



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

Financial-Related Audit

Department of Commerce
July 1, 1999, through June 30, 2002



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.

Consistent with OLA's mission, the Financial Audit Division works to:

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

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OFFICE OF THE LEGISLATIVE AUDITOR

State of Minnesota • James Nobles, Legislative Auditor

Representative Tim Wilkin, Chair
Legislative Audit Commission

Members of the Legislative Audit Commission

Mr. Glenn Wilson, Commissioner
Department of Commerce

We have audited selected financial activities of the Department of Commerce for the period from July 1, 1999, through June 30, 2002. Our audit scope included financial management, telephone and energy assessments, payroll, rent, professional contract services expenditures, and insurance settlement agreements. We also examined certain insurance settlement agreements entered into from May 2002 through January 2003. The audit objectives and conclusions are highlighted in the individual chapters of this report. We emphasize that this has not been a comprehensive audit of the Department of Commerce's financial activities.

We conducted our audit in accordance with *Government Auditing Standards*, as issued by the Comptroller General of the United States. Those standards require that we obtain an understanding of management controls relevant to the audit. The standards require that we design the audit to provide reasonable assurance that the Department of Commerce complied with provisions of laws, regulations, contracts, and grants that are significant to the audit. Management of the department is responsible for establishing and maintaining the internal control structure and complying with applicable laws, regulations, contracts, and grants.

This report is intended for the information of the Legislative Audit Commission and the management of the Department of Commerce. This restriction is not intended to limit the distribution of this report, which was released as a public document on August 20, 2003.

/s/ James R. Nobles

James R. Nobles
Legislative Auditor

/s/ Claudia J. Gudvangen

Claudia J. Gudvangen, CPA
Deputy Legislative Auditor

End of Fieldwork: May 16, 2003

Report Signed On: August 15, 2003

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Audit Participation

The following members of the Office of the Legislative Auditor prepared the report:

Claudia Gudvangen, CPA	Deputy Legislative Auditor
Brad White, CPA, CISA	Audit Manager
Marla Conroy, CPA, CISA	Director of Investigations
Scott Tjomsland, CPA	Auditor-In-Charge
Steve Johnson, CPA, CISA	Auditor
John Hakes, CPA	Auditor
Rob Litchke	Auditor

Exit Conference

We discussed the findings and recommendations with the following representatives of the Department of Commerce at an exit conference on July 24, 2003:

Glenn Wilson	Commissioner
Edward Garvey	Deputy Commissioner
Patrick Nelson	Deputy Commissioner
Mike Blacik	Assistant Commissioner
Mim Stohl	Chief Financial Officer
Janet Streff	Manager, Energy Division
Robert Schram	Accounting Officer
Jim Alan	TAM Administrator

Report Summary

Key Findings and Recommendations

- The Department of Commerce accepted questionable terms in an insurance settlement agreement. The final agreement identified the insurance company's required payment as a market conduct examination fee reimbursement. We think it should have been identified as a penalty, fine, or investigative cost. In addition, the final agreement included a "no comment" or confidentiality provision that we think was inappropriate and, potentially, in conflict with state law. (Finding 2, page 17)
- Two appropriation accounts were incorrectly assigned attributes that allowed carry-forward of \$2.6 million from fiscal year 2002 into fiscal year 2003. The department corrected the accounts in April 2003, and moneys were cancelled back to the General Fund. We recommend that the Department of Commerce use more caution and scrutiny when establishing its appropriation accounts. (Finding 1, page 7)

Agency Background

The Department of Commerce regulates utilities, financial institutions, licensed businesses and individuals, retail businesses, and commercial activity. During the period covered by our audit, Department of Commerce commissioners included David Jennings (July 1999 to August 1999), Steve Minn (August 1999 to February 2000), and James Bernstein (February 2000 to January 2003). Governor Tim Pawlenty appointed Glenn Wilson as commissioner effective January 6, 2003.

<p>Financial-Related Audit Reports address internal control weaknesses and noncompliance issues noted during our audits of state departments and agencies. The scope of our audit work at the Department of Commerce included financial management, telephone and energy assessments, payroll, rent, professional contract services expenditures, and insurance settlement agreements. The department's response is included in the report.</p>
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Chapter 1. Introduction

The Department of Commerce's mission is to ensure that commercial, financial, and utility services and transactions are secure, stable, reliable, and equitable. To accomplish its mission, the department regulates utilities, financial institutions, licensed businesses and individuals, retail businesses, and commercial activity. The department is organized into five divisions, each with specific responsibilities:

- The ***Administration Division*** manages financial, human resources, and information systems operations, licenses various businesses and individuals, and provides unclaimed property reclamation services to the people of Minnesota. The division also administers the Petroleum Tank Release Cleanup Fund, or Petrofund, which provides reimbursement to underground petroleum storage tank owners and operators for the cost of investigating and cleaning up petroleum tank releases. Finally, the division administers the Telecommunications Access Minnesota (TAM) program, which funds telecommunications access services for deaf and hearing-impaired citizens.
- The ***Financial Examinations Division*** licenses, examines, and regulates insurance companies, credit unions, state chartered banks, mortgage companies, finance companies, and other financial institutions to ensure that they remain safe and financially solvent.
- The ***Market Assurance Division*** enforces compliance and responsible business conduct by regulated businesses and individuals, evaluates insurance policies and rates to ensure fair rates and compliance with Minnesota law, and registers securities sold in Minnesota.
- The ***Energy & Telecommunications Division*** advocates for the public interest, enforces federal and state energy and telecommunications laws, and promotes access to reliable, reasonably priced, efficient, economically, and technologically sound and environmentally responsible energy and telecommunication services. In addition, the division administers the federal Low Income Home Energy Assistance and Weatherization Assistance programs.
- The ***Weights and Measures Division*** ensures accuracy in all transactions based on weight or measure, ensures consistent quality of petroleum products, and provides precision mass, temperature, density, and volume measurement services to businesses.

Both the Energy & Telecommunications Division and the Weights and Measures Division transferred from the former Department of Public Service to the Department of Commerce. Governor Ventura, by executive order, transferred the Energy & Telecommunications Division effective September 15, 1999. The Legislature transferred the Weights and Measures Division effective July 1, 2001, and abolished the Department of Public Service.

