

THOMAS M. SALMON, CPA, CFE
STATE AUDITOR



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

SITUATION REPORT:
*Department of Banking, Insurance, Securities,
and Health Care Administration (BISHCA)*

New priorities & strategies at BISHCA regarding Market Conduct Examinations & Enforcement

March 2012

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Situation Report

Market Conduct Examinations and Enforcement

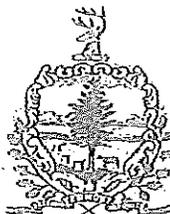
March 2012

A Situation Report is an effective tool used to foster forward progress by informing citizens and management of issues that may need attention. It is not an audit and expresses no opinion nor draws conclusions. Instead, the report gathers information in order to identify issues relevant to the entity. Ultimately, it is the responsibility of the entity's stakeholders to address the issues. A situation report is a tool to improve effectiveness and efficiency. If we improve government performance we will improve the lives of Vermonters.

– State Auditor Thomas M. Salmon, CPA, CFE

This small project was created from a preliminary review designed to attain clarifying information from a unit of state government, after certain concerns were brought to our attention. It is a report that simply represents questions and corresponding answers related to a significant change in philosophy and performance in the area of market conduct examination and enforcement. We appreciate the cooperation we have received in this process and have no further questions at this time. The activities of any unit of government are the responsibilities of management and we hope that the attention by our office given to any area will ultimately improve transparency and performance.

On October 4, 2011, the auditor asked:



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

MEMORANDUM

To: Stephen W. Kimbell, Commissioner
Department of Banking, Insurance, Securities,
And Health Care Administration

From: Thomas M. Salmon, CPA *TMS*
Vermont State Auditor

Date: October 4, 2011

Re: Letter of Preliminary Review.

This memorandum is to inform you that we are conducting a letter of preliminary review. Such a review is a non-audit, low-level step taken by our office to clarify a situation regarding the performance of a unit of state government. This request is driven by concerns over market conduct examination and enforcement activities, and results, at the Department of Banking, Insurance, Securities and Health Care Administration (BISHCA).

Please provide us with answers to the following questions by Friday, October 14, 2011 at 5pm.

1. Please provide some history: explain the basis for changes to the enforcement attorney composition at the start of the year (as reported by Shay Totten "The Fix Is In" - 2/9/11).
2. How is Vermont (BISHCA) ensuring that health policies with mandated protections are operating as required?
3. Enforcement actions resulting in fines have dropped significantly. Please confirm the 2009, 2010, 2011(year to date) figures* and explain the cause for any change.

Thanks in advance for your cooperation. If you have any questions, please do not hesitate to ask.

Sincerely,

Thomas M. Salmon CPA

*\$908,500 (2009), \$949,091(2010), \$250 (at 9/27/11)

“Seven Days” article – February 9, 2011

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POLITICS 

The Fix Is In

Fair Game

BY SHAY TOTTEN [02.09.11]

TAGS: fair game, politics

Gov. Peter Shumlin's ambitious health care reform bill came out on Tuesday, and the big document will likely keep lawmakers busy reading all week.

Leading the reform effort is Steve Kimbell, one of the state's most successful lobbyists. He's now commissioner of the Department of Banking, Insurance, Securities and Health Care Administration, which oversees some of the same insurance companies Kimbell once represented.

Does Kimbell have a conflict of interest, or is he the government guy best equipped to play hardball with his former employers?

"I ask people to judge me on my current actions," said Kimbell.

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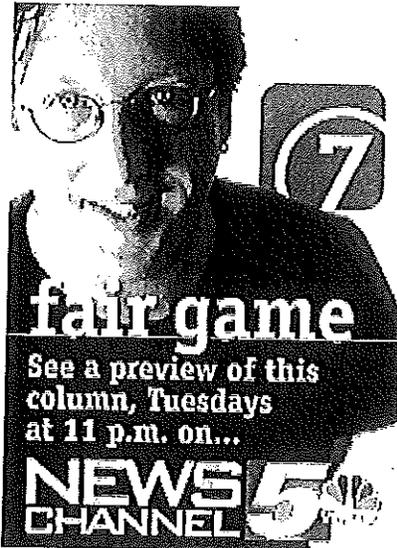
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5

State ethics rules require Kimbell to have his name removed from any lobbying or law firm. On January 1, 2011, Kimbell's former firm — Kimbell Sherman and Ellis — renamed itself KSE Partners, LLP.



**ALSO BY SHAY
TOTTEN**

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But a law firm connected to the lobbying firm — Kimbell Storrow Buckley Hughes LLP — still sported Kimbell's name on its masthead as of Monday. It was removed immediately after "Fair Game" inquired about it; by Tuesday, the firm had been rechristened Storrow Buckley Hughes LLP.

Emails obtained by "Fair Game" show that Kimbell's name — along with the name of his newly appointed general counsel **Cliff Peterson** — has shown up in communication between **Jackie Hughes**, a member of Kimbell's former law firm, and BISHCA staff over the past two months. Probably just an oversight, but BISHCA staff felt uncomfortable getting emails from a firm with their new boss' name on it. Peterson had worked at Kimbell's law firm. Hughes herself used to work at BISHCA during Gov. **Howard Dean's** tenure as gov.

Kimbell has no remaining stock in either firm, said KSE Partners principal **Kevin Ellis**.

Hard Rain

TAGS

politics

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But there's more. Back in 2010, when Shumlin hired Kimbell, the appointment precipitated the eventual firing of six — of 10 — BISHCA lawyers. At least five of them happened to be state regulators who led the charge to fine and sanction some of Kimbell's former clients — including two out-of-state, Blue Cross-related companies: Anthem Blue Cross in New Hampshire and New York-based Excellus. The out-of-state Blues were fined for selling insurance in Vermont without a license and not providing some of Vermont's statutorily mandated coverage, including mental health services.

Anthem was fined \$100,000; Excellus, \$400,000.

Kimbell's firm tried to get Excellus' fine reduced to \$75,000. But BISHCA attorney **Robert LaRose** wouldn't negotiate. He's now gone from BISHCA.

Peter Young, BISHCA's former deputy general counsel, led regulatory action against Blue Cross Blue Shield of Vermont in two cases: its rate hike request, and the \$6.25 million retirement package handed over to former CEO **William Milnes Jr.** The retirement payout angered consumers and lawmakers, along with BISHCA regulators. Commissioner **Paulette Thabault** ruled that BCBSVT overpaid Milnes by \$1.4 million. As a result, the state ordered BCBSVT to return \$3 million to subscribers in the form of lower, or lower-than-expected, premiums.

