who is chairman for the state Republican Party...I take the letter. Do the door knock that day. I mean, I’m trying to figure out what’s going on here. This is troubling to me. I know that mischief is afoot here. I know why American Bankers is doing this.

Mr. Jerich acknowledged that he showed Attorney General Hatch and others who had come to the “door knocking” event the letter from Mr. Eibensteiner. However, he said that the letter subsequently disappeared, and he didn’t know who took it.

When we asked Attorney General Hatch whether it was his understanding at the time that Mr. Jerich intended for him to take the letter, he said:

I don’t know. What I did is I read the letter, and I asked him questions about it. You know, what is this Republican National State Committee? How does Ron Eibensteiner chair the party? Why did he send it on his personal stationery? It’s not on the Republican State Committee. There’s all sorts of fishy things going on in this thing. I’m asking him questions. I was, I was going to keep that letter, no matter what happened. So I took that letter and I put it in my pocket right in front

## **Special Review: Department of Commerce American Bankers Insurance Settlement**

of him and he didn't say anything. Did I ask him? No. Had he said I want it back, I would have said you are not getting it back. I mean, I was not going to give it back. I know a crooked deal when I see it, and this was a crooked deal. And this bothered me.

Attorney General Hatch also said that after obtaining the Eibensteiner letter, he told various staff from his office, including Mr. Warch, about the political contribution American Bankers made to the Republican Party. He also discussed the issue with Mr. Bernstein. And, as we noted in the previous chapter, the Attorney General asserts that he discussed the political contribution and showed the letter to Commissioner Wilson in January.

Attorney General Hatch told us that he thinks the Eibensteiner letter raises legal questions about American Bankers' campaign contributions. But, as stated at the beginning, we did not address the legality of the contributions or attempt to trace American Bankers' campaign contributions. We did, however, ask Mr. Eibensteiner about his letter to Mr. Jerich. He told us that the Jerich letter was a "form letter" prepared by staff for his signature. He said he signed thousands of these letters during the 2002 campaign, and they were on his personal stationery to give the letters a more personal touch. He also told us that until the controversy arose in February 2003, he did not know who Ron Jerich was; nor had he ever heard of American Bankers Insurance. He said that the state office knew to send Mr. Jerich a thank you letter because Mr. Jerich sent the American Bankers check to the state office, and it was sent from there to the national office. According to Mr. Eibensteiner, neither the state party nor the Pawlenty campaign received money from the national party as a result of the American Bankers contribution. The national party could spend money on Minnesota races, but that decision would be made nationally. He said he did not know, and had no way of knowing, whether any of the American Bankers money was spent in Minnesota.

**Special Review: Department of Commerce  
American Bankers Insurance Settlement**

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# STATE OF MINNESOTA

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March 14, 2003

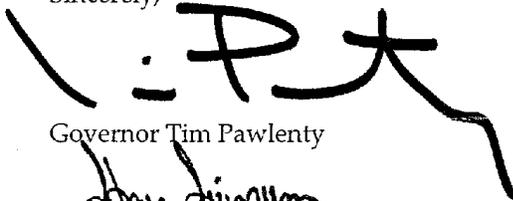
Mr. James R. Nobles  
Legislative Auditor  
100 Centennial Office Building  
658 Cedar Street  
Saint Paul, MN 55155

Dear Mr. Nobles:

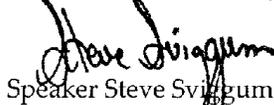
Minnesota Statutes, Sections 3.972 through 3.979 give the Auditor authority to investigate allegations of improper conduct by state officials in their administration of the state's financial operations. Based on that authority and responsibility, we jointly request that you investigate and report all facts and considerations relating to the negotiations and settlement reached between the Minnesota Department of Commerce and the American Bankers Insurance Group in February 2003.

We ask that you determine whether in negotiating the settlement, state officials acted appropriately and in compliance with state law. We ask that you specifically determine whether state officials were improperly influenced by political contributions made by American Bankers Insurance Group.

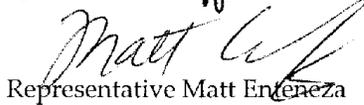
Sincerely,



Governor Tim Pawlenty



Speaker Steve Sviggum



Representative Matt Entenza



Senator John C. Hottinger



Senator Dick Day

cc: Senator Ann H. Rest, Chair  
Legislative Audit Commission

**Department of Commerce Settlement with American Bankers  
Individuals Interviewed**

**Office of the Governor:**

Tim Pawlenty	Governor
Charlie Weaver	Chief of Staff
Bob Schroeder	Deputy Chief of Staff

**Office of the Attorney General:**

Mike Hatch	Attorney General
Kristine Eiden	Chief Deputy Attorney General
Lori Swanson	Solicitor General
Stephen Warch	Assistant Attorney General
Michael Tostengard	Assistant Attorney General

**Department of Commerce:**

Glenn Wilson	Commissioner
Jim Bernstein	Former Commissioner
Patrick Nelson	Deputy Commissioner
Gary LaVasseur	Director of Enforcement (former Deputy Commissioner)
Scott Borchert	Director of Registration (former Director of Enforcement)
Tim Commers	Senior Executive Officer

**Assurant/American Bankers Insurance:**

Jerome Atkinson	General Counsel
Harry Bassett, Jr.	Senior Vice President, Government Relations
Tim Thornton	Attorney – Briggs and Morgan
Ron Jerich	Lobbyist

**Other Contacts:**

Mary Brainerd	Chief Executive Officer, Health Partners
Dick Niemiec	Senior Vice President, Blue Cross Blue Shield of Minnesota
Ron Eibensteiner	Chair, Republican Party of Minnesota



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH  
ATTORNEY GENERAL

May 23, 2002

NCL TOWER, SUITE 1200  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2130  
TELEPHONE: (651) 296-9412

*By FACSIMILE TRANSMISSION: (612) 334-8650*

Timothy R. Thornton, Esq.  
Briggs and Morgan, P.A.  
2400 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402-2157

*Re: In the Matter of American Bankers Insurance Company of Florida and American Bankers Life Assurance Company*

Dear Tim:

I write to provide a response to the proposal you made to Steve Warch yesterday via telephone concerning the resolution of the above-referenced matter.

The Department accepts your proposal to settle the matter upon the following terms:

- A \$3.5 million civil penalty.
- For a five-year period, ABIC and ABLAC will cease and desist from offering any new insurance products within the State of Minnesota. American Reliable will cease and desist from offering any accidental death and dismemberment (AD&D) or credit insurance products in the State of Minnesota. Non-AD&D and non-credit products may be ceded to third parties. American Reliable may continue to offer and sell the antique car and equine products you referenced.
- As to existing insurance business, ABIC and ABLAC will decrease rates for AD&D insurance by 40% across-the-board and for credit insurance 30% across-the-board. The decrease will be prospective.
- If after the five-year cease and desist period, ABIC and ABLAC wish to resume issuing new insurance in the State of Minnesota, they would be subject to revocation and a \$5 million civil penalty if the Department establishes that they violated any provision of the agreement.
- ABIC and ABLAC will receive a global release.

Facsimile: (651) 296-7438 • TTY: (651) 296-1410 • Toll Free Lines: (800) 657-3787 (Voice), (800) 366-4812 (TTY) • [www.ag.state.mn.us](http://www.ag.state.mn.us)

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Timothy R. Thornton, Esq.

May 23, 2002

Page 2

Please let me know as soon as possible if the parties are in agreement. I will be out of the office on Friday, May 24, 2002 through the Memorial Day weekend. Mr. Warch, however, will be in the office. His direct phone number is (651) 296-2200.