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During the period covered by our audit, Department of Commerce commissioners included David Jennings (July 1999 to August 1999), Steve Minn (August 1999 to February 2000), and James Bernstein (February 2000 to January 2003). Governor Tim Pawlenty appointed Glenn Wilson as commissioner effective January 6, 2003.

Table 1-1 shows the financial activity of the department's governmental and fiduciary funds for fiscal year 2002.

Table 1-1
Financial Activity by Fund
Fiscal Year 2002

	<u>General</u>	<u>Special Revenue</u>	<u>Gift and Agency</u>
Sources of Funds:			
Appropriations	\$27,311,706	\$14,491,245	\$ 0
Reductions ^(Note 1)	(506,000)	(3,200,000)	0
Cancellations ^(Note 2)	(2,662,076)	0	0
Receipts	2,621	83,460,515	1,734,597
Other:			
Transfers In	3,317,959	2,033,592	79,573
Transfers Out ^(Note 3)	(804,270)	(58,334,683)	(777,707)
Balance Forward In	0	14,376,576	6,425
Balance Forward Out ^(Note 2)	(1,249,614)	(13,837,881)	(202,582)
Total Sources	<u>\$25,410,326</u>	<u>\$38,989,364</u>	<u>\$ 840,306</u>
Uses of Funds:			
Payroll	\$19,506,785	\$ 3,058,125	\$ 0
Rent	1,627,385	192,977	0
Professional/Technical Services	82,506	5,748,946	0
Claims	1,922,237	11,873,702	0
Grants	34,239	12,498,996	840,306
Other	2,237,174	5,616,618	0
Total Uses	<u>\$25,410,326</u>	<u>\$38,989,364</u>	<u>\$ 840,306</u>

Note 1: The Legislature mandated reductions in fiscal year 2002 in response to state budget shortfalls. Reductions directed to the department included General Fund appropriation reductions and a \$3.2 million transfer from the department's Real Estate Education, Research, and Recovery Fund to the General Fund.

Note 2: The fiscal year 2002 balances include an adjustment for cancellation of \$2,662,076 that did not occur until April 2003, as reported in Chapter 2, Finding 1. Minnesota Statutes require the department to cancel any fiscal year end balances in excess of \$25,000 to the General Fund for two accounts: the Insurance Examination Revolving Fund and the Telephone Investigation Revolving Fund. Funds were transferred to the General Fund in August 2002; however, the funds were not cancelled but balanced forward into fiscal year 2003 instead. In April 2003, the department corrected the account error, and the excess balance of \$2,662,076 was cancelled.

Note 3: The Legislature transferred certain energy programs, including the federal Low Income Home Energy Assistance Program, from the Department of Economic Security to the Department of Commerce effective October 1, 2001. Under an interagency agreement between the departments for fiscal year 2002, the Department of Economic Security continued to process program expenditures, while the Department of Commerce collected program funds and transferred sufficient amounts to the Department of Economic Security to cover those expenditures. Approximately \$53.5 million of the department's transfers out were to the Department of Economic Security for those energy programs.

Source: Minnesota Accounting and Procurement System, fiscal year 2002, as of February 28, 2003 (as adjusted).

Chapter 2. Financial Management

Chapter Conclusions

Except for two fiscal year 2002 appropriation accounts, the Department of Commerce effectively structured its state treasury accounts to ensure that funds were cancelled or carried-forward in compliance with legal provisions. The two appropriation accounts were incorrectly assigned attributes that allowed carry-forward of \$2.66 million into the next fiscal year rather than cancellation of funds. In April 2003, the department corrected the accounts and the funds were cancelled. For the items tested, the department had the appropriate authority to transfer moneys between funds and accounts and used funds earmarked for specific purposes in compliance with legal provisions.

The Department of Commerce received funding for its operations from various sources. The department received biennial appropriations from the General Fund, Petrofund, and Workers' Compensation Fund. Biennial appropriations generally carry forward moneys from fiscal year to fiscal year within a biennium and cancel at the end of a biennium. The Legislature may earmark portions of biennial appropriations for specific purposes. For example, the department received \$1.4 million as part of its fiscal year 2000 General Fund appropriation to redesign and reengineer its database and a \$15 million General Fund appropriation in fiscal year 2001 for payment to the Minnesota Comprehensive Health Association.

The department also received open appropriations for certain program activities, such as Petrofund claims payments. Open appropriations allow whatever expenditures are needed for the program, with the appropriation equaling the amount actually expended. In addition, the department received several special appropriations for various activities. Examples of special appropriations include certain license fees dedicated to the department's Contractor's Recovery Fund for a program to compensate owners or lessees of residential property defrauded by licensed contractors and surcharges on telephone lines dedicated to fund the TAM program. Special appropriations generally operate as revolving accounts, with unused funds at fiscal year-end carrying forward to the next fiscal year.

The department used separate accounts in the Minnesota Accounting and Procurement System (MAPS) to manage its various appropriations. The department worked with the Department of Finance to establish appropriate MAPS accounts. The accounts were structured to ensure account balances at the end of each fiscal year cancel or carry-forward in compliance with legal provisions. During fiscal year 2002, the department used 48 separate MAPS accounts in eight different funds.

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Table 2-1 shows the department's appropriations and appropriation reductions for fiscal years 2000 through 2002.

Table 2-1
Appropriations and Reductions by Fiscal Year
Fiscal Years 2000 through 2002

	2000	2001 ^(Note 1)	2002 ^(Note 2)
Biennial Appropriations	\$18,827,000	\$32,460,000	\$27,061,000
Appropriation Reductions	<u>(270,000)</u>	<u>(479,419)</u>	<u>(3,706,000)</u>
Net Biennial Appropriations	\$18,557,000	\$31,980,581	\$23,355,000
Open Appropriations	\$21,025,746	\$16,028,871	\$14,741,951

Note 1: Minn. Laws 2000 Ch. 488, Art. 13, Sec. 1 provided a one-time General Fund appropriation of \$15 million to the Department of Commerce in fiscal year 2001 for payment to the Minnesota Comprehensive Health Association to reduce the association's operating deficit.

Note 2: The appropriation balances for fiscal year 2002 included appropriations for the Energy & Telecommunications and Weights and Measures Divisions. Appropriations for those divisions were made to the former Department of Public Service for fiscal years 2000 and 2001.

Source: Minnesota Accounting and Procurement System for fiscal years 2000, 2001, and 2002, as of February 2003.