Thabault said Shumlin and Kimbell may have hindered their efforts to reform the state's health care system by firing this select group of

regulatory attorneys who have extensive knowledge of past reform efforts as well as the new federal health care law.

“These are very strong people who had nothing but the best interests of Vermonters,” Thabault told “Fair Game.” “We always operated with very little, if any, interference from the governor’s office in protecting its citizens, and that’s the way it should be.”

Kimbell dismisses the theory that firing these particular attorneys will hurt reform efforts or the ability of BISHCA to be a strong regulator.

“This had nothing to do with individual competency,” said Kimbell. “This was all about looking forward.”

Kimbell said Shumlin’s administration wanted a different team on board to ensure they could carry out the governor’s ambitious health care agenda. He also said attorneys aren’t always retained during shifts in administration.

“I think that is a false notion,” Kimbell said. “We are a government of laws, and lawyers are very much part of the political process. In many cases, a new team of lawyers is more important than bringing in new commissioners.”

More With More

Former Gov. **Jim Douglas** often said Vermonters should get used to a government doing “less with less.” Gov. Peter Shumlin’s motto seems to be closer to “Do more with more.”

AI

A report provided to "Fair Game" by the Department of Human Resources shows that Shumlin's got his own stimulus program going for some top appointees.

Ag Secretary **Chuck Ross** is earning \$115,000, compared to predecessor **Roger Allbee's** salary of \$109,000. Commerce Secretary **Lawrence Miller** is taking home \$115,000; previous secretary **Kevin Dorn** pulled down \$104,000. Natural Resources Secretary **Deb Markowitz** is earning \$115,000 annually, up from the \$104,000 earned by **Jonathan Wood**.

Administration Secretary **Jeb Spaulding** and Transportation Secretary **Brian Searles** are earning \$115,000, the same as their predecessors — **Neale Lunderville** and **David Dill**, respectively.

Human Services Secretary **Doug Racine** is earning \$115,000 — less than outgoing Secretary **Rob Hofmann**, who was earning \$121,000. Meanwhile, **Susan Wehry**, the new commissioner of the Department of Disabilities, Aging and Independent Living, is getting \$115,000 a year; her predecessor **Joan Senecal** earned \$80,000.

A few other select commissioners are earning more than those before them: Fish and Wildlife Commissioner **Patrick Berry** and Forest, Parks and Recreation Commissioner **Michael Snyder** are both making \$88,000, up from the \$79,000 earned by **Wayne Laroche** and **Sarah Clark**. Environmental Conservation Commissioner **David Mears** is earning \$92,000, up from **Justin Johnson's** \$82,000. Johnson is staying on as Mears' deputy at his old salary.

The biggest jump? BISHCA Commissioner Steve Kimbell is bringing home \$127,000. His predecessor, **Mike Bertrand**, earned \$92,000. Paulette Thabault, who had the job before Bertrand, got about \$96,000.

In all, Shumlin is spending \$400,000 more than Douglas on top execs, and he's not done hiring yet.

Meanwhile, he's asking state employees to give up \$12 million that once went to their retirement and health care plans. That's on top of pay cuts that union employees accepted more than a year ago.

Abenaki Angst

A group of Abenaki that opposes the recognition of several Vermont-based tribes won't be allowed to testify before a key Senate committee.

The Abenaki First Nation initially got the OK to testify before the Senate Economic Development, Housing and General Affairs Committee, but that offer was partially rescinded by Sen. **Vince Illuzzi** (R-Essex/Orleans), the committee's chair and a proponent of Abenaki recognition.

Illuzzi said the group's in-state members can testify, but the out-of-state members can only provide written testimony. "We only meet for three hours a day and only have so much time to take direct testimony," he said. "We've done the same for other out-of-state witnesses on bills."

That's not good enough for **Denise Watso** of the Abenaki First Nation, which has tribal members in Vermont, New York and

Québec. Watso questions the authenticity of at least two tribes seeking state recognition.

“Why are lawmakers like Sen. Illuzzi afraid to hear what we have to say? Why are they scared to look us in the eye?” she asked. “These are not rhetorical questions. They are willing to take the time to hear testimony, they just refuse to hear from us. It’s just a lot easier to ignore emails and letters than it is to hear real-life Abenaki people speaking out for truth and justice in the halls of the Statehouse.”

The House General, Housing and Military Affairs Committee has not established such restrictions this year, but it has yet to receive a request from out-of-state groups.

To date, two tribes that claim Abenaki heritage are seeking recognition: the Nulhegan and the Elnu. A third, the Koasek, has been approved for recognition, but no formal bill has been introduced.

It’s unclear if other tribes or family bands will follow suit this session under a new state recognition law passed last year.

The Missisquoi Tribe was in the process of gathering up the necessary documents, but its leader — Chief **April St. Francis-merrill** — was arrested last week for allegedly stealing money from a vulnerable adult.

Sanders in Stone

Six years ago, *Rolling Stone*’s **Matt Taibbi** wrote a glowing profile of Sen. **Bernie Sanders** (I-VT) entitled “Four Amendments and a

Funeral.” It was glowing for Taibbi, anyway, who is hardly enamored with politicians. More recently, in late 2010, Taibbi blogged about Bernie’s eight-hour filibuster, of which he also apparently approved.

In response to Taibbi’s January 20 story about House Speaker John Boehner (R-OH), a reader asked in a letter to the editor if Taibbi could write about a D.C. pol who wasn’t a “total shit bird.”

Taibbi responds in the February 17 issue: “I did just such a piece, about Senator Bernie Sanders from Vermont. But beyond that, you really want me writing about people I like?”

Counsel Costs

The city of Burlington has denied “Fair Game”’s request to provide copies of attorney bills associated with defending the city and Burlington Telecom in a civil lawsuit brought by Fred Osier and Gene Shaver.

The attorney’s fees are being paid by the city’s insurance company, Traveler’s, and cover the costs to defend BT, the city and Chief Administrative Officer Jonathan Leopold.

To date, the city has spent more than \$625,000 on consultants as it sorts through BT’s fiscal and operational challenges.

“With respect to your request for insurance counsel costs in the Osier case, the city will not disclose this information at this time because it falls under attorney-client privilege and, as a separate basis, it relates to pending litigation,” **Joe Reinert**, assistant to Mayor **Bob Kiss**, wrote in an email.

Once the litigation has ended, the city may revisit the request, Reinert noted.