Sincerely,



MICHAEL J. TOSTENGARD  
Assistant Attorney General

(651) 296-9701

cc: Deputy Commissioner Gary LaVasseur  
Steve Warch

AG: #669638-v1

**BRIGGS AND MORGAN**

PROFESSIONAL ASSOCIATION

WRITER'S DIRECT DIAL

(612) 334-8550

WRITER'S E-MAIL

pvolk@briggs.com

June 20, 2002

**VIA FACSIMILE (651) 296-7438**

Michael J. Tostengard  
State of Minnesota  
1200 NCL Tower  
445 Minnesota Street  
St. Paul, MN 55101-2130

Re: *In the matter of American Bankers Insurance Company of Florida and  
American Bankers Life Assurance Company*

Dear Mike:

American Bankers responds to the settlement proposal communicated to me by telephone on Friday, June 14, 2002 as follows:

1. A \$3.5 million civil restitution. \$2.5 million of this payment shall be immediately remitted; the remaining \$1 million shall be paid pursuant to paragraph 6.
2. For a five-year period, ABIC and ABLAC will cease and desist from offering any new insurance products within the State of Minnesota. American Reliable will cease and desist from offering any accidental death and dismemberment (AD&D) or credit insurance products in the State of Minnesota. Non-AD&D and non-credit products may be ceded to third parties.
3. ABIC and ABLAC will decrease the rates that were in effect as of December 31, 2001 – for AD&D insurance by 40% across-the-board, and for credit insurance 30% across-the-board. The decrease will be prospective.
4. If after the five-year cease and desist period, ABIC and ABLAC wish to resume issuing new insurance in the State of Minnesota, the companies would be subject to revocation of authority and a \$5 million civil penalty if the Department establishes a violation of the settlement agreement.
5. ABIC and ABLAC will receive a global release. Accordingly, the settlement will resolve all claims or allegations pertaining to ABIC and ABLAC and its agents or accounts that have been made or could be made and terminate all Administrative

**BRIGGS AND MORGAN**

Michael Tostengard

June 20, 2002

Page 2

Subpoenas issued by the Department of Commerce to ABIC and ABLAC and to any of their agents or accounts, *In the Matter of the Market Conduct Examination of American Bankers Insurance Company, American Bankers Life Assurance Company and their Affiliates, Subsidiaries and Related Companies.*

6. The Department of Commerce shall not disclose this Consent Order or its existence or terms to any third party, except as required by law. This commitment precludes the Department from holding any press conference, initiating any media coverage, or leaking any stories or documents about this settlement. Upon the expiration of eighteen months, if no disclosure breaching the terms of this undertaking has occurred, then ABIC and ABLAC will pay the remaining \$1 million of the \$3.5 million civil restitution. If the Department breaches this undertaking then the \$1 million hold back shall be forgiven. A news story about or a media account of this settlement shall be prima facie evidence that this undertaking has been breached – unless the Department can demonstrate that the press learned of the settlement without the assistance of any Department employee or agent. Disputes regarding this provision shall be resolved in the Ramsey County District Court.

This proposal fairly and fully reflects the spirit of the deal that has been discussed. I apologize for not having this to you on Wednesday, but my wife and secretary are both out of town and a home remodeling project that was promised to start no later than May 15 commenced on Monday. In short, my life is temporarily in logistical shambles.

I look forward to closing this settlement. Thank you for your cooperation.

Sincerely,



Timothy R. Thornton

TRT:jb

cc: B. Camacho  
J. Atkinson  
S. Spiegel  
M. Hatch  
S. Warch



85 7th Place East, Suite 500  
St. Paul, Minnesota 55101-2198

651.296.4026 FAX 651.297.1959 TTY 651.297.3067

July 3, 2002

Timothy R. Thornton  
Briggs and Morgan, P.A.  
2400 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402-2157

RE: *In the Matter of American Bankers Insurance Company of Florida and American Bankers Life Assurance Company, OAH Docket No. 15-1004-14706-2*

Dear Tim:

I hope you are back on schedule even if the remodeling isn't. Remember, if you start having problems with the project, we also regulate residential builders and remodelers.

The Department settlement proposal in the above-referenced matter, conveyed to you by the Commissioner on Friday, June 14, 2002, was memorialized in the Consent Order that was e-mailed to your secretary that afternoon. As I stated during our discussion on the 14<sup>th</sup>, the Department was willing to settle with your clients in accordance with the terms that had been cited in Mike Tostengard's letter of May 23, 2002 (copy attached). In addition, Commissioner Bernstein agreed that if your client would accept our proposal and resolve this matter once and for all, by no later than the afternoon of June 19, 2002, he would be willing to agree not to hold a news conference or to issue a news release regarding the settlement.

Obviously your clients chose not to accept the Commissioner's proposed settlement, since they did not respond by the stated deadline. Furthermore, in making their counterproposal they significantly changed and added terms and conditions which would virtually ensure further litigation. The additions and changes contained in your clients' proposal lead me to believe that they have no sincere interest in resolving this matter.

The Department would still prefer to resolve this matter and avoid the time and expense associated with the ongoing litigation and examination. Your clients should not, however, interpret our desire for settlement as a lack of resolve or commitment to bring this matter to a fair and equitable conclusion. As stated repeatedly in the past, we believe your clients' exposure to regulatory sanctions far exceeds those contained in the Department's settlement proposal. These potential sanctions would be in addition to your clients' costs of litigation and our continuing examination.

Timothy R. Thornton  
July 3, 2002  
Page Two

I have enclosed a copy of a Consent Order identifying the terms that the Department will accept. If your clients wish to reconsider their position and accept these terms, the Commissioner is still willing to agree not to hold any news conference announcing the settlement of this matter; however, the Commissioner reserves the right to issue a news release regarding the settlement. I am asking that your clients respond no later than noon on Friday, July 12, 2002. If we fail to hear from you or your clients by the deadline, our offer is withdrawn.

Sincerely



GARY A. LAVASSEUR  
Deputy Commissioner  
(651 296-4051  
Enclosure

- c Stephen Warch, Attorney General's Office
- Michael Tostengard, Attorney General's Office
- Scott Borchert, Department of Commerce

Draft 8/7/02 Appendix F

IN9908353

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of American Bankers Insurance  
Company of Florida and American Bankers Life  
Assurance Company of Florida

**CONSENT ORDER**

TO: American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, by their counsel, Timothy R. Thornton, Esq., Briggs & Morgan, P.A., 2400 IDS Center, 80 South 8th St., Minneapolis, MN 55402.

Commissioner of Commerce James C. Bernstein ("Commissioner") has determined as follows:

1. On February 5, 2002, the Minnesota Department of Commerce ("Department") issued a Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges ("Order for Hearing") against American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida ("Respondents"). In the Order for Hearing, the Department alleged that Respondents violated various provisions of Minnesota's insurance laws entrusted to the Commissioner for enforcement.
2. Respondents acknowledge that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondents waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.
3. Respondents, without admitting or denying the allegations in the February 5, 2002 Order for Hearing, have agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2000) and Minn. R. 1400.5900 (2001).

4. The following Order is in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED**, that Respondents American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida shall pay to the Minnesota Department of Commerce \$3,500,000.00.

**IT IS FURTHER ORDERED** that Respondents shall cease and desist from offering or issuing any insurance products within the State of Minnesota for a period of five years from the date of entry of this Order by the Commissioner of Commerce. All subsidiaries of the American Bankers Insurance Group ("ABIG") shall cease and desist from offering any accidental death and dismemberment (AD&D) or credit insurance products in the State of Minnesota for a period of five years from the date of entry of this Order by the Commissioner of Commerce. Non-ADD or credit insurance products may be ceded to third parties. Respondents and ABIG subsidiaries shall have forty-five (45) days from the date of entry of this Order to notify all agents and accounts that they are no longer accepting new enrollees or applicants for the insurance products covered by this Consent Order.