In addition, a variety of other accounts are used in the accounting system to track nondedicated receipts deposited into the state treasury, as well as dedicated moneys earmarked for a specific purpose.

Audit Objectives and Methodology

The primary objectives of our review of financial management were to answer the following questions:

- Did the department effectively structure its accounts to ensure that funds cancel or carry forward in compliance with legal provisions?
- Did the department have appropriate authority to transfer moneys between funds and accounts?
- Did the department use funds earmarked for specific purposes as intended and in compliance with legal provisions?

To answer these questions, we reviewed the legal authority for each funding source and evaluated the structure of the related MAPS accounting system appropriation accounts. We also reviewed transfers between MAPS accounts for legal authority. Finally, we examined expenditures of earmarked funds to determine if the department properly used those funds.

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Conclusions

Except for two fiscal year 2002 appropriation accounts, the Department of Commerce effectively structured its state treasury accounts to ensure that funds were cancelled or carried-forward in compliance with legal provisions. The two appropriation accounts were incorrectly assigned attributes that allowed carry-forward of \$2.66 million into the next fiscal year rather than cancellation of funds. In April 2003, the department corrected the accounts, and the funds were cancelled. For the items tested, the department had the appropriate authority to transfer moneys between funds and accounts and used funds earmarked for specific purposes in compliance with legal provisions.

1. The department did not correctly structure two appropriation accounts.

The Department of Commerce did not structure two fiscal year 2002 General Fund appropriation accounts to ensure that funds were cancelled in compliance with legal requirements. Instead of structuring the accounts as regular appropriation accounts, which cancel unused funds at the end of the fiscal year, the department structured the accounts as biennial appropriation accounts, which allows carry-forward of unused funds to the next fiscal year. Although the department worked with the Department of Finance to establish and review appropriation account attributes, neither department noticed the error.

The department established the two General Fund appropriation accounts as a mechanism to cancel funds from two of its Special Revenue Fund accounts: the Insurance Examination Revolving Fund and the Telephone Investigation Revolving Fund. Minn. Stat. Sections 60A.03 and 237.30 established each revolving fund and required the department to cancel any fiscal year-end revolving fund balances in excess of \$25,000 to the General Fund. The department transferred the excess balances in each revolving fund account to the corresponding General Fund account in August 2002. However, over \$2.66 million in the two accounts carried forward to fiscal year 2003 instead of canceling to the General Fund. When the error was brought to its attention in April 2003, the department corrected the account attributes, and funds were cancelled.

Recommendation

- *The Department of Commerce should structure and closely monitor its appropriation accounts to ensure that funds cancel or carry forward in compliance with legal provisions.*

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Chapter 3. Energy and Telecommunications Assessments

Chapter Conclusions

The Department of Commerce's internal controls provided reasonable assurance that energy and telecommunication assessment receipts were adequately safeguarded and properly deposited, outstanding accounts receivables were pursued, and assessment financial activities were properly recorded in the accounting records. For the items tested, we found that the department accurately assessed its energy and telecommunications costs to utility companies in compliance with significant finance-related legal provisions.

Minn. Stat. Chapters 216B and 237 authorize the department to recover its costs of performing duties related to energy and telecommunications from the gas, electric, and telephone companies operating in Minnesota. On a semiannual basis, the department assesses the direct costs of specific projects to the companies involved in those projects. On a quarterly basis, the department assesses the indirect costs not associated with specific projects to all regulated gas, electric, and telephone companies. The department assesses the indirect costs based on the proportion of each company's revenue to the total revenues of all regulated companies in its industry. By statute, the department must assess its estimated indirect costs each fiscal year. On the third quarter assessment of the subsequent fiscal year, the department must include an adjustment to compensate for the difference between the estimated indirect costs assessed and the actual indirect costs.

The department partners with the Public Utilities Commission, which also recovers its energy and telecommunications costs from the gas, electric, and telephone companies, to bill and collect energy and telecommunications assessments. The department maintains the assessment computer system, generates assessment invoices that include both department and commission assessments, and maintains accounts receivable records. The commission collects, deposits, and records assessment receipts. The department's energy assessment receipts are deposited into the General Fund as nondedicated receipts. The department's telecommunications assessment receipts are deposited into the department's Telephone Investigation Revolving Fund and available for expenditures related to telecommunications investigations. At the end of each fiscal year, the department must cancel any balance in excess of \$25,000 in the revolving fund to the General Fund.

Table 3-1 shows the department's energy and telecommunications assessment receipts for fiscal years 2000 through 2002.

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Table 3-1
Energy and Telecommunications Assessment Receipts
Fiscal Years 2000 through 2002

	<u>2000</u>	<u>2001</u>	<u>2002</u>
Energy Cost Assessments	\$4,083,254	\$2,735,283	\$3,934,326
Telecommunication Cost Assessments	<u>1,444,813</u>	<u>1,198,239</u>	<u>2,902,408</u>
Total ^(Note 2)	<u>\$5,528,067</u>	<u>\$3,933,522</u>	<u>\$6,836,734</u>

Note: Fluctuations from fiscal years 2000 to 2002 were caused by assessment timing differences and the inclusion of activity from the former Department of Public Service.

Source: Minnesota Accounting and Procurement System for fiscal years 2000, 2001, and 2002, as of February 2003.

Audit Objectives and Methodology

The primary objectives of our review of energy and telecommunications assessments were to answer the following questions:

- Did the department accurately assess its energy and telecommunications costs to utility companies in compliance with significant finance-related legal provisions?
- Did the department properly record energy and telecommunications assessment activity in the accounting records?
- Did the department adequately safeguard and properly deposit energy and telecommunications assessment receipts and adequately pursue outstanding accounts receivable?

To answer these questions, we interviewed department employees to gain an understanding of the assessment process. We reviewed samples of assessment invoices to determine if the department accurately assessed its costs. We also reviewed assessment receipts and the accounting records associated with assessment activity to determine if the department adequately safeguarded and properly deposited the assessment receipts, properly recorded the assessment activity, and adequately pursued outstanding accounts receivable.

Conclusions

The Department of Commerce's internal controls provided reasonable assurance that energy and telecommunication assessment receipts were adequately safeguarded and properly deposited, outstanding accounts receivables were pursued, and assessment financial activities were properly recorded in the accounting records. For the items tested, we found that the department accurately assessed its energy and telecommunications costs to utility companies in compliance with significant finance-related legal provisions.