I don't recall seeing an exemption in state law that keeps such expenditures secret. These lawyers are working, albeit indirectly, for Burlington taxpayers.

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The Complaint – September 27, 2011

September 27, 2011

Thomas M. Salmon
Vermont State Auditor
132 State St.
Montpelier, Vermont 05620

RE: Good Faith Report

Dear Vermont State Auditor Salmon,

The following is a good faith report that alleges waste in government and a threat to the health of the public.

I have been an insurance examiner for BISHCA since April 1, 2002. I have completed over 40 investigations/examinations of insurance companies or producers during that time. These exams and or investigations have resulted in over \$2.3 million dollars in fines that have been sent to the Vermont General Fund. These activities have also directly resulted in over \$2 million dollars being reimbursed to Vermont policyholders or claimants. This program has protected Vermont citizens from unfair trade practices very effectively in the past.

The enforcement team has had a full time enforcement attorney ever since I started working there in 2002. Now, for the first time, we no longer have an enforcement attorney. I believe that the duties of the enforcement attorney are not being fulfilled with the current staffing arrangement.

I am alleging that the individual who is responsible for the decision to eliminate the enforcement attorney position has caused a threat to the public health and this decision has also resulted in waste of public resources.

I believe that the results of not having an enforcement attorney are the following:

1. There is a threat to the health of the public.

The enforcement attorney was responsible for negotiating settlements with health care companies after I found evidence of violations. In the past two years I uncovered three cases where unlicensed insurance companies had issued policies that used unapproved forms. The cases are described in Docket No 99-183-H, Docket No 10-102-H and Docket No 09-034-H. All three companies were fined and given requirements to upgrade their existing coverage to include Vermont mandated coverages.

The public health problem can be explained as follows:

Vermont requires many health coverages that other states do not require. Therefore if a Vermonter is covered by one of these policies that have not gone through our review process, he/she may not be receiving these health benefits that are mandated by Vermont Statute. Many people do not have the money to pay for these procedures unless they are covered by their insurance. Consequently, they do not get the treatment they need.

I believe that BISHCA is not following through with investigations like the ones described above and consequently the Vermonters who have these unapproved policies are not getting the mandated coverages that the legislature has required.

The prior enforcement attorney was very successful at resolving these issues. He is no longer at BISHCA. I do not see that the responsibilities that were connected to the position of enforcement attorney are now being carried out, and consequently, the public is not being protected from having health policies that should by statute include mandated protection.

I am asking your office to audit the new BISHCA enforcement policies to insure that BISHCA is protecting the public from inferior policies as it has in the past.

2. There is a waste of public funds as a result of not having an enforcement attorney.

The position of enforcement attorney has been eliminated at BISHCA. This has caused a loss of income to BISHCA and the state of Vermont.

A full time experienced enforcement attorney not only gets his expenses paid for through settlement agreements with violators of Vermont law, but his work results in fines that go to the General Fund. I checked the BISHCA website and found that in 2009, \$908,500. in fines resulted from enforcement actions. I looked at the BISHCA website and found that in 2010, \$949,091. in fines resulted from enforcement actions. I looked at the BISHCA website and found that in 2011 the total of all enforcement actions added up to \$250.00. I realize that it is only September 27th, but the difference is astonishing. I ask that the your office do a review of the market conduct program of the past few years and compare the productivity of orders and the revenues produced with a full time experienced enforcement attorney versus the activities and revenue produced by the new system. I believe that this review will show that a full time experienced enforcement attorney is a much better use of public funds.

I respectfully submit this report to you.

Thank you,

BISHCA Response – October 14, 2011



State of Vermont
Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101
www.bishca.state.vt.us

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MEMORANDUM

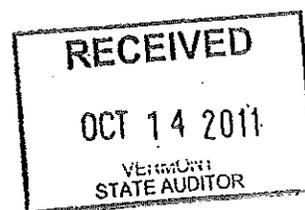
BY HAND

To: Thomas M. Salmon, CPA
State Auditor

From: Clifford Peterson, General Counsel

Date: October 14, 2011

Re: Letter of Preliminary Review



Dear Mr. Salmon:

Commissioner Kimbell has asked me to respond to your letter of October 4, 2011 regarding insurance market conduct examination and enforcement activity. I hope what follows is helpful. Please feel free to contact me at 828-1316 or cliff.peterson@state.vt.us with any questions.

At the risk of providing too much detail, some context might be useful. Regulatory enforcement in the insurance context is generally, but not exclusively, accomplished through the "market conduct examination" process. This process identifies non-compliant business practices of regulated entities through examinations and data analyses. Not all issues initially reviewed by the market conduct staff become formal examinations or even result in formal orders. There are many stages to the process of analyzing potential non-compliant behavior of an insurance company or individual producer (agent). A great deal of regulatory discretion is built into the market conduct function since BISHCA's main purpose is to balance the correction of market failure that would cause company insolvency with consumer protection. Good judgment and proper regulatory restraint are keys to the success of any market conduct program.

Insurance market conduct examinations can be lengthy. As to the list of Vermont market conduct matters apparently supplied to you that ended in 2009 and 2010, many of those matters lasted for several years. The current roster of insurance market conduct matters ranges from those that began several years ago in previous administrations and are in various stages of review to newer items under consideration. There are also several multi-state examinations coordinated through the National Association of Insurance Commissioners (NAIC) that Vermont has joined.



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Insurance
802-828-3301

Captive Insurance
802-828-3304

Securities
802-828-3420

Health Care Admin.
802-828-2900

Please provide some history: explain the basis for changes to the enforcement attorney composition at the start of the year (as reported by Shay Totten "The Fix Is In" – 2/9/11).

First, a change of BISHCA attorneys with a new administration has precedent. I was a staff attorney at BISHCA when the Douglas administration took office. That resulted in the then-General Counsel losing her position the day the new Commissioner arrived. It also led to a conversation between me and the then-Commissioner in which he said (this is almost verbatim): "I can't promise you continued employment. I hope you'll give plenty of notice." I moved to the Attorney General's office shortly thereafter.

As to the changes in legal staffing earlier this year, BISHCA's lawyers are exempt employees who serve at the pleasure of the Commissioner. After his appointment was announced, the Commissioner interviewed all ten BISHCA lawyers and, after deliberation, decided to replace six of them. I participated in all those interviews except the one with the former General Counsel. As to particular personnel decisions this past January, I believe I am constrained and cannot go into particulars. But I hope what follows shows that far from abandoning enforcement in our legal function, we are doing it more efficiently.