**IT IS FURTHER ORDERED**, that if Respondents resume selling insurance in Minnesota after the five-year cease and desist period lapses, Respondents shall notify the Commissioner. Should Respondents resume insurance sales in the State, Respondents' Certificates of Authority shall be revoked and a \$5 million civil penalty shall be imposed if the Department establishes that Respondents or ABIG subsidiaries violated any provision of this Consent Order during the five-year cease and desist period. Nothing in this Order prevents the Commissioner from seeking any remedy available by law for any violation occurring after the date of the entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents and ABIG subsidiaries shall within thirty (30) days from the date of entry of this Order by the Commissioner of Commerce, prospectively decrease rates for all AD&D insurance that are currently in force, by forty percent (40%) and for all credit insurance currently in force by thirty percent (30%). These rate reductions shall be applied to all rates in effect as of December 31, 2001. Respondents warrant that they have not offered or issued any new types of AD&D or credit insurance products in Minnesota after December 31, 2001.

**IT IS FURTHER ORDERED**, that this Consent Order resolves all of the Department's allegations contained in its February 5, 2002 Order for Hearing and all claims or allegations that could be made by the Commissioner regarding the Respondents' conduct or their agents and accounts' conduct in Minnesota prior to the date of entry of this Order, with the exception of Best Buy Company and Household Bank, S.A.

This Order shall be effective upon signature of the Commissioner.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JAMES C. BERNSTEIN  
Commissioner  
Department of Commerce



Ronald Eibensteiner  
800 Nicollet Mall, Suite 2690  
Minneapolis, MN 55402  
Office Phone (612) 338-8948  
Office Fax (612) 338-7332

September 9, 2002

Mr. Ronald A. Jerich  
Ronald A. Jerich & Associates  
597 Sutcliff Circle  
Mendota Heights, Minnesota 55418

Dear Ron,

I want to take this opportunity to say thank you for obtaining from American Bankers Insurance Company of Florida a \$10,000 contribution to the R.N.S.E.C. (Republican National State Election Committee). I believe that we share the same goal in making the Republican Party the majority in the new Millennium.

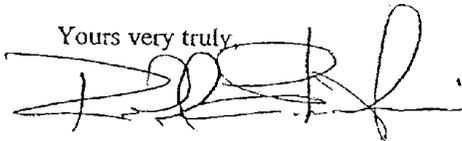
As you know, this is a pivotal year for the Republican Party and Minnesota has been targeted as a key state this year. That means the pressure has been put on us to raise enough money to make sure our major candidates, Norm Coleman to replace Paul Wellstone, Tim Pawlenty for Governor, and John Kline to replace Bill Luther (in the new 2<sup>nd</sup> District), can win.

Our overall budget for this year requires us to raise \$7.3 million, a daunting goal. Of that amount, \$1.5 million has been earmarked for a media buy to promote Tim Pawlenty for Governor...the media ads begin running Labor Day weekend.

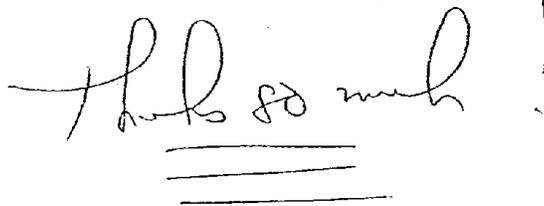
With the General Election only 58 days away, we are pleased that your contribution will help us accomplish our budget goal. Without the necessary funds to support our candidates, we could end up disappointing President Bush. He needs our support, right here in Minnesota, to make sure we can make Minnesota a Republican state!

Once again, we appreciate your help and the contribution of \$10,000 from American Bankers Insurance; it will go a long way in helping to make the Republican Party the majority President Bush needs right now.

Yours very truly



Ronald E. Eibensteiner  
Chair, Republican Party of Minnesota



*P.S. Since we're not sure who to thank at American Bankers Insurance, if you would do that on our behalf, I would appreciate it.*

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of American Bankers Insurance  
Company of Florida and American Bankers Life  
Assurance Company of Florida

**CONSENT ORDER**

TO: American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, by their counsel, Timothy R. Thornton, Esq., Briggs & Morgan, P.A., 2400 IDS Center, 80 South 8<sup>th</sup> St., Minneapolis, MN 55402.

Commissioner of Commerce Glenn Wilson ("Commissioner") has determined as follows:

1. On February 5, 2002, the Minnesota Department of Commerce ("Department") issued a Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges ("Order for Hearing") against American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida ("Respondents"). In the Order for Hearing, the Department alleged that Respondents violated various provisions of Minnesota's insurance laws entrusted to the Commissioner for enforcement.
2. Respondents acknowledge that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondents waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.
3. Respondents, without admitting or denying the allegations in the February 5, 2002, Order for Hearing, have agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2000) and Minn. R. 1400.5900 (2001).

4. The following Order is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, that Respondents American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida shall pay to the Minnesota Department of Commerce a civil penalty in the amount of \$100,000 each.

IT IS FURTHER ORDERED that Respondents shall cease and desist conducting the business of insurance within the State of Minnesota in any manner which was alleged by the Department in the Order for Hearing to be violative of Minnesota's insurance laws.

IT IS FURTHER ORDERED, that nothing in this Consent Order prevents the Commissioner from seeking any remedy available by law for any violation, including any violation of this Order, occurring after the date of the entry of this Consent Order.

IT IS FURTHER ORDERED, that Respondents shall within thirty (30) days from the date of entry of this Order by the Commissioner of Commerce, prospectively decrease rates for all AD&D insurance that is currently in force in Minnesota, by forty percent (40%). This rate reduction shall be applied to all rates in effect as of December 31, 2001.

IT IS FURTHER ORDERED, that this Consent Order resolves all of the Department's allegations contained in its February 5, 2002, Order for Hearing and any and all other claims or allegations that have been or could be made by the Commissioner regarding the Respondents' conduct or their agents and accounts' conduct in Minnesota prior to the date of entry of this Consent Order.

IT IS FURTHER ORDERED, that Respondents shall reimburse the Minnesota Department of Commerce for the costs it has expended in investigating and pursuing this matter in an amount agreed upon by the Respondents and the Commissioner.

*2 million*

**This Order shall be effective upon signature of the Commissioner.**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**GLENN WILSON**  
**Commissioner**  
**Department of Commerce**

**CONSENT TO ENTRY OF ORDER**

The undersigned representative, on behalf of American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, states that he has read this Consent Order; that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing; and that he has been represented by legal counsel in this matter. The undersigned consents to entry of this Order by the Commissioner of Commerce. It is further understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

AMERICAN BANKERS INSURANCE  
COMPANY OF FLORIDA AND AMERICAN  
BANKERS LIFE ASSURANCE COMPANY OF  
FLORIDA

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by personally appearing before me and identifying him/herself as \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

IN9908353

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of American Bankers Insurance  
Company of Florida and American Bankers Life  
Assurance Company of Florida

**CONSENT ORDER**

TO: American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, by their counsel, Timothy R. Thornton, Esq., Briggs & Morgan, P.A., 2400 IDS Center, 80 South 8th St., Minneapolis, MN 55402.

Commissioner of Commerce Glenn Wilson ("Commissioner") has determined as follows:

1. On February 5, 2002, the Minnesota Department of Commerce ("Department") issued a Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges ("Order for Hearing") against American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida ("Respondents"). In the Order for Hearing, the Department alleged that Respondents violated various provisions of Minnesota's insurance laws entrusted to the Commissioner for enforcement.