Chapter 4. Administrative Expenditures

Chapter Conclusions

The Department of Commerce's internal controls provided reasonable assurance that it accurately compensated employees, properly paid vendors for rent and professional/technical services received, periodically verified the existence of recorded fixed assets, and correctly recorded administrative expenditures in the accounting records. In addition, for the items tested, the department processed and paid payroll, professional/technical services, and rent expenditures in compliance with significant finance-related legal provisions. Finally, the department adequately safeguarded its fixed assets.

The department spent a total of \$156.6 million on administrative expenditures during fiscal years 2000, 2001, and 2002. We limited our review of administrative expenditures to payroll, professional/technical services, and rent. We also reviewed the department's fixed asset records and inventory procedures. Table 4-1 shows the administrative expenditures areas examined for fiscal years 2000 through 2002.

Table 4-1
Audited Administrative Expenditures
Fiscal Years 2000 through 2002

	<u>2000</u>	<u>2001</u>	<u>2002</u> (Note 1)
Payroll	\$17,048,730	\$19,318,048	\$22,564,910
Professional/Technical Services	3,097,756	4,090,134	5,831,452
Rent	<u>1,359,681</u>	<u>1,693,381</u>	<u>1,916,145</u>
Total	<u>\$21,506,167</u>	<u>\$25,101,563</u>	<u>\$30,312,507</u>

Note 1: Fiscal year 2002 expenditures include activity for the Weights and Measures Division, which transferred from the former Department of Public Service on July 1, 2001.

Source: Minnesota Accounting and Procurement System for fiscal years 2000, 2001, and 2002, as of February 2003.

Payroll

Payroll represents the largest administrative expenditure for the department. The department staff includes approximately 350 full-time equivalent positions. Department employees participate in the following bargaining units and compensation plans:

- American Federation of State, County, and Municipal Employees
- Minnesota Association of Professional Employees
- Middle Management Association
- Minnesota Government Engineers Council
- Commissioner's Plan
- Managerial Plan

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Professional/Technical Services

The department contracted with several outside vendors for certain professional and technical services. The department's largest professional/technical contract was with Communication Service for the Deaf (CSD) to operate and maintain the relay service for the TAM program. Expenditures to CSD accounted for nearly 70 percent of the department's professional/ technical service expenditures. The department also incurred large professional/technical service expenditures for its database redesign and reengineer project and for financial examinations of Minnesota insurance companies.

Rent

The department moved its main office, which currently houses all but the Weights and Measures Division, to its current location in downtown St. Paul's Golden Rule Building in December 2000. Prior to that, the department's main office was in the Commerce Center in downtown St. Paul. The Energy & Telecommunications Division, after transferring from the former Department of Public Service, remained in its office in downtown St. Paul's Metro Square until moving into the Golden Rule Building. The department maintains a separate office in Roseville for the Weights and Measures Division. In addition, the department maintains satellite offices in Fergus Falls and Rochester for staff in its Financial Examinations Division.

Fixed Assets

The department utilized the state's Fixed Assets Inventory System to monitor and control its equipment and fixed assets that exceed \$2,000 or more in value. A total of over \$1.7 million of fixed assets were acquired during fiscal years 2000, 2001, and 2002. Near the end of fiscal year 2002, the department began conducting a physical inventory at its central office and a number of remote locations.

Audit Objectives and Methodology

The primary objectives of our review of administrative expenditures were to answer the following questions:

- Did the department's internal controls provide reasonable assurance that it accurately compensated employees, properly paid vendors for rent and professional/technical services received, adequately safeguarded fixed assets by periodically verifying the existence of recorded items, and correctly recorded administrative expenditures in the accounting records?
- Did the department process and pay administrative expenditures in compliance with significant finance-related legal provisions?

To answer these questions, we interviewed department employees to gain an understanding of the payroll, human resources, procurement, and disbursement processes. We tested various types of payroll and human resources transactions to determine if the department accurately

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compensated employees in compliance with applicable compensation plans. We also tested professional/technical service expenditures to determine if the department obtained services in accordance with significant finance-related legal provisions and accurately paid for services received. In addition, we reviewed rent expenditures to determine if the department accurately paid rent based on valid lease agreements. Furthermore, we examined administrative expenditures to determine whether costs were charged to appropriate funding sources and were properly recorded. Finally, we reviewed the department's fixed asset records and procedures to determine whether the department periodically verified the existence of recorded assets.

Conclusions

The Department of Commerce's internal controls provided reasonable assurance that it accurately compensated employees, properly paid vendors for rent and professional/technical services received, periodically verified the existence of recorded fixed assets, and correctly recorded administrative expenditures in the accounting records. In addition, for the items tested, the department processed and paid payroll, professional/technical services, and rent expenditures in accordance with significant finance-related legal provisions.

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Chapter 5. Insurance Settlement Agreements

Chapter Conclusions

For the items tested, except for a settlement agreement with United American Insurance Company that contained questionable terms, the Department of Commerce properly prepared negotiated settlement agreements with companies that allegedly violated Minnesota's insurance laws.

In May 2003, the Office of the Legislative Auditor reported on a special review of a settlement between the Department of Commerce and American Bankers Insurance, a Florida company. Because of concerns raised in that report, as part of this audit, we reviewed five other insurance settlement agreements entered into by the department. Former Commissioner James Bernstein signed four of the settlements, totaling \$1,440,000. Substantial parts of the other settlement, with United American Insurance Company for \$100,000, were also negotiated during the Bernstein administration, but the agreement was finalized in January 2003 and signed by Commissioner Glenn Wilson on January 23.¹

The Department of Commerce routinely performs market conduct examinations of insurance companies pursuant to Minn. Stat. Chapter 60A. Minn. Stat. Section 60A.03, Subd. 5 (2002), authorizes the department to assess examination costs to the corporation or insurance plan being reviewed. Moneys collected from the examinations are deposited in the examination revolving fund created in Minn. Stat. Section 60A.03, Subd. 6, and market conduct examination costs are paid from that account. The department's collections for insurance market conduct examinations during fiscal years 2001 to 2003 totaled approximately \$10.7 million.