What I found when Commissioner Kimbell asked me to be his General Counsel was a legal section in which the staff attorneys operated in silos. Some examples: there was an attorney whose function was to supervise two line staffers, one of whom reviewed and sent out for actuarial analysis requests for health insurance rate increases and the other of whom reviewed health insurance forms as they came in for approval. I found that inefficient and a waste of legal resources; those line staff positions did not need and no longer have a lawyer devoted to their supervision. For another example, there was an attorney whose sole function was to receive and direct into the proper channel appeals from denials of health coverage and to supervise two staff members who received consumer complaints on health insurance. That attorney, to his credit, admitted in his interviews that, modestly put, he had "spare capacity." Again, the legal function was structured inefficiently.

To the immediate point, there was also an attorney siloed and devoted solely to market conduct exams. Since my arrival more than 9 months ago I have assigned that work to various staff attorneys. I therefore have personal knowledge that there has not been enough insurance market conduct work to keep a single lawyer occupied. Having a siloed attorney for market conduct was another inefficient use of staff resources.

In contrast to the silo system, since the Commissioner and I arrived the legal section has run largely as a small law firm, where work is assigned to lawyers who have the time to devote to a matter and/or are best equipped to handle a particular assignment. This avoids having siloed attorneys with time on their hands. It also avoids having siloed attorneys who may in peak periods have too little time to give proper attention to matters. Not restricted by silos, I have sometimes assigned two attorneys to a matter. The small firm model recognizes that some attorneys have particular substantive knowledge and it is often good to turn to a particular attorney on a particular matter. But "substantive knowledge" is a broad term. For example, an attorney previously devoted solely to the Captive Insurance Division in fact has a sophisticated

background in major corporate transactions. He is now providing valuable advice on a health care Certificate of Need matter which involves a proposed \$26 million asset sale. In my view, this flexibility in the use of legal talent is an efficient use of resources.

In addition, I found on the organization chart that the Insurance Division's market conduct staff reported directly to General Counsel rather than to the Deputy Commissioner for Insurance, as had been the case when I was here previously. It is my opinion that a General Counsel in as large a legal function as ours and in a department regulating everything from hospital budgets to mortgage brokers is not the person to supervise the details of insurance market conduct exams. It is an inefficient use of General Counsel's time and it is not good for the insurance market conduct program. I changed the organization chart to the prior and logical practice, where insurance market conducts staff report to the Deputy Commissioner of Insurance. As with any change, this may have caused some upset but it is the correct and most effective reporting path.

It is worth noting that the Deputy Commissioner of Insurance is a seasoned attorney with market conduct enforcement experience; she was formerly counsel to the Massachusetts insurance commissioner. She works closely with me as BISHCA's General Counsel in assigning and tracking legal matters relating to insurance market conduct enforcement. I am confident that she is better equipped than I to supervise insurance market conduct activities.

Not incidentally, however, she and I have arranged for specialized training for two of our attorneys in insurance market conduct enforcement, training run by the National Association of Insurance Commissioners. (I have also arranged for one of our attorneys to receive specialized training in securities litigation -- the insurance market isn't our only concern).

We have a diverse and talented team of lawyers at BISHCA. Our legal function is fully staffed. We are now deploying these lawyers in a way that makes us able to respond flexibly to requests for legal assistance from throughout BISHCA. It is the Commissioner's management judgment that our small law firm model is more efficient and will better serve the legal needs of the entire department over the long term. I fully concur.

Finally, you mention Shay Totten's February 9, 2011 column titled "The Fix Is In." Again without getting into details of personnel decisions, please be assured that contrary to the implications in the article there was nothing retributive in the staffing decisions of last January; any suggestion to the contrary is without foundation. It may help you to know that the Commissioner and I both recuse ourselves from matters in which we were involved with former clients. As to remarks by others in that article that the staffing changes somehow hindered health care reform, that record will have to speak for itself.

2. How is Vermont (BISHCA) ensuring that health policies with mandated protections are operating as required?

There are multiple ways in which the Department ensures that mandated coverage is provided.

At the threshold, we approve all health insurance forms in advance. Unlike Vermont, some states, known as "file and use" states, allow companies to submit their insurance products to the

regulator, sell the products, and wait for problems to arise later. Vermont takes a stricter approach. We review and approve or disapprove all health and other insurance policies in advance of their sale to ensure they comply with Vermont law, including health insurance mandates.

After the policy is approved and in the marketplace, if a Vermonter is denied coverage, including mandated coverage, he or she can lodge a so-called first-level internal appeal with the company. This first-level internal appeal is required by our law. Some companies, including Blue Cross Blue Shield of Vermont and MVP, two major carriers in Vermont, also voluntarily offer a second-level internal appeal.

We also have an active consumer assistance program. Any Vermonter denied coverage can come to us for help at any time. Further, if the Vermonter's second-level internal appeal is denied by the company we can then begin the third-level appeal, which is to external authority.

Many coverage matters are resolved short of appeal, however, simply by a call from us to the insurer; mistakes happen in processing claims and both we and the insurers recognize this. We handle and resolve many of these matters every year either by informal resolution or through the appeals process and they rarely rise to a market conduct issue. In fact, very few of the denials have anything to do with coverage mandates.

One matter which does touch on mandates has been determined to involve complex legal and policy issues of national significance relating to cross-border health insurance contracts and choice of law. It has been removed from the market conduct docket and is being addressed by the Deputy Commissioner of Insurance with support from legal staff.

3. Enforcement actions resulting in fines have dropped significantly. Please confirm the 2009, 2010, 2011 (year to date) figures¹ and explain the cause for any change.

Based on the figures in your letter, I believe you've been misinformed. I can confirm that the figures presented are inaccurate and I will address that in detail at the end of this section.

It is important to bear in mind that even if the figures were accurate as to fines arising from insurance market conduct investigations in the years cited (which they aren't), they would be an incomplete picture of what BISHCA does – which is regulate the banking industry (including such entities as licensed lenders, mortgage brokers and debt settlement companies, among others), the securities industry, the captive insurance industry, a significant part of the health care industry, and the insurance industry. Moreover, not all enforcement even in the Insurance Division goes through the market conduct staff. To focus simply on inaccurate figures as to fines imposed on insurance companies and producers misses the larger picture.

Fines imposed, in our view, are in any event not a good measure of the effectiveness of a public agency. We not only impose penalties in areas other than insurance, where feasible we seek restitution for consumers, a legal remedy which must be considered in our overall activities. We also have a variety of enforcement tools to call upon, and fines are only one of those tools.