2. Respondents acknowledges that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondents waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.

3. Respondents, without admitting or denying the allegations in the February 5, 2002 Order for Hearing, have agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2000) and Minn. R. 1400.5900 (2001).

4. The following Order is in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED**, that Respondents American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida shall pay to the Minnesota Department of Commerce a civil penalty in the amount of \$100,000 each

**IT IS FURTHER ORDERED** that Respondents shall cease and desist from offering or issuing any insurance products within the State of Minnesota for a period of five years from the date of entry of this Order by the Commissioner of Commerce. American Reliable Insurance Company, an affiliate of Respondents, shall cease and desist from offering any accidental death and dismemberment (AD&D) or credit insurance products in the State of Minnesota for a period of five years from the date of entry of this Order by the Commissioner of Commerce. Non-ADD or credit insurance products may be ceded to third parties. Respondents and American Reliable Insurance Co. shall have 45 (forty-five) days from the date of entry of this Order to notify all agents and accounts that they are no longer accepting new enrollees or applicants for the insurance products covered by this Consent Order. After a period of 20 months from the date of entry of this order the respondents can petition the Commissioner to waive imposition of the final 36 months of this prohibition.

**IT IS FURTHER ORDERED**, that nothing in this Order prevents the Commissioner from seeking any remedy available by law for any violation, including any violation of this order, occurring after the date of the entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents and American Reliable Insurance Company shall within thirty days from the date of entry of this Order by the Commissioner of Commerce, prospectively decrease rates for all AD&D insurance that are currently in force, by

forty percent (40%) and for all credit insurance currently in force by thirty percent (30%). These rate reductions shall be applied to all filed and approved rates in effect as of December 31, 2001.

**IT IS FURTHER ORDERED**, that this Consent Order resolves all of the Department's allegations contained in its February 5, 2002 Order for Hearing and all claims or allegations that could be made by the Commissioner regarding the Respondents' conduct or their agents and accounts' conduct, with the exception of Best Buy Companies, in Minnesota prior to the date of entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents shall reimburse the Minnesota Department of Commerce in an amount agreed by the Respondents and the Commissioner. (\$1,800,000)

This Order shall be effective upon signature of the Commissioner.

Dated: \_\_\_\_\_

\_\_\_\_\_  
GLENN WILSON  
Commissioner  
Department of Commerce



IN9908353

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of American Bankers Insurance  
Company of Florida and American Bankers Life  
Assurance Company of Florida

**CONSENT ORDER**

TO: American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, by their counsel, Timothy R. Thornton, Esq., Briggs & Morgan, P.A., 2400 IDS Center, 80 South 8th St., Minneapolis, MN 55402.

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2. Respondents acknowledges that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondents waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.

3. Respondents, without admitting or denying the allegations in the February 5, 2002 Order for Hearing, have agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2000) and Minn. R. 1400.5900 (2001).

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**IT IS FURTHER ORDERED** that Respondents shall withdraw from offering or issuing any insurance products within the State of Minnesota for a period of five years from the date of entry of this Order by the Commissioner of Commerce. The Respondents shall agree not to cede accidental death and dismemberment (AD&D) or credit insurance products to affiliates or nonaffiliated third parties for this period. Non-ADD or credit insurance products may be ceded to nonaffiliated third parties. Respondents shall have 45 (forty-five) days from the date of entry of this Order to notify all agents and accounts that they are no longer accepting new enrollees or applicants for the insurance products covered by this Consent Order. After a period of 20 months from the date of entry of this order the respondents can petition the Commissioner to waive imposition of the final 36 months of this prohibition.

**IT IS FURTHER ORDERED**, that nothing in this Order prevents the Commissioner from seeking any remedy available by law for any violation, including any violation of this order, occurring after the date of the entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents and American Reliable Insurance Company shall within thirty days from the date of entry of this Order by the Commissioner of Commerce, prospectively decrease rates for all AD&D insurance that are currently in force, by forty percent (40%) and for all credit insurance currently in force by thirty percent (30%). These rate reductions shall be applied to all filed and approved rates in effect as of December 31, 2001.

**IT IS FURTHER ORDERED**, that this Consent Order resolves all of the Department's allegations contained in its February 5, 2002 Order for Hearing and all claims or allegations that could be made by the Commissioner regarding the Respondents' conduct or their agents and accounts' conduct, with the exception of Best Buy Companies, in Minnesota prior to the date of entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents shall reimburse the Minnesota Department of Commerce in an amount agreed by the Respondents and the Commissioner. (\$2,800,000)

This Order shall be effective upon signature of the Commissioner.

Dated: \_\_\_\_\_

\_\_\_\_\_  
GLENN WILSON  
Commissioner  
Department of Commerce



DRAFT -- FEBUARY 24, 2003 -- 10: 43 AM

IN9908353

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of American Bankers Insurance  
Company of Florida and American Bankers Life  
Assurance Company of Florida

**CONSENT ORDER**

TO: American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, by their counsel, Timothy R. Thornton, Esq., Briggs & Morgan, P.A., 2400 IDS Center, 80 South 8th St., Minneapolis, MN 55402.

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2. Respondents acknowledges that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondents waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.

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IT IS FURTHER ORDERED, that nothing in this Order prevents the Commissioner from seeking any remedy available by law for any violation, including any violation of this order, occurring after the date of the entry of this Order.

IT IS FURTHER ORDERED, that Respondents and American Reliable Insurance Company shall within thirty days from the date of entry of this Order by the Commissioner of Commerce, prospectively decrease rates for all AD&D insurance that are currently in force, by forty percent (40%) and for all credit insurance currently in force by thirty percent (30%). These rate reductions shall be applied to all filed and approved rates in effect as of December 31, 2001.

**IT IS FURTHER ORDERED**, that this Consent Order resolves all of the Department's allegations contained in its February 5, 2002 Order for Hearing and all claims or allegations that could be made by the Commissioner regarding the Respondents' conduct or their agents and accounts' conduct, with the exception of Best Buy Companies, in Minnesota prior to the date of entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents shall reimburse the Minnesota Department of Commerce in an amount agreed by the Respondents and the Commissioner. (\$1,800,000)

This Order shall be effective upon signature of the Commissioner.

Dated: \_\_\_\_\_

\_\_\_\_\_  
GLENN WILSON  
Commissioner  
Department of Commerce



IN9908353

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
COMMISSIONER OF COMMERCE

In the Matter of American Bankers Insurance  
Company of Florida and American Bankers Life  
Assurance Company of Florida

**CONSENT ORDER**

TO: American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, by their counsel, Timothy R. Thornton, Esq., Briggs & Morgan, P.A., 2400 IDS Center, 80 South 8th St., Minneapolis, MN 55402.

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2. Respondents acknowledge that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and Respondents waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.
3. Respondents, without admitting the allegations in the February 5, 2002 Order for Hearing, have agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2000) and Minn. R. 1400.5900 (2001).
4. The following Order is in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED,** that Respondents American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida shall pay to the Minnesota Department of Commerce a civil penalty in the amount of \$100,000 each.

**IT IS FURTHER ORDERED** that Respondents shall voluntarily withdraw from offering or issuing any insurance products within the State of Minnesota for a period of five years from the date of entry of this Order by the Commissioner of Commerce. The Respondents shall agree not to cede accidental death and dismemberment (AD&D) or credit insurance products to affiliates or nonaffiliated third parties for this period. Non-ADD or credit insurance products may be ceded to nonaffiliated third parties. Respondents shall have 45 (forty-five) days from the date of entry of this Order to notify all agents and accounts that they are no longer accepting new enrollees or applicants for the insurance products covered by this Consent Order. After a period of 20 months from the date of entry of this order, Respondents may petition the Commissioner to recommence the offering and issuing of filed and approved insurance products in the State.