The department also issues consent orders, pursuant to Minnesota Rules 1400.5900, for negotiated settlements with companies that have allegedly violated Minnesota's insurance laws. The commissioner of Commerce executes the consent orders on behalf of the state, with assistance and advice from the Office of the Attorney General. The consent orders we reviewed generally discussed the alleged violations and contained statements that the company agreed to the consent order, without admitting the allegations. Some orders included a cease and desist order or a provision prohibiting the company from conducting future business in the state for a specified period of time. Any fine or other cost recovery was identified.

In certain cases, in order to reach final settlement, the department characterized the amount assessed as a combination of fines or civil penalties and investigative cost reimbursements. The investigative cost reimbursements differ from the market conduct examination reimbursements assessed pursuant to Minn. Stat. Section 60A.03, Subd. 5. The department collected and deposited a total of \$5.6 million from insurance company penalties, fines, and reimbursements

¹ The settlement was agreed to by the parties and signed by the company on January 21, 2003.

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during the three years ended June 30, 2003, and deposited the collections in the General Fund. For the five settlements we reviewed, 60 percent of the recoveries were identified as fines and 40 percent were identified as investigative cost recoveries.

Minn. Stat. Section 60A.26, Subds. 1 and 2 require reporting of regulatory actions, as follows:

The commissioner of commerce shall notify the insurance departments of all other states whenever, under any law then in effect, the commissioner suspends the right of a foreign or domestic insurer to transact business in this state.

The commissioner of commerce shall report public regulatory actions, investigative information, and complaints to the appropriate reporting system or database of the National Association of Insurance Commissioners.

In recent years, the department has reported the results of investigations and regulatory actions on its web site. In addition, until late 1999, the department reported these actions to the National Association of Insurance Commissioners (NAIC), although department officials told us they were not aware of the 1995 statutory reporting requirement until March 2003. As discussed in our report on American Bankers Insurance, from 1999 to March 2003, the department was not appropriately reporting to the NAIC because of miscommunication within the department.

Audit Objective and Methodology

The primary objective of our review of settlement agreements was to answer the following question:

- Did the department comply with legal requirements when negotiating settlement terms with companies that allegedly violated Minnesota's insurance laws?

To answer that question, we examined five negotiated consent orders executed by the Department of Commerce from May 2002 to January 2003. As appropriate, we reviewed relevant supporting documentation for the agreements. We also discussed the consent orders with staff of the department and, as necessary, with staff of the Office of the Attorney General.

As we were concluding our audit, media reports raised questions about the department's settlement with United American Insurance Company. Since we had a finding in our draft audit report related to that settlement, we decided to expand our review and provide more information on the negotiations that led to the settlement agreement. We required both the department and the Office of the Attorney General to provide us with documents relating to the settlement. However, we did not conduct an "investigation," which means, in part, that we did not take sworn statements from individuals involved in the settlement (as we did with our review of the American Bankers settlement).

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Conclusions

For the items tested, except for a settlement agreement with United American Insurance Company that contained questionable terms, the Department of Commerce properly prepared negotiated settlement agreements with companies that allegedly violated Minnesota's insurance laws.

2. The Department of Commerce accepted questionable terms in an insurance settlement agreement.

We question some terms of the department's settlement with United American Insurance Company. First, the final agreement identified the insurance company's required payment as a "market conduct examination fee reimbursement." We think it should have been identified as a penalty, fine, or investigative cost. In addition, the final agreement included a "no comment" or confidentiality provision that we find objectionable and, potentially, in conflict with the department's statutory reporting requirements.

As noted, we expanded our review of the settlement because of questions in the media, particularly about the respective roles and responsibilities of the Department of Commerce and the Office of the Attorney General in the settlement negotiations. While we take the position that the department is responsible for the final terms of the United American settlement, we decided it would be appropriate to use this report to provide additional information about the negotiation process, including information about the involvement of the Attorney General's Office.² We emphasize, however, that the information is based on documents provided to us by the Department of Commerce and the Attorney General's Office. As noted before, we did not take sworn statements.

The Department of Commerce and Office of the Attorney General each submitted documentation to us, including written statements from officials and staff with their recollections of the negotiation process. They also provided draft and final consent orders and settlement agreements, e-mails, and other correspondence between the agencies. Although we were able to review this material, the Department of Commerce did not waive attorney/client privilege for certain documents and we are, therefore, unable to report in detail on some aspects of the negotiation process.

It is clear from the documents we reviewed that there has been significant conflict between the department and the Attorney General's Office regarding this case for many months, beginning during the Bernstein administration. And the conflict continues, with each agency blaming the

² We were told that Attorney General Mike Hatch was not personally involved in the negotiations. Assistant Attorney General Stephen Warch managed the attorneys assigned to the Department of Commerce during the negotiation process. In a memo to our office, he stated that Mr. Hatch advised him that approximately ten years ago, while in the private practice of law, Mr. Hatch had represented United American. Mr. Warch stated that "Attorney General Hatch was screened and walled-off from any participation in the United American administrative proceedings and litigation, including the negotiation and settlement of them." He also asserted that officials at the Department of Commerce were aware of Mr. Hatch's past legal representation of the company.

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other for the final settlement provisions. Department of Commerce officials and staff are strongly critical of the quality of representation they received from the Attorney General's Office in the United American case. We discuss certain of these concerns as we provide a brief history of the settlement negotiations.

In March 2000, the Department of Commerce, in conjunction with other states, initiated a multi-state market conduct examination of United American Insurance Company, a Texas company. In the fall of 2000, the department also began a separate examination of United American. On July 15, 2002, the Department of Commerce issued a Notice for Hearing against United American. The notice was amended in December 2002. In both the original and amended orders for hearing, the Department of Commerce alleged that the company violated various provisions of Minnesota's insurance laws, primarily relating to the sale of Medicare Supplement insurance policies. On or about August 30, 2002, United American initiated litigation in Texas against Paul Hanson (both individually and in his official capacity as the Department of Commerce's chief examiner in the market conduct examinations). In the Texas action, United American sought recovery of monetary damages allegedly suffered by it in connection with the examination.

Gary LaVasseur, who was deputy commissioner under Commissioner Bernstein, told us in his written statement that beginning in the fall of 2002, attorneys from the Attorney General's Office working on the United American case became very aggressive in actively pursuing a settlement. He told us that at a December 2002 meeting, Assistant Attorneys General Steve Warch and David Aafedt set out a number of concerns about the case. Mr. LaVasseur said the concerns were presented as reasons to issue an amended statement of charges, deleting many of the counts previously included, (which was done) and to aggressively pursue settlement of the case before the administration changed in January.