¹ \$908,500 (2009), \$949,091 (2010), \$250 (at 9/27/11).

Just to give one example, since I arrived we have discovered and have actively pursued, issued orders on and warned the public about, the illegal solicitation of Vermonters to purchase what appear to be non-existent health insurance policies. This apparent conspiracy involves activities in at least 30 states and there is a comprehensive federal investigation including the FBI and the U.S. Postal Service. We have worked to identify possible Vermont victims and have reached out individually to all we could identify. We have also referred this matter to the Vermont Attorney General. None of this enforcement effort shows up in a list of fines, accurate or not and none of it originated in the insurance market conduct program.

The Fines Data Presented

As to the list of fines itself, the level of regulatory fines received in one year cannot reasonably be compared to amounts received in other years. Regulatory matters can take years to resolve. Fines can be assessed in one year and collected in another. Some years result in a high total, some in a low. The Securities Division, for example, collected \$1.16K in fines in FY2008 and \$926K in FY2009. No year-on-year comparison is valid.

As I'm sure you understand, statistics with few data points, such as those presented, are inherently unreliable. Further, the statistics presented do not include multi-state market conduct investigations in which Vermont participates. The statistics presented don't mention the settlement of one such investigation in the spring of this year that will result in a payment of \$500,000 to Vermont in this fiscal year. That matter was handled by the legal function without going through the market conduct staff. The statistics presented also don't address fines and settlements assessed in other divisions, such as Banking or Securities. Simply, a selected list of fines (and they are selected) is an invalid measure of effectiveness or of enforcement activity.

Since you received certain numbers claiming to be fines collected in calendar 2009 – 2011 (to date), I will address those numbers, with the headnote that because of their unpredictability we don't give estimates of fines to the Agency of Administration and we don't base our budgets on anticipated fines. Since our records are not fine-based, our present review is based on drilling down in response to your letter, but only as to the Insurance and the Health Care Administration Divisions and only as to fines actually booked (an important point considering the \$500,000 to be received later this fiscal year). Our drill-down does not attempt to calculate money recovered as restitution for those who have been harmed by violations of our laws. The details:

First, the complainant has included as a fine a \$150,000 contribution by a regulated entity to UVM in settlement of a matter. That is not a fine.

That aside, it is clear that the complainant has not included all the fines even in Insurance and Healthcare. The true dollar number booked to date in Insurance and Health Care for calendar 2011 is \$8,664.81, not \$250, and not including the accrued but not booked \$500,000 settlement referred to above.

For 2010, the information given to you included only 14 of 37 fines assessed in Insurance and Health Care. The correct total – again just for Insurance and Health Care – is \$913,222.47, not

the \$949,091 presented to you. For 2009, the information you were given included only 14 of 29 fines actually assessed and the correct total is \$989,892.74, not the \$908,500 presented to you. As I've said, we don't track fines as such and these numbers may be subject to further refinement. In any event they do not include all the BISHCA enforcement activity. A final twist is that for some reason the prior administration attributed to the Insurance Division fines actually assessed by the Health Care Administration Division. In short, the numbers you received are inaccurate and do not reflect the Department's activity.

Conclusion

Consumers are best protected by a compliant regulated community. How best to obtain and maintain compliance with Vermont insurance laws by companies doing business in the state is a matter of some difference of opinion and for any regulator is a matter of discretion. The Commissioner's philosophy of regulation, which he made clear on the day his appointment was announced, is to obtain compliance through clear articulation of the rules, good communication with the regulated community and the public to make clear what compliance with those rules means, and then collaboration with the regulated community to achieve the agreed upon definition of compliance. Achieving compliance in that way is hard work. But it ensures good protection for consumers as well as an attractive and predictable business climate for the regulated community. Only in extreme cases does the Commissioner consider heavy fines to be appropriate. They can be the easy way out. Trying to buy compliance without remedial measures and, when possible, restitution for affected Vermonters rarely results in a good long-term solution. In addition, there is a good argument that fines simply end up being paid by consumers as a cost of doing business for the entity that is fined. Equally important, they may drive companies away from Vermont.

As for the reorganization of the legal function, we believe that flexibility and the assignment of staff where they can best serve the Department as need arises is a better use of resources than silos. It is a management judgment but one we believe has shown itself to be effective.

Again, please feel free to contact me if you have any questions.

Yours truly,



Clifford Peterson

The Auditor's Follow-up Questions – November 1, 2011



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

Memorandum

To: Clifford Peterson, General Counsel
Dept. of Banking, Insurance, Securities and Health Care Administration

From: Thomas M. Salmon, CPA
Vermont State Auditor *TS*

Date: November 1, 2011

Re: Response to Letter of Preliminary Review

Thank you for your October 14, 2011 reply on behalf of Commissioner Kimbell to my October 4, 2011 letter of preliminary review concerning insurance market conduct examination and enforcement activities at the Dept. of Banking, Insurance, Securities and Health Care Administration (BISHCA).

You point out that BISHCA's lawyers are exempt employees and serve at the pleasure of the Commissioner, and we certainly recognize and respect the Commissioner's authority to restructure the agency in a way he feels better meets the agency's mission and the delivery of services to Vermonters. The effectiveness of those changes can best be evaluated at some time in the future.

Your explanation on the current market conduct examination and enforcement operations and philosophy was helpful and I do appreciate the information. However, to better understand the mechanics of market conduct activities, both currently and in the past, and to fully respond to the issues raised by the complainant there are a few additional pieces of information I need.

- Please provide a list of all market conduct examinations initiated during 2009, 2010, and 2011 to date including the current status of those examinations and any enforcement activities taken as a result of the examinations.
- In addition, please provide a list of all enforcement actions taken during the same time period including fines, restitution for consumers, and other enforcement measures.

Please provide the requested information by November 30th.

Thanks for your cooperation. If you have any questions please call me.

cc: Steve Kimbell, Commissioner, BISHCA

BISHCA Response – November 30, 2011



State of Vermont
Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101
ww\vt,bishca.state.vt.us

Consumer Assistance Only:
Insurance: 1-800-964-1784
Health Care Admin.: 1-800-631-7788
Securities: 1-877-550-3907

MEMORANDUM

BY HAND

To: Thomas M. Salmon, CPA, State Auditor

From: Clifford Peterson, General Counsel

Date: November 30, 2011

Re: Response to Letter of Preliminary Review



Dear Mr. Salmon:

In response to your letter of November 1, 2011, I'm attaching several tables. I should note again that "market conduct" is a term of mt referring to just one enforcement mechanism in the insurance industry.