**IT IS FURTHER ORDERED,** that nothing in this Order prevents the Commissioner from seeking any remedy available by law for any violation, including any violation of this order, occurring after the date of the entry of this Order.

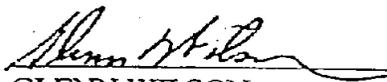
**IT IS FURTHER ORDERED,** that Respondents and American Reliable Insurance Company shall within thirty days from the date of entry of this Order by the Commissioner of Commerce, prospectively decrease rates for all AD&D insurance that are currently in force, by forty percent (40%) and for all credit insurance currently in force by thirty percent (30%). These rate reductions shall be applied to all filed and approved rates in effect as of December 31, 2001.

**IT IS FURTHER ORDERED**, that this Consent Order resolves all of the Department's allegations contained in its February 5, 2002 Order for Hearing and all claims or allegations that could be made by the Commissioner regarding the Respondents' conduct or their agents and accounts' conduct in Minnesota prior to the date of entry of this Order.

**IT IS FURTHER ORDERED**, that Respondents shall reimburse the Minnesota Department of Commerce in connection with these proceedings.

This Order shall be effective upon signature of the Commissioner.

Dated: 2-27-03

  
\_\_\_\_\_  
GLENN WILSON  
Commissioner  
Department of Commerce

CONSENT TO ENTRY OF ORDER

The undersigned representative, on behalf of American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, states that he has read this Consent Order, that he knows and fully understands its contents and effect; that he has been advised of his right to a hearing; and that he has been represented by legal counsel in this matter. The undersigned consents to entry of this Order by the Commissioner of Commerce. It is further understood that this Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

AMERICAN BANKERS INSURANCE  
COMPANY OF FLORIDA AND AMERICAN  
BANKERS LIFE ASSURANCE COMPANY OF  
FLORIDA

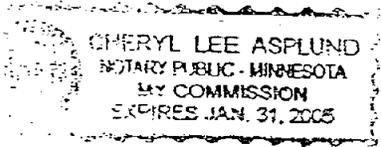
BY: [Signature]

ITS: General Counsel

STATE OF Minnesota )  
COUNTY OF Ramsey ) ss:

Acknowledged before me this 24 day of February, 2003, by personally appearing before me and identifying him/herself as Jerome A. Atkinson

[Signature]  
Notary Public



Minnesota Statutes 2002, Table of Chapters

Table of contents for Chapter 16A

**16A.151 Proceeds of litigation or settlement.**

Subdivision 1. **State funds; general fund.** (a) This subdivision applies, notwithstanding any law to the contrary, except as provided in subdivision 2.

(b) A state official may not commence, pursue, or settle litigation, or settle a matter that could have resulted in litigation, in a manner that would result in money being distributed to a person or entity other than the state.

(c) Money recovered by a state official in litigation or in settlement of a matter that could have resulted in litigation is state money and must be deposited in the general fund.

Subd. 2. **Exceptions.** (a) If a state official litigates or settles a matter on behalf of specific injured persons or entities, this section does not prohibit distribution of money to the specific injured persons or entities on whose behalf the litigation or settlement efforts were initiated. If money recovered on behalf of injured persons or entities cannot reasonably be distributed to those persons or entities because they cannot readily be located or identified or because the cost of distributing the money would outweigh the benefit to the persons or entities, the money must be paid into the general fund.

(b) Money recovered on behalf of a fund in the state treasury other than the general fund may be deposited in that fund.

(c) This section does not prohibit a state official from distributing money to a person or entity other than the state in litigation or potential litigation in which the state is a defendant or potential defendant.

Subd. 3. **Definitions.** For purposes of this section:

(1) "litigation" includes civil, criminal, and administrative actions;

(2) "money recovered" includes actual damages, punitive or exemplary damages, statutory damages, and civil and criminal penalties; and

(3) "state official" means the attorney general, another constitutional officer, an agency, or an agency employee, acting in official capacity.

Subd. 4. **Supersede.** This section supersedes section 8.31, subdivision 2c.

Subd. 5. **Expiration.** This section expires June 30, 2004.

HIST: 1Sp2001 c 10 art 2 s 23; 2002 c 379 art 1 s 7,8



May 16, 2003

James Nobles, Legislative Auditor  
Office of the Legislative Auditor  
State of Minnesota  
Room 140 Centennial Building  
658 Cedar Street  
St. Paul, MN 55155-1603

Dear Mr. Nobles:

Thank you for the opportunity to review your report concerning the settlement of the American Bankers case.

I am confident I did the right thing for the consumers of Minnesota, and your report confirms this. As you point out, the critic's allegations are based on circumstantial evidence and inferences. As you state "we sought more substantial evidence, but found none."

Attached please find my attorney Mr. Kelly's more detailed response to your report. I wish to commend you and your staff who have obviously done a tremendous amount of work and have conducted a thorough investigation; and, as a result of that investigation have prepared a balanced report of the facts surrounding the American Bankers Insurance case. Thank you for your efforts.

Sincerely,

*/s/ Glenn Wilson*

Glenn Wilson  
COMMISSIONER

Attachment

**KELLY & BERENS, P.A.**

ATTORNEYS AT LAW  
3720 IDS CENTER  
80 SOUTH EIGHTH STREET  
MINNEAPOLIS, MINNESOTA 55402

May 16, 2003

TIMOTHY D. KELLY  
tkelly@kellyandberens.com

**Via Messenger**

TELEPHONE  
(612) 349-6171

FAX  
(612) 349-6416

Mr. James R. Nobles  
Legislative Auditor  
Room 140 Centennial Building  
658 Cedar Street  
St. Paul, MN 55155-1603

Re: May 12, 2003 Draft Report ("Draft") on Special  
Review per March 14, 2003 letter  
Our File No. 6171.01

Dear Legislative Auditor Nobles:

Acting Commissioner Wilson asked me to respond on his behalf to your May 12, 2003 letter with the enclosed Draft. While we have comments on and objections to parts of the Draft we commend you and your staff for a thorough investigation and the preparation of a comprehensive, balanced and professional report. In some respects, moreover, we agree with your criticisms. For example, the failure to give proper notice to the NAIC of the settlement was a mistake.

Importantly, we agree with your conclusion that the charges of political influence are unsubstantiated.

On the other hand, we do not think the Draft fully explains several key points: First, why Commissioner Wilson began the 2003 negotiations by seeking \$2 million, not the \$3.5 million that had been discussed in August 2002. The Commissioner testified that he had been briefed about the reverses suffered by the State's lawyers in the interim in both the court case and the administrative case. He also pointed out that if there had been a charitable contribution the charitable payment would have been fully tax deductible by the company and the net impact on the company would have been slightly less than \$2 million. Given the Attorney General's role in advocating the charitable settlement to Commissioner Wilson, the Attorney General's later criticism of the \$2 million settlement appears less than genuine.

**KELLY & BERENS, P.A.**  
ATTORNEYS AT LAW

Mr. James R. Nobles  
May 16, 2003  
Page 2

It is undisputed that in late 2002, American Bankers pursued a very successful litigation strategy. The litigation posture of the State was significantly weaker in early 2003 than it had been in August 2002. Both sides recognized this change in negotiating leverage. Indeed, in 2003, the State faced a genuine risk that the Ramsey County District Court would bar the entire prosecution of American Bankers. The Draft does not reflect these important facts and does not even disclose that the Court had entered an unusual and onerous discovery order against the State that, absent a settlement in early 2003, would have had to be fulfilled by the Department.