On January 6, 2003 (before James Bernstein left office on that day), the Department of Commerce and United American entered into a letter agreement that identified general terms of agreement (or agreement "in principle") regarding the department's action against United American. The letter agreement was conditioned upon the parties finalizing the agreement in a Settlement and Release Agreement and a Consent Order. The letter agreement was signed by a representative of the company and by Gary LaVasseur.

The January 6, 2003, letter agreement addressed future actions by the company and contained ten specific provisions, including a dismissal of the company's and the department's basic claims. In addition, the letter said:

- United American shall pay the Department \$100,000 in examination fees and expenses in accordance with Minn. Stat. Section 60A.03, Subd. 5;
- United American shall not pay any civil penalty of any kind in connection with the Department's Action;
- Neither party will issue a press release, or offer oral or written comment to the media, regarding the Consent Order or Settlement Agreement noted below;

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Mr. LaVasseur stated that Mr. Aafedt told him that United American demanded the provision prohibiting a press release and oral or written comment to the media. Mr. LaVasseur also said: “David [Aafedt] stated that he understood the company’s concern in this matter and felt it was reasonable, based on the prior comments made by Commissioner Bernstein at the press conferences announcing the original statement of charges.” Mr. LaVasseur said he signed the letter agreement after discussing its provisions with Commissioner Bernstein.

Negotiations on the final United American settlement agreement continued after Commissioner Wilson took office. Between January 6 and January 21, 2003, various draft settlement agreements were developed. Assistant Attorneys General David Aafedt and Scott Goings, in a written statement to our office, asserted that attorneys representing United American developed all of the drafts. They also stated that after each draft was sent to them by the United American attorneys, they would flag the changes and transmit them to the Department of Commerce and, in most cases, meet with department officials to follow up on the document transmittal.

The draft consent orders and settlement agreements contained various proposals relating to release of information regarding the settlement, including provisions on how the department would respond to requests for information pursuant to the Minnesota Government Data Practices Act. Under one proposal, United American would have had a right to approve any response made by the department to any such request, absent an order by a court of competent jurisdiction. Mary Lippert, a Department of Commerce staff attorney (not an employee of the Attorney General’s Office), told us she believed the proposed provision violated the Government Data Practices Act. She discussed the issue with Don Gemberling, the Department of Administration official who provides advice on the Act. Mr. Gemberling agreed that the proposed provisions were not in compliance with the Act. The provisions were subsequently modified.

The final settlement agreement and consent order, which were signed by Commissioner Wilson, included various provisions that are troubling, including the following provisions discussing the company’s payment to the state:

- Respondent United American Insurance Company shall pay to Minnesota Department of Commerce \$100,000 for the Department’s examination fees and expenses in accordance with Minn. Stat. Section 60A.03, Subd. 5 (2000).
- No civil penalty of any kind has been or will be assessed by the Commissioner of the Department against Respondent in connection with any claim or allegation contained within the Department’s Order for Hearing or Amended Order for Hearing.

This issue was further expanded on in the Covenants and Warranties section of the settlement agreement. It provided, in part:

MDOC and Hanson covenant and agree that under no circumstance will they or any of their employees, agents or other representatives characterize the payment [\$100,000] called for by the provisions of Paragraph 9.1 above as anything other than a payment by

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United American of Examination expenses and fees made in accordance with Minn. Stat. Section 60A.03, Subd. 5 in connection with the Examination.

We think this characterization of the company's payment is misleading since all companies having a market conduct examination are required to reimburse the examination revolving fund established in Minn. Stat. Section 60A.03, even in the absence of a consent order. The company was assessed and paid costs for the examination, pursuant to this section. However, the \$100,000 payment from United American did not have anything to do with the cost reimbursement provisions of Section 60A.03, Subd. 5. When the department received the \$100,000 payment, it deposited the moneys in the General Fund, as it would other fines and penalties, rather than in the revolving fund. We think the \$100,000 payment would more accurately be described as a penalty, fine, or investigative fee. Department officials told us they were willing to characterize the payment as something other than a civil penalty or fine in order to achieve a settlement agreement.

The Covenants and Warranties section also contained troubling language regarding confidentiality, as follows:

MDOC and Hanson further covenant and agree that, except as provided for in Paragraph 5³ of this Agreement, neither they nor their employees, agents or other representatives will make any type of written or oral comment to any person, including, but not limited to, the commerce department or insurance department of another state or any member or representative of the National Association of Insurance Commissioners, regarding the Examination, the Consent Order, the parties' Letter Agreement dated January 6, 2003, or this Settlement and Release Agreement.

The provision raises concern since it potentially conflicts with Minn. Stat. Section 60A.26, which requires the department to notify the National Association of Insurance Commissioners, in addition to other states, of violations and settlements reached by the State of Minnesota. Department officials told us that they thought the "no comment" provision did not prevent them from reporting the settlement to the National Association of Insurance Commissioners, but the department received conflicting advice on that question from the Attorney General's Office.

On January 24, 2003, after the settlement had been signed, Assistant Attorneys General Aafedt and Goings sent a memorandum to four officials at the Department of Commerce highlighting several terms from the settlement agreement and consent order. Mr. LaVasseur said that the memo was the subject of a great deal of controversy at a subsequent meeting. In their statement to us, Mr. Aafedt and Mr. Goings said they drafted the memorandum to provide their interpretation of the unique settlement provisions. They also stated: "This Memorandum should not in any way be construed as our approval of the confidentiality provisions." However, department staff told us that no one from the Attorney General's Office had ever expressed any reservations or concerns about the no-comment provisions in the proposed and final settlement agreements. Because the Department of Commerce classified the memorandum from Mr. Aafedt

³ Paragraph 5 of the agreement said the parties would not issue a press release or make other comment to the media, except as required by the Government Data Practices Act.

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and Mr. Goings as protected by attorney/client privilege, we cannot quote its specific advice. The department also claimed attorney/client privilege for subsequent e-mails between the two agencies discussing the settlement and whether the department was allowed to post provisions of the settlement on its web site.

Commissioner Wilson, in his statement to our office, said he received limited advice prior to signing the consent order, and that he received no direct advice or counsel from the Attorney General's Office. However, he did meet with Deputy Commissioner Nelson to discuss the agreement. Commissioner Wilson stated:

Deputy Commissioner Nelson said that the settlement terms were formally agreed to by the previous administration and he advised signing the agreement. He also said that the department was interested in settling because the company had personally sued Investigations Supervisor Paul Hanson and this agreement would resolve those issues.