[Exhibit 1](#) lists market conduct examinations initiated in 2009 and later and now closed. [Exhibit 2](#) lists market conduct examinations initiated in 2009 and still open. [Exhibit 3](#) lists insurance enforcement actions generally (including but beyond market conduct).

These respond to the two bullets in your November 1 letter.

As to [Exhibits 4](#) and [5](#): Each of the Department's divisions has its own "fines" account. Exhibit 4 shows the history of the Insurance Division account. You will see a jump beginning in 2009. It is my understanding that this is the result of a directive from the then-Commissioner to redirect some fines from the Health Care Administration (HCA) Division fines account to that of the Insurance Division. This was contrary to the Department's established accounting practice and had the effect of showing more fine activity in Insurance and less in HCA. The previous accounting practice has been restored under Commissioner Kimbell.

Exhibit 5 lists fines credited to-the Insurance Division's fines account and such HCA fines which, may have had some market conduct involvement. Some large fines, such as that for 5/20/09, would have been credited to the HCA fines account but for the directive noted above.

I would be happy to meet with you or your staff to discuss any of this if you wish.

CP/

The Auditor's Follow-up Questions – January 27, 2012



STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

January 27, 2012

Mr. Stephen Kimbell, Commissioner
Mr. Clifford Peterson, General Counsel
BISHCA
89 Main St.
Montpelier, VT 056

Dear Mr. Peterson,

I would like to windup our preliminary review of market conduct examination and enforcement activities.

Below are a few questions I have after reviewing your November 14, 2011, response to our initial concerns.

1. In your October 14, 2011, response to our October 4, letter of preliminary review requesting information on market conduct examination and enforcement activities, you stated that there was a change in the philosophy of regulation with the change of commissioners. Would you please explain what that change in philosophy was, the rationale for those changes along with your assessment of how those changes affected the enforcement protocols in effect prior to the changes? Were these changes in protocol documented? How have these changes in enforcement philosophy benefited Vermont consumers?
2. Attached is a spreadsheet taken from the information you provided to us in your November 14 letter. The spreadsheet shows that a significant number of open cases were reassigned to Deputy Commissioner Donegan. Would you please explain why those reassignments were made, who supervised these cases prior to the changes, and what progress has been made in cases since the changes?
3. Would you please provide some background information on an International Fidelity case which we have recently heard about which reportedly involved a \$20,000 fine which was subsequently refunded?

Please return these responses by February 10. We appreciate your cooperation and expect these to be our final questions. Thank you in advance for sufficient, straightforward responses so we can properly understand your situation.

Sincerely,

Thomas M. Salmon CPA, CFE

Thomas M. Salmon, CPA, CFE
Vermont State Auditor

List of MC Exams and Investigations Initiated during 2009 and 2010 - Open files
 (Information from C. Peterson letter of 11/30/11)

Respondent	Exam #	Initiation Date	Comments
Blue Cross Blue Shield of VT	117	02/26/2009	The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11
Blue Cross Blue Shield of MA	183	09/19/2010	The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11
Anthem Blue Cross Life & Health	186	09/22/2010	The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11
Cigna Health & Life Ins, Co.	182	09/08/2010	The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11
United Healthcare	148	10/05/2009	This file has been on hold and no action has been taken in 2011
Cigna Health & Life Ins. Co.	197	12/06/2010	this file has been on hold per management instructions and no action has been taken in 2011
Cigna Health & Life Ins. Co.	195	11/10/2010	File has been on hold per management instructions since Jan, 2011
Bankers Life and Casualty	154	01/13/2010	Deputy Commissioner Donegan is discussing settlement options with this company

BISHCA Response – February 25, 2012



State of Vermont
Department of Banking, Insurance,
Securities and Health Care Administration
89 Main Street
Montpelier, VT 05620-3101
www.bishca.state.vt.us

Consumer Assistance Only:
Insurance: 1-800-964-1784
Health Care Admin.: 1-800-631-7788
Securities: 1-877-550-3907

MEMORANDUM

BY HAND



To: Thomas M. Salmon, CPA, CFE, State Auditor

From: Clifford Peterson, General Counsel 

Date: February 25, 2012

Re: Response to Letter of January 27, 2012 re Preliminary Review

Dear Mr. Salmon:

I write in response to your letter of January 27, 2012, and will address your three questions in order. Your questions are in boldface below.

1. In your October 14, 2011, response to our October 4, letter of preliminary review requesting information on market conduct examination and enforcement activities, you stated that there was a change in the philosophy of regulation with the change of commissioners. Would you please explain what that change in philosophy was, the rationale for those changes along with your assessment of how those changes affected the enforcement protocols in effect prior to the changes? Were these changes in protocol documented? How have these changes in enforcement philosophy benefited Vermont consumers?

Please explain what the change in philosophy was.

Prior to Commissioner Kimbell taking office, the Department had a reputation for being hard on industry, difficult to work with, and unpredictable. In contrast, Commissioner Kimbell's approach (and mine as the chief legal officer), has been that we are not hostile to regulated industries and where their development can be encouraged, we encourage them. Rather than being difficult to work with, the Department now has a culture of accessibility – the Commissioner will speak to any representatives of any regulated industry simply on their request. To the extent those requests come to me over a regulatory issue, I take the same approach. As to predictability, where some rules were unwritten and apparently ad hoc (as I can attest from personal experience in the private sector), the present administration takes the approach that industry should know what it takes to conform to the law and be able to proceed with their businesses accordingly. As I said in my October 14 response:

The Commissioner's philosophy of regulation, which he made clear on the day his



Banking
802-828-3307

Insurance
802-828-3301

Captive Insurance
802-828-3304

Securities
802-828-3420

Health Care Admin.
802-828-2900

appointment was announced, is to obtain compliance through clear articulation of the rules, good communication with the regulated community and the public to make clear what compliance with those rules means, and then collaboration with the regulated community to achieve the agreed upon definition of compliance. Achieving compliance in that way is hard work. But it ensures good protection for consumers as well as an attractive and predictable business climate for the regulated community. Only in extreme cases does the Commissioner consider heavy fines to be appropriate. They can be the easy way out. Trying to buy compliance without remedial measures and, when possible, restitution for affected Vermonters rarely results in a good long-term solution. In addition, there is a good argument that fines simply end up being paid by consumers as a cost of doing business for the entity that is fined. Equally important, they may drive companies away from Vermont.