Commissioner Wilson learned about these litigation problems and risks and considered them in his decision making, particularly the potential of years of litigation before a resolution could be anticipated. The Draft, however, reads like he rather gratuitously failed to ask American Bankers for more than \$2 million. This is simply not true. In fact, his proposal was a considered decision reflecting the changed circumstances that existed in 2003.

Second, the Draft fails to state that whenever American Bankers discussed a \$3.5 million payment with the State it was always subject to conditions that were unacceptable to the State. Instead, the Draft implies that at some point American Bankers offered \$3.5 million unconditionally.

Third, the American Banker's settlement was handled in exactly the same manner as other significant achievements by the Department under Commissioner Wilson. The fact is Commissioner Wilson has not initiated any press conferences. It is simply not his personal style. Although it is certainly true that many public officials frequently seek media attention for their actions, a lack of such self-aggrandizement should be applauded, not questioned.

Perhaps the best way to address our concerns is page by page. We first comment as to the Draft's statements about Commissioner Wilson, pp 2-9 herein and then comment as to the Draft's statements about Attorney General Hatch, pp. 9-10 herein.

**KELLY & BERENS, P.A.**  
ATTORNEYS AT LAW

Mr. James R. Nobles  
May 16, 2003  
Page 3

**COMMENTS AS TO COMMISSIONER WILSON**

Page 1: The charge given to the Legislative Auditor by the Governor and the Legislature is set forth in your cover letter of May 21, namely, (a) in negotiating a settlement with American Bankers Insurance Company in 2003, were officials at the Department influenced by the company's campaign contribution to the Republican Party, and (b) in working to achieve a settlement with American Bankers did officials at the Department and the Office of the Attorney General act appropriately and in compliance with the law.

In the summary of your report which appears at page 1 and which, unfortunately, may be the only part of the report that many people will read, there is no clear answer to the questions posed. A fair reading of the substance of the report would lead to the answer that the Department was neither influenced by the campaign contribution nor did it act inappropriately or without compliance with the law. That is consistent with all the evidence of which we are aware. A clear statement to that effect would help the public in understanding the matters in your report.

The phrase "charges were dropped," used on page 1 and in parts of the Draft, has a pejorative connotation which we submit is unintended. This settlement was a compromise and claims asserted by American Bankers and asserted by the State were both dismissed.

The statement that the terms offered to American Bankers in early 2003 by Commissioner Wilson were "more favorable to the company than any terms previously offered by the state" is incomplete; the final report should add that by this point the State had suffered setbacks in Court and in the administrative process that it had not suffered when the State earlier set forth terms.

The statement that the "new administration. . .never tried to obtain more than \$2 million from American Bankers and accommodated the company without attempting to obtain concessions in return" is inaccurate. When Commissioner Wilson arrived on the scene the principal stumbling block to a deal with American Bankers was the amount, if any, of public disclosure of a settlement: American Bankers wanted secrecy (something a

**KELLY & BERENS, P.A.**  
ATTORNEYS AT LAW

Mr. James R. Nobles  
May 16, 2003  
Page 4

charitable contribution may have given it) and Commissioner Wilson wanted disclosure to the NAIC so other states would know what happened. While the parties did not negotiate a trade of the American Banker's secrecy condition in return for the Commissioner's desired \$2 million payment, the practical effect of the acceptance of that amount by American Bankers conditioned upon NAIC disclosure was that American Bankers made a concession.

Indeed, a key focus of the Draft is on the dollars American Bankers was to pay, with little attention to the NAIC notice, something that was very important to Commissioner Wilson from a regulatory standpoint.

Page 6: The Draft states that in May 2002 American Bankers "offer[ed] a maximum payment to the state of \$3 million." We believe that this "offer" was subject to conditions, including secrecy, that made it unacceptable to the state. The Draft reads like American Bankers offered an *unconditional* \$3 million, but we do not think even the State officials involved ever contended that and we also believe that both Mr. Bassett and Mr. Thornton testified they did not recall this alleged offer.

The Draft states that on May 23, 2002 Mr. Tostengard wrote American Bankers counsel Tim Thornton "accepting terms *reportedly* presented to Mr. Warch the day before in a telephone conversation." We think the italicized word is a typographical error and should be "purportedly."

In any event, this sentence reads like a contract had been formed - an offer was made and that offer was accepted. The Draft fails to explain to the reader that even Mr. Tostengard did not press the matter after American Bankers backed away and, instead, apparently admitted that whatever else happened between Mr. Warch and Mr. Thornton on the telephone, the State did not have a legally binding contract at \$3.5 million with the right to publicize the deal. We understand also that Mr. Thornton insisted that no such contract was formed.

Indeed, the Draft does not explain why on page 7 American Bankers is suddenly making a new offer at the end of June that includes a novel secrecy provision. It would be appropriate to explain that in neither May nor June did the parties come to an agreement on the essential terms of a settlement.

**KELLY & BERENS, P.A.**  
ATTORNEYS AT LAW

Mr. James R. Nobles  
May 16, 2003  
Page 5

Page 7: This page discusses the litigation events in the fall of 2002 but leaves out the orders of the Ramsey County District Court. Commissioner Bernstein and his staff wanted the administrative proceeding to move forward and the district court action to be dismissed or at least stayed while that happened. This, of course, is commonplace and involves a legal doctrine called "primary jurisdiction" which essentially provides that the courts let administrative agencies that are knowledgeable about particular matters perform their legally assigned tasks before the courts weigh in.

But the exact opposite happened - the Ramsey County District Court stayed the administrative proceeding while it sorted out which of the Commissioner's claims, if any, were outside the multistate consent decree and the "back-end" provision. Then the Court entered its onerous discovery order against the State, a most unusual development. And the district judge expressed displeasure at the State, something that is also unusual. The point here is that the litigation leverage had changed markedly and both sides knew it. The Draft simply does not convey this point at all. To the contrary, it implies there was no reason for Commissioner Wilson to give any "concessions" to American Bankers.

Page 8: Here the Draft fails to disclose that when the Attorney General appeared before the Senate Committee he presented a timeline chart that showed American Bankers paying \$200,000 in the settlement. While that number was an accurate recitation of the face of the consent order, he knew that American Bankers had actually paid \$2 million and the penalty was reported to NAIC as \$2 million so his timeline was seriously misleading. We sympathize with the committee members who must have been befuddled by the different stories people were telling about the settlement.

We think this page needs to state clearly that American Bankers agreed to pay \$2 million and the Attorney General knew that prior to the consent order. It should also state that he did not object to or otherwise try to block the deal.

**KELLY & BERENS, P.A.**  
ATTORNEYS AT LAW

Mr. James R. Nobles  
May 16, 2003  
Page 6

Page 10: It is not fair for the Draft to state: "we think state officials had good reason to believe that on August 7, 2002, American Bankers Insurance was willing to pay the state of Minnesota \$3 million to settle its regulatory issues. . ." We think the testimony was unanimous that, at best, on August 7, 2002, the State's lawyers and executives believed that if they could negotiate out the "public disclosure" issue they could receive as much as \$3.5 million from the company. Everyone knew that American Bankers was using \$3.5 million as a negotiating carrot to get its way on secrecy and thereby to avoid other states "piling on." The Draft simply does not convey this crucial point and leads a reader to believe it was not present.

Page 11: The statement that the Attorney General believed American Bankers "should have been held to the terms that were rejected on August 1, 2002" is unfair. Not even Attorney General Hatch, to our knowledge, has ever contended that he told Commissioner Wilson, in the January 8 meeting or otherwise, that Mr. Wilson should hold American Bankers to the August 7, 2002 terms. Moreover, by the start of 2003 the State had suffered serious litigation reverses and no one of Mr. Hatch's sophistication could seriously have believed that a deal that was not completed in August could be completed in January or February.