Regarding the confidentiality provision, Commissioner Wilson said:

When I read the order, I was uncomfortable with the "no comment" clause and expressed that to Deputy Commissioner Nelson. He said that the agreement prevented comment, but the settlement would be posted to the department's web site and then reported to the NAIC, as would be the case for all other insurance enforcement actions. I said that I was not interested in talking about the case to media or others because it was resolved during the previous administration and I didn't have any background, nor was I involved in settlement negotiations. I then said that we should handle this settlement in the normal course of business by posting to the department's web site and reporting to the NAIC. Deputy Commissioner Nelson assured me that the agreement did not prohibit us from doing either. That decision was made before I signed the agreement.

The department posted the settlement on its web site in February 2003. It did not disclose that the company was prohibited from selling Medicare Supplement policies to any Minnesota resident for a period of 30 months. The department takes the position that the Minn. Stat. Section 60A.26, Subd. 1 requirement to notify other states when the commissioner suspends or revokes the right of an insurer to transact business in the state only applies when there is a revocation or suspension of a company's Certificate of Authority.

Regarding Minn. Stat. Section 60A.26, Subd. 2, Gary LaVasseur told us:

The Department believed that the Agreement did not prevent it from posting notice of the action to its own web site, and we did post it....At the time, we believed that by posting the action to the Department web site, we were also posting it to the NAIC database. This turned out not to be the case, and when we discovered that the information had not gone to the NAIC, we revisited the issue. Around March 24, we became aware of Minn. Stat. § 60A.26, requiring that all regulatory actions be posted to the NAIC. I subsequently contacted the Attorney

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General's Office, because of their earlier memo suggesting that reporting to the NAIC could be considered a breach of the settlement agreement. On March 25, Karen Olson responded by e-mail to my phone call of March 24.She confirmed my belief that the statute trumped any possible interpretation of the agreement, and that we were free to forward the action to the NAIC. This was done on April 4.

On April 2, 2003, attorneys for United American wrote to Assistant Attorneys General Aafedt and Goings and said they believed that the department's decision to publish information regarding the settlement on its web site was contrary to the express provisions of the agreements. They stated that this kind of public pronouncement, made in writing on the department's web site, was in contravention of the settlement agreement and consent order provisions. Assistant Attorney General Karen Olsen responded to the company's attorneys stating that the department disagreed with their interpretation of the settlement agreement and did not believe that posting the settlement on the department's web site was an "oral or written comment" on the settlement.

However, our concern about the "no comment" provision goes beyond the department's ability to post the settlement on its web site or report it to the National Association of Insurance Commissioners. We think the "no comment" provision is objectionable because it significantly diminishes the department's accountability. It constrains the department's ability to explain its actions and respond to legitimate inquiries. Indeed, we think recent events clearly demonstrate that the department placed itself in an untenable position by agreeing to a "no comment" requirement in the United American settlement agreement.

Recommendations

- *The Department of Commerce should ensure the payment terms found in settlement agreements accurately describe the nature of the payment.*
- *The Department of Commerce should ensure settlement agreements do not contain provisions that would prevent it from complying with Minn. Stat. Section 60A.26 and should avoid provisions that prevent department officials from responding to inquiries about their regulatory actions.*

Status of Prior Audit Issues As of May 16, 2003

Special Review

Legislative Audit Report 03-25, issued in May 2003, involved a special review of a legal settlement between the department and American Bankers Insurance on February 24, 2003. We found no evidence of wrongdoing; however, concerns were raised about actions by the department and the Office of the Attorney General. We expanded a review into the legal agreements and reporting for five other recent insurance settlements, as discussed in Chapter 5 of this report.

Most Recent Financial-Related Audit

Legislative Audit Report 00-40, issued in August 2000, covered the period from July 1, 1996, through December 31, 1999. The audit scope included various revenue and expenditure areas, including the unclaimed property program. The audit report contained 14 findings. As discussed in the next section, several of the findings dealt with the administration of the unclaimed property program, which we reviewed as part of our fiscal year 2002 Statewide/Single Audit. We found that the department substantially resolved the other issues in the report.

Fiscal Year 2002 Statewide/Single Audit

We examined the department's activities and programs material to the *State of Minnesota's Comprehensive Annual Financial Report* for the fiscal year ended June 30, 2002. The purpose of the audit was to render an opinion on the State of Minnesota's financial statements for fiscal year 2002. We issued an unqualified opinion on the *State of Minnesota's Comprehensive Annual Financial Report* for the fiscal year ended June 30, 2002. **Legislative Audit Report 03-18**, issued in March 2003, reported two weaknesses related to the unclaimed property program. One of those weaknesses was an unresolved issue from **Legislative Audit Report 00-40**. We plan to review the status of those weaknesses during our fiscal year 2003 Statewide/Single Audit.

State of Minnesota Audit Follow-Up Process

The Department of Finance, on behalf of the Governor, maintains a quarterly process for following up on issues cited in financial audit reports issued by the Legislative Auditor. The process consists of an exchange of written correspondence that documents the status of audit findings. The follow-up process continues until Finance is satisfied that the issues have been resolved. It covers entities headed by gubernatorial appointees, including most state agencies, boards, commissions, and Minnesota state colleges and universities. It is not applied to audits of the University of Minnesota, any quasi-state organizations, such as the metropolitan agencies, or the State Agricultural Society, the state constitutional officers, or the judicial branch.

Department of Commerce

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August 15, 2003

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

Dear Mr. Nobles:

Thank you for your recent audit of the financial activities of the Department of Commerce for the period of July 1, 1999 through June 30, 2002. We appreciate the effort you and your staff invested in the audit. As with all audits and reviews, we welcome your guidance and we will implement your recommendations.

The Department of Commerce responses to the audit findings follow. Mim Stohl, Chief Financial Officer for the Department of Commerce, will be responsible for implementing our response to Finding #1. Patrick Nelson, Deputy Commissioner of the Market Assurance Division. Will be responsible for implementing our response to Finding #2. The Findings will be resolved immediately.

Finding #1.

The Department did not correctly structure two appropriation accounts.

Recommendation:

The Department of Commerce should structure and closely monitor its appropriation accounts to ensure that funds cancel or carry forward in compliance with legal provisions.