Provide the rationale for those changes.

The rationale for the changes can be stated briefly. The Department has a dual role: the protection of consumers and the encouragement of a market, properly regulated. By taking the approach above it is believed that not only can better compliance be achieved; industry can more easily conform to the law and get on with what it is in business to do.

Give your assessment of how those changes affected the enforcement protocols in effect prior to the changes.

Our assessment of how the change in philosophy affected protocols in place prior to the change of administration is not easy to answer. Protocols is not a word I used in my October 14 response and suggests a more programmed approach to enforcement than is possible or wise.

No two market conduct (or other enforcement) cases are alike. There were no protocols in place prior to this administration. More important, when we arrived there was no chain-of-command approval process in place for the exercise of judgment as to what to investigate and how to deploy resources. The market conduct staff did not report to anyone in the Insurance Division but acted outside the authority of those involved in regulating insurance. Deputy Commissioners of Insurance in the previous administration had no insurance experience (unlike the current Deputy). The same was true of the Commissioners. By the statements of classified market conduct staff after this administration arrived, they acted without controls and made their own decisions without oversight. As I've noted previously, I changed the organization chart on my arrival to put the insurance market conduct function in the Insurance Division where it belongs.

There are now proper channels from classified market conduct staff to the responsible Deputy and thence to the Commissioner.

As to protocols as such, there is no fixed system and no checklist for addressing market conduct or other enforcement issues. As I said in my October 14, 2011 response, a great deal of regulatory discretion is built into the market conduct function; good judgment and proper regulatory restraint are keys to the success of any market conduct program. While there is an NAIC "Market Regulation Handbook", it is only a handbook and covers a great many topics

other than market conduct. It is also important to understand that a full "market conduct examination" is at the extreme end of market conduct investigations and inquiries and infrequently invoked. The aim is to bring an insurer's conduct into compliance, not to bring an action for the sake of doing so. There are also legitimate decisions to be made as to where best to deploy resources and efforts. These are necessarily matters of judgment, not protocols.

In this regard, as will be seen from the responses below to your second question, prior to this administration some market conduct actions were opened which were unnecessary and improvident. An example is Number 182, where an insurance market conduct inquiry was opened because some health claims data submitted to the Division of Health Care Administration (not the Insurance Division) contained errors – errors discovered and corrected by the insurer. This has nothing to do with the conduct of the insurer in the marketplace. Rather, it's a matter of innocent, self-corrected data input errors where the proper solution is to work with the insurer not to bring enforcement actions against the company.

Sometimes, enforcement is needed, and sometimes regulatory decisions do not make the industry happy. We are, fundamentally, a consumer protection agency since the solvency of insurers, for one example, or the safety of banks, for another, are matters affecting consumers. The collapse of an insurance company, or its departure from the market, is not good for consumers.

Where enforcement is required, however, we enforce, and not necessarily through the market conduct staff – we try to do that which is most efficient and effective in a particular circumstance.

A recent example, of which you may have read, is the case of UnitedHealthCare. The case involved a direct mail, print, and television/radio advertising campaign by UHC. It was brought to the Department's attention by the Commissioner himself (it did not come through market conduct staff). Working with the Deputy Commissioner for Insurance, I assigned two lawyers to the matter and under my supervision administrative charges were brought on essentially two counts: that UHC failed to seek prior approval for its ads as required by law and – importantly – that the ads were deceptive and misleading, falsely suggesting to Vermonters that UHC offered a zero premium Medicare Supplement policy. The case was settled earlier this month, outside the market conduct function, for \$250,000 plus \$10,000 in costs. The whole process took a matter of a few months to investigate, charge, and resolve. Federal regulators from Health and Human Services were alerted, participated as observers, and continue to take an interest in UHC. Vermonters have been protected from false advertising, the company has been subject to a large enough penalty to get its attention, and Vermonters can still purchase UHC's (now properly promoted) products.

Alternatively, in a non-insurance matter, a health facility in Vermont applied for a Certificate of Need for a small construction project. An alert staff member, not in market conduct, noticed from a few words in a supplemental filing that in fact the project had already been completed when the application was submitted, a clear violation of statute. Investigation revealed that a staffer at the health facility had inquired of the wrong agency as to whether a Certificate of Need was required and was told it was not. When the error was discovered, an application was submitted. We invited the health facility staff and their counsel to meet with us and in

discussions with the CEO, the board chairman, and counsel, the matter was resolved with a \$5,000 fine. Given the small scale of the project, the human error in the facility's staff asking the wrong agency for an opinion, and the now clear understanding by the board chairman and the CEO of what went wrong and what the law requires, a small penalty was deemed appropriate.

Were these changes in protocol documented?

I offered the two examples above to show that there can be no protocols on how to enforce the law. In decades of conducting complex litigation, both as regulator and as counsel for companies, I have long since learned that it is judgment, not a protocol, which counts. The concept of "protocols," if I understand your use of the word, is inappropriate in this context. It follows that "changes in protocols" are not documented.

How have these changes in enforcement philosophy benefited Vermont consumers?

It is difficult to quantify how these changes in approach have benefited consumers, nor perhaps would it be useful to attempt to do so. A refund of \$20 to one person might be more valuable than a refund of \$200 to another. The benefits to consumers of cease and desist orders, such as the ones described in our October 14 response, cannot be known, but are nonetheless real. Injuries from scams which are prevented are a benefit, though a negative one – people were not hurt. One way we have tried to benefit consumers in this administration, however, is to focus on restitution where restitution is feasible. We have pending in our bill (H.512) legislation that will, if adopted, give the Commissioner broad authority to order restitution, authority that is currently not available in all the matters we enforce.

On the industry side, we have had feedback that the change in approach and tone is noticeable and is appreciated. In various ways we have worked through problems with regulated industries without ever getting even to the point of a low-level market conduct inquiry. This, we feel, is a good result – it's efficient, consumers are served, and companies can move forward with their business knowing the rules.

Our other focus, on encouraging the development of the financial services industry is evidenced in part in the increasing number of captive insurance companies that are domesticated here, with the ensuing benefit to the Vermont economy. Further, both in last year's BISHCA bill and this year's we have offered (so far successfully) legislation intended to make Vermont an attractive domicile for the financial services industry by updating our laws on merchant banking and by writing legislation – following a suggestion from industry – which will provide a place in Vermont for a new type of independent trust company. We also have pending at the moment legislation to create an entirely new financial industry in Vermont, providing a domicile for companies that transfer blocks of insurance business between solvent insurers. If successful in this initiative, H.533, Vermont would be first in the nation in this area, leading as it led in the past in the captive insurance industry.