Page 12: We have no doubt that once Governor Ventura announced he was not running for re-election in 2002 American Bankers rejoiced and decided to try to negotiate with a successor to Commissioner Bernstein and "run out the clock," but that was not its sole strategy. American Bankers also proceeded with an aggressive litigation strategy that was wildly successful. The Draft does not make this two pronged approach clear so it fails to disclose the true situation that confronted him when Commissioner Wilson arrived on the scene in 2003.

Page 13-14: Lawyers for a party are ethically prohibited from having contact with an opposing party on a matter in issue if that opposing party is represented by counsel. The Draft reads like the Attorney General had direct contact with Mr. Bassett on January 6 in violation of this rule. A lawyer who reads this report will consider what he did as improper. Of course Mr. Thornton may have been present or may have permitted the contact, but that is not clear from the Draft.

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We do believe, however, that the Attorney General is trying to have his cake and eat it too on the issue of efforts to settle the case. On the one hand he told the Senate Committee that his office does not make substantive decisions for his client state officials and on the other hand it is clear as a bell that on the evening of January 6 he was trying to settle the American Bankers case without notice to or permission from the Commissioner of Commerce.

Page 14: You may want to consider stating how the Hatch-Wilson meeting on January 8 arose, as you do later on p. 27. Perhaps you should refer the reader to the detail on p. 27. We take it that both sides testified that Hatch invited Wilson to come to his office with no announcement as to the agenda.

Finally, we think it is fair that you make clear that Kris Eiden is not career-staff. It should be explained that she came to the Attorney General's office when Mr. Hatch did, after serving as his law partner. I personally respect Deputy Attorney General Eiden, but a reader should not assume that she is an independent professional without long-time ties to the Attorney General.

Page 17: While it is true that the new administration never sought more than \$2 million from American Bankers it is not true that Commissioner Wilson "accommodated the company without attempting to obtain concessions in return." Indeed, this sentence misses the point of what was keeping the parties apart when Commissioner Wilson came on the scene. At that point a seven figure settlement was apparently available if the parties could come together on the secrecy/public disclosure issue.

As a practical matter, the "concession" Commissioner Wilson received in return for lowering the dollar amount was the right, which he insisted upon, to disclose the settlement to the NAIC, something Mr. Thornton's June 20, 2002 offer would have prohibited.

In fairness to American Bankers, it appears the company was also attracted to Commissioner Wilson's statement that he did not plan a self-congratulatory press conference, something this writer thinks is commendable (but unusual) in a public official and something Attorney General Hatch either cannot fathom or

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believes could only happen if a public official was trying to hide something.

The Draft suggests that the failure to hold a press conference following the settlement or to give greater publicity to the settlement was an accommodation to American Bankers. The record contradicts that inference. The report should note that other than the press conference announcing his appointment, Commissioner Wilson has had no press conferences at all since January 6, 2003, the day he took office. The Department has settled any number of other matters, made other material decisions, and done other acts which others may have believed were worthy of press activity, but Commissioner Wilson has determined that press conferences and the press releases ballyhooing these settlements are inappropriate. The Draft's criticism in this regard is a criticism of Commissioner Wilson's management style.

At a minimum your report should state that the way the Department under Commissioner Wilson handled the American Bankers Insurance publicity in no way differed from any other settlement or matter of material importance the Department has handled since Commissioner Wilson became Acting Commissioner.

We accept your criticism of the way the settlement was reported to the National Association of Insurance Commissioners ("NAIC"). The reporting problem existed for a number of years during the prior administration and, once discovered, was promptly corrected at Commissioner Wilson's insistence. In that connection, on page 24 of your Draft, you note that the Department reported to the NAIC that there were \$900,000 in costs and \$100,000 in penalties. It may not be clear to all who read the report that these amounts were for *each* of two American Banker related companies and that the total reported, and clearly reported, was \$2 million in fines, penalties, and restitution. By any standard, this was a very significant penalty.

Page 18: The word "seeding" in the quote from Deputy Commissioner Nelson should be "ceding." An insurer cedes risk (and premium) to another insurer to reduce its monetary exposure on a risk it has underwritten.

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Page 22: It is not accurate to say that the State and American Bankers had agreed "in principle" to settle for \$3.5 million in August 2002. An agreement in principle is one where the parties have specifically or generally agreed on all essential terms and will then proceed to nail down the details, generally in a definitive document. Here an essential term - secrecy or public disclosure - had not been agreed upon and the parties had fundamentally different positions on that issue so there was no agreement in principle.

If I agree to sell you my business for cash and a secured note and we agree on the price and the terms, but we disagree on what security shall support the note we do not have an agreement in principle. If we agree, however, that the security will be one of three specific items (but leave for later agreement as to which one) we have an agreement in principle although we do not yet have a legally binding contract. In August 2002 the State and American Bankers were in the first situation, not the second.

This is an important point. This writer's view is that in February 2003 Commissioner Wilson and American Bankers did have an agreement in principle before the consent order was signed because they had agreed on all essential terms, but at no point prior to that point had any such agreement ever been reached between the State and American Bankers. Indeed, I think one of the reasons for all the confusion here is that some of the players - Commissioner Bernstein comes to mind - do not understand this legal point. (I thought Gary LaVasseur touched on it in his testimony and explained it well.)

We suggest that you state that in August 2002 the parties had reached oral agreement on all terms except the secrecy/public disclosure issue and were hopeful when they met on August 7 to resolve that issue but by then American Bankers declined to negotiate further. It is simply unfair to Commissioner Wilson for you to find even a preliminary agreement arose in August and, inferentially, that he abandoned that deal in February with no concessions from the company.

Page 23-24: We think these pages, perhaps inadvertently, suggest wrongful conduct on the part of the Commissioner Wilson when none occurred. He inherited a defective NAIC reporting system at the Department from Commissioner Bernstein, but both

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commissioners had no reason to know the Minnesota reporting practices were mistaken. Even with the erroneous reporting the key interest that Commissioner Wilson sought to protect was protected because one of the NAIC websites had the settlement; other insurance commissioners and staff could see from one of the NAIC sites what had happened to American Bankers in Minnesota.

We think you need to clarify that when Commissioner Wilson agreed to the consent order he had reason to believe, based on what staff had told him, that a report to the NAIC would be promptly and properly filed. No one would expect this administrative task to be performed by the Commissioner (or by Deputy Nelson) and neither knew or had any reason to believe the Department's reporting system was not working properly.

We certainly agree that this mistake makes the Commissioner look bad but we think you need to make a clear finding that it was an innocent administrative error, not something he orchestrated or could even expect.

**COMMENTS AS TO ATTORNEY GENERAL HATCH**

Page 27: It is not our place to comment on your proposed finding that Attorney General Hatch did not violate Minn. Stat. § 16A.151 and we will not do so here or elsewhere. But we do ask that you make a specific finding that the Attorney General should have disclosed to Commissioner Wilson on January 8 that the American Bankers proposal he contends Mr. Jerich was setting forth was known by the Attorney General to be "not legally permissible."

When the Attorney General and Commissioner Wilson first met on January 8 both knew that the Commissioner was the client and the Attorney General was the attorney in an attorney-client relationship. That is a fiduciary relationship where the lawyer has a duty to make full disclosure of all relevant information to his client about a possible course of action that the client may take. When a party opponent makes a settlement offer the attorney is ethically required to convey it to his client and to provide appropriate information and advice.