Response: The Department will comply with this recommendation.

Chapter 5. Insurance Settlement Agreements

Response: This Administration strongly believes in openness and full disclosure, and also believes that government officials should be accountable to the public and take responsibility for their actions. These principles will continue to guide the actions of the Department of Commerce. The settlement of the United American Insurance Company matter was unique in the Department's history. Attorney General Hatch and former Commissioner Bernstein were

scheduled to be deposed on this case within days. The document's unusual format, its specific terms, the fact that the basic terms of settlement were agreed to by a prior administration, and the difficult conditions affecting the settlement combined to result in an agreement that the Department entered into reluctantly. Commissioner Wilson signed the agreement only after receiving assurances from staff that it was a public document and would be handled in the same manner as other actions with respect to reporting and public access.

On the eve of the prior administration's departure, former Commissioner Bernstein instructed his staff to sign a letter of agreement setting forth the terms for a settlement. The January 6, 2003 agreement set forth the provision that United American shall pay the Department \$100,000 in examination fees and expenses in accordance with Minn. Stat. 60A.03, subd. 5. The letter of agreement also provided neither party will issue a press release, or offer a written comment to the media regarding the consent order or settlement agreement. The parties were supposed to negotiate terms of a final consent order and settlement agreement to be consistent with the letter of agreement. The department relied on its attorneys general to negotiate these specific provisions on their behalf.

The agreement achieved significant protections for Minnesota citizens and prevented the expenditure of tens of thousands of taxpayer dollars in additional litigation expense, but it also resulted in a compromise of the Department's usual practices regarding public comment. Although the Department believes that it acted properly in settling this unique case, we are committed to ensuring that the concerns raised in this report are addressed in all future settlement agreements.

Finding #2.

The Department of Commerce accepted questionable terms in an insurance settlement agreement.

Recommendations:

- a) The Department of Commerce should ensure the payment terms found in settlement agreements accurately describe the nature of the payment.

Response: The Department agrees with the recommendation that payment terms should accurately describe the nature of the payment. In the United American (UA) case, the payment should have been classified as "investigative costs" rather than an "examination fee."

- b) The Department of Commerce should ensure settlement agreements do not contain provisions that would prevent it from complying with Minn. Stat. Section 60A.26 and should avoid provisions that prevent department officials from responding to inquiries about their regulatory actions.

Response: According to our understanding of the Auditor's review of the UA settlement, the central issue was whether the "no comment" terms of the agreement violated Minn.

Stat. Section 60A.26 or otherwise unlawfully restricted the Department's ability to provide information about the case. Although we share the Auditor's opinion that the no comment provision was "objectionable," we want to make clear that it has not in any way prevented the Department from fulfilling its responsibilities under the law. The no comment provision violates no statute, rule, or contract governing the practices of the Department.

It should be noted that while the Office of the Attorney General recorded over 900 hours of work on cases related to UA during the past fiscal year, on no occasion did anyone from that office ever advise the Department that they believed the no comment provisions were illegal, or that the Department should refrain from executing a document containing such provisions. On the contrary, the attorneys from the Attorney General's office representing the Department strongly urged the Department to agree to the settlement as proposed by UA. It may be significant to note that both Attorney General Mike Hatch and former Commissioner Bernstein were scheduled to be deposed in the UA matter within days. Although the Department carefully applies its own judgment when considering any proposed agreement, in matters of statutory interpretation and application the Department relied on the advice and counsel of the attorneys general that represent it.

The Department did not violate Minn. Stat. Section 60A.26, subdivision 1, when it agreed to the no comment provision of the settlement. Section 60A.26, subdivision 1, requires the Department to notify other states whenever the commissioner "...*suspends* the right of a foreign or domestic insurer to transact business in this state." The insurance industry and the regulatory community, including the legal section of the National Association of Insurance Commissioners (NAIC), interpret this language to refer specifically to the suspension or revocation of a company's Certificate of Authority, which constitutes its license to transact business in a particular state. The UA settlement involved no such suspension or revocation; therefore this subdivision is not applicable.

The Department did not violate Minn. Stat. Section 60A.26, subdivision 2, when it agreed to the no comment provision of the settlement. Section 60A.26, subdivision 2, requires the Department to report public regulatory actions to the NAIC database. When considering whether to accept the final settlement proposal, the Department concluded that its terms did not prevent posting the action to the Department's web site, nor did it prevent the Department from reporting the action to the NAIC. It was our belief that the restrictions on "comment to the NAIC" referred to UA's concerns that Department employees might make derogatory comments about the company to other regulators during quarterly NAIC meetings.

The Auditor expressed concern that the no comment provision *could* be interpreted as preventing compliance with the statute. The fact that other parties, not subject to the reporting requirements of Section 60A.26, may claim that the provisions could be construed to prohibit such reporting, should not be the focus of this discussion. The key issue should be how the Department interpreted the provision, and what actions it took based on its

interpretation. The Department interpreted the language as not prohibiting the reporting of this action to the NAIC, and acted on its interpretation by properly posting and reporting the action.

The Department did not unlawfully restrict its ability to provide information about the settlement. Under the terms of the settlement agreement, the Department preserved its ability to fulfill its responsibilities to provide information under the Minnesota Government Data Practices Act. The language ultimately included in the agreement explicitly recognizes the primacy of Minnesota law in this matter.

Conclusion: The Department agrees that UA's \$100,000 payment should have been classified as something other than a market conduct exam fee. However, the Department does not believe that the language of the settlement agreement prevented it from complying with the requirements of Minn. Stat. Section 60A.26, subdivisions 1 or 2, or with any laws or rules regarding data practices. We also agree that the no comment provision was objectionable, although legal, and that similar provisions should be scrupulously avoided in any future settlement agreements. However, given the circumstances that the Department was facing – our attorneys' strong recommendation that we settle; the aggressively litigious nature of the company; and the magnitude of the current and future resources that would be required to continue the matter – the Department believed that it was appropriate to agree to this provision in this unique case, because it was absolutely necessary in order to achieve the settlement.

Thank you again for the time and effort you and your staff put into this audit. Your staff conducted the audit with professionalism and respect. We enjoyed working with everyone. We look forward to working with you again.

Sincerely,

A handwritten signature in cursive script, reading "Glenn Wilson".

Glenn Wilson, Commissioner