New industries located in Vermont are good for all Vermonters, whether direct consumers of the products or not. These development efforts reflect this Commissioner's approach – meet, talk, encourage, and move forward. We enforce where it's called for with the vigor required.

2. Attached is a spreadsheet taken from the information you provided to us in your November 14 letter. The spreadsheet shows that a significant number of open cases were reassigned to Deputy Commissioner Donegan. Would you please explain why those reassignments were made, who supervised these cases prior to the changes, and what progress has been made in cases since the changes?

I believe you are referring to a letter of November 30, rather than November 14.

As a preliminary matter, I should correct the inaccuracy in what was sent (written by market conduct staff) when it says a case was "reassigned" to Deputy Commissioner Donegan. This is not a matter of assignment but of direction of activity by the person in charge.

I should also point out that we are mindful that information regarding these matters is largely protected from disclosure by statute.

... all market conduct annual statements and other information filed pursuant to subdivision (1) of this subsection, all records, and other information of investigations conducted by the department under this title, whether such statements, records, or information are in the possession of another regulatory or law enforcement agency, the National Association of Insurance Commissioners, or any person, shall be confidential and privileged, shall not be made public, shall not be subject to subpoena, and shall not be subject to discovery or introduction into evidence in any private civil action.

8 V.S.A. § 3561(b)(2). In my letter of November 14 we said about as much as can be said.

However, I can make some comments and add some further facts, which are in italics in the copy of your table below. I also note in my comments that until Deputy Commissioner Donegan took direct control of these files, many seem to have been unattended to by staff.

Respondent	Exam #	Initiation Date	Comments
Blue Cross Blue Shield of VT	117	02/26/2009	The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11 <i>This matter is discussed below following #186. Note that the matter was opened in February, 2009 and the last entry in the file by market conduct staff is November 10, 2010. The matter was thus before market conduct staff more than 20 months before going dormant prior to the present administration. It then apparently continued to be unattended to until Deputy Commissioner Donegan took control of the file on October 11, 2011.</i>
Blue Cross Blue Shield of MA	183	09/19/2010	The status is that the file has been reassigned to Deputy Commissioner Donegan for

Respondent	Exam #	Initiation Date	Comments
			<p>handling as of 10/11/11</p> <p><i>This matter is discussed below following #186. Note that the matter was opened on September 19, 2010 and the last entry in the file by market conduct staff is a week later, September 27, 2010. It appears that market conduct staff left the matter unattended until Deputy Commissioner Donegan took control of the file on October 11, 2011.</i></p>
Anthem Blue Cross Life & Health	186	09/22/2010	<p>The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11.</p> <p><i>Note that this matter was opened on September 22, 2010 and the last entry in the file is two weeks later, October 7, 2010. It appears that market conduct staff left the matter unattended until Deputy Commissioner Donegan took control of the file on October 11, 2011.</i></p>
<p><i>These comments apply to #117, #183 and #186 above and to #148 and #197 below.</i></p> <p><i>These matters all involve the question of what law applies to cross-border group health insurance situations, remembering that the purchasers of group health insurance are not John and Jane Doe but their employers. Example: A New Hampshire employer enters into a contract with a New Hampshire insurer for coverage for its employees. The contract is thus entered into in New Hampshire between two New Hampshire companies. Some of the employees live in Vermont. What law applies to that contract? It appears that New Hampshire law applies, which may mean the Vermonters do not get the benefit of Vermont coverage mandates. Alternatively, assume a Vermont employer enters into a group insurance contract with a Connecticut insurer licensed in Vermont, and some employees live in New Hampshire. Does New Hampshire law govern the coverage of New Hampshire residents, or are they covered by Vermont law, even though not Vermont residents? Must the employer enter into separate contracts for each state in which it operates?</i></p> <p><i>Assume Acme Auto Insurance Co. is based in Indiana, but has salaried representatives in small offices around the country and, say, 30 employees in Vermont, 300 in Ohio, 26 in Wyoming, and so on through 50 states. Which state's law applies in terms of coverage mandates? Must Acme enter into 50 contracts?</i></p> <p><i>What of the remote employee – a software engineer working out of his home in Vermont for a company in Silicon Valley California, using that company's servers remotely, and covered by insurance from that company. Does Vermont law apply? California law? Where, for that</i></p>			

Respondent	Exam #	Initiation Date	Comments
<i>matter, is that person employed?</i>			
<p><i>These are not small questions – Some Dartmouth employees live in Vermont, though Dartmouth presumably (if not self-insured) entered into an insurance contract on their behalf in New Hampshire. Some King Arthur Flour employees may well live in New Hampshire and King Arthur presumably insures them under a Vermont contract.</i></p>			
<p><i>These are only examples. The cross-border issue affects all states, in an almost infinite number of combinations – we are one national economy with 50 state regulators and sets of laws. The National Association of Insurance Commissioners has spent a great deal of effort on these cross-border issues and in 2009 produced a lengthy white paper on the subject. It offered recommendations in multiple areas where cross-border issues arise, including payment, complaint handling, and form review. As to coverage mandates, the NAIC recommended that where possible, a state should <u>not</u> apply its mandates if the principal or primary place of business is not also in the state. That it is, the NAIC applies the familiar legal principle of <u>lex locus contractus</u> – the law of the place of contracting governs. This is the same approach taken by the federal government just last week in connection with determining “Essential Health Benefits” under the Affordable Care Act: “conform to the benefits required in the employer’s State, given that the employer is the policyholder.” That is not necessarily the interpretation under Vermont statute, however, and that conflict raises serious policy and legislative questions, as well as complicated legal issues.</i></p>			
<p><i>The situation is further complicated in many of the matters listed by the Blue Cross Blue Shield structure. Blue Cross Blue Shield of Vermont and its subsidiaries are together the major regulated medical insurer in Vermont with some 62% of the market. The Blues of Vermont are part of the Blue Cross Blue Shield Association, which has numerous rules on coordination between the other Blues across the country, including how to handle cross-border issues using the Blue Card – the Blue Card is a consumer-focused program that allows a Vermonter who breaks a leg in Arizona to present her Vermont card to an Arizona hospital and not have to think further about the matter (similarly for an Arizonan covered by an Arizona Blue plan who breaks a leg at Stowe). Indeed, #117 is squarely directed at the Blue Card system as though it were a market conduct issue rather a benefit