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It was not merely "inconsiderate" for the Attorney General to fail to disclose to Commissioner Wilson, a non-lawyer, that the proposal was illegal, it was improper. Of all the curiosities in this somewhat bizarre set of events this one is the most baffling. Why would a lawyer ever tell his client about a settlement offer on a litigation matter and encourage acceptance of the proposal without explaining that the lawyer knows the deal is legally barred by a statute?

More pointedly, why did the Attorney General decide to alert Commissioner Wilson to the political risks of dealing with American Bankers but not warn him that the deal the company was proposing was illegal? There are no sensible answers to these questions.

In closing, we appreciate your consideration of these comments and all the efforts you and your staff have invested in the special review. If you have questions, please feel free to call Commissioner Wilson directly.

Very truly yours,

*/s/ Tim Kelly*

Timothy D. Kelly

cc: Commissioner Glenn Wilson



# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

**MIKE HATCH**  
ATTORNEY GENERAL

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May 19, 2003

The Honorable James R. Nobles  
Legislative Auditor  
Office of the Legislative Auditor  
Room 140-Centennial Building  
658 Cedar Street  
St. Paul, MN 55155-1603

Dear Mr. Nobles:

I thank you for your letter dated May 12, 2002 and the draft reporting concerning American Bankers Insurance Company of Florida and its affiliates ("American Bankers.") I would like to offer two comments regarding the draft report.

First, I respect the fact that the Office of the Legislative Auditor is not a judicial body. Even courts of law find it difficult to resolve conflicting testimony, and I respect your office's belief that circumstantial evidence does not have the same clarity as direct testimony. Nonetheless, circumstantial evidence can be very persuasive. If I leave my daughter in the kitchen with a plate of cookies, and return to the kitchen to find an empty plate and crumbs on her dress, I can form an opinion, based on circumstantial evidence, that she ate the cookies. I don't have to see her eat the cookies, nor does she have to admit that she ate the cookies, in order for me to conclude that she did so.

The circumstantial facts contained in the draft audit report reaffirm my concerns about the collusive links between the \$15,000 political contribution, the subsequent secret settlement negotiations, and the resulting settlement terms, which were substantially more favorable to the company than the settlement proposed before the political contributions were made. The audit report confirms the following facts:

**Fact Number One.** American Bankers and the State of Minnesota reached an "agreement in principle" in August, 2002 to settle the matter on the following terms:

1. \$3.5 million paid to the State of Minnesota;
2. The two named defendants, American Bankers Insurance Company of Florida and American Bankers Life Assurance Company of Florida, must cease and desist from selling insurance in Minnesota for five years;

3. All affiliates of the two named defendants must cease and desist from selling accidental death and dismemberment and credit insurance in Minnesota for five years;
4. A prospective reduction in rates to current policyholders;
5. A written press release about the settlement.

**Fact Number Two.** It was very important to American Bankers that the settlement agreement be kept as secret as possible. Under the law, such orders are supposed to be public and filed with the National Association of Insurance Commissioners.

**Fact Number Three.** In August of 2002 American Bankers contacted Tim Commers, the Pawlenty campaign manager, and Vic Moore, the Moe campaign manager, to offer to contribute at least \$10,000 to each campaign.

**Fact Number Four.** American Bankers made political contributions to ensure that Tim Penny was not elected governor, that Jim Bernstein was not retained as commerce commissioner, and to get a more favorable settlement from a new commissioner. American Bankers admits that it made the political contributions “to influence the outcome of the settlement.”

**Fact Number Five.** American Bankers, through Ron Jerich, frequently communicated with Mr. Commers, the Pawlenty campaign manager, during the campaign, which communications included American Bankers and its political contribution.

**Fact Number Six.** American Bankers, through Ron Jerich, communicated with Mr. Commers while he was a member of the executive office at the Department of Commerce. Mr. Jerich states that he contacted Mr. Commers to facilitate settlement discussions between American Bankers and the Commerce Department.

**Fact Number Seven.** During Commissioner Bernstein’s tenure, from February 5, 2002 to January 6, 2003, all negotiations concerning a possible settlement of the American Bankers case were made through and with the extensive involvement of the Attorney General’s Office.

**Fact Number Eight.** During Commissioner Wilson’s tenure, after January 8, 2003 until the settlement on February 24, 2003, the Attorney General’s Office was excluded from settlement negotiations.

**Fact Number Nine.** The final settlement was very favorable to American Bankers in that:

1. The settlement document only makes reference to a payment to the State by the named defendants of \$200,000, together with an unidentified “reimbursement” to the Department of Commerce;

2. The monetary portion of the settlement was \$1.5 million less than the August, 2002 terms, and the Commissioner admits that he never even asked American Bankers to pay more than \$2 million;
3. The settlement allows both named defendants to reapply to do business in Minnesota after 20 months, rather than flatly barring them for five years;
4. The settlement allows American Bankers to continue to sell all types of insurance in Minnesota through its affiliates, including American Reliable Insurance Company. Thus, the company for all practical purposes is not barred from selling insurance in Minnesota at all;
5. Until criticized by Commissioner Bernstein, the settlement agreement was kept secret by the Commerce Department;
6. Until criticized by Commissioner Bernstein, the settlement agreement was not reported, as required by Minnesota law, to the National Association of Insurance Commissioners ("NAIC").

While the above facts may be categorized as circumstantial evidence, it is clear that there is a relationship between the contribution and the settlement if one simply connects the dots.

The second comment relates to the statement in chapter four of the report that my arrangement of the January 8, 2003 meeting was troubling.

The time, venue and content of the meeting with American Bankers' representatives on January 8, 2003 was unusual. The ordinary course of business would be, as the draft report indicates, to conduct such negotiations through the attorneys. This case was highly unusual, however, and I believed that corrupt activity was about to undermine the litigation. Keep in mind the facts as I knew them on January 8, 2003:

- That American Bankers is an insurance company with a checkered past in Minnesota and throughout the country.
- That American Bankers had precipitously backed out of an agreement to settle the litigation on August 7, 2002.
- Thereafter, American Bankers made extraordinarily large campaign contributions to two of three gubernatorial candidates with the obvious purpose to influence the settlement.
- That the political contributions were corporate in nature, illegal under Minnesota law, and were surreptitiously laundered through the two national political parties.

In short, I was very concerned that a laundered corporate contribution from a disreputable insurance company could corrupt the litigation process.

As noted in the draft report, the normal course of business would have been to simply ask Mr. Basset to present the offer in a letter. Under these circumstances I did not believe it was prudent to simply wait for a written letter. There were too many people that had been involved

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in the political contribution process, and too many possibilities for someone to disrupt the written offer so that a “better settlement” could be obtained directly from the Commerce Department officials. I had already experienced one “surprise” in terms of an offer that was made, in writing, but then subsequently withdrawn. Because of the surreptitious corporate contributions being laundered through the national political parties in an effort to influence the litigation process, it was my judgment that time was of the essence in getting an offer made to the new commissioner, and to make the new commissioner aware of the political activity, before any political activity disrupted the process.

Accordingly, on January 8, 2003 I met with Commissioner Wilson. Both Chief Deputy Eiden and I made him aware, in no uncertain terms, about the Ebensteiner letter and the litigation involving American Bankers Insurance Company. I agree with the observation in the draft report that the meeting must have been extraordinarily uncomfortable for Commissioner Wilson, coming only on his second day in office at a meeting that was originally supposed to be a “meet and greet.” My obligation to the State of Minnesota is not to make people comfortable. It is to safeguard the public’s interest. In a situation where a disreputable company makes highly questionable political contributions for what may be corrupt purposes, comfort was not high on my priority list.

Very truly yours,

*/s/ Mike Hatch*

MIKE HATCH  
Attorney General  
State of Minnesota

MAH/rlh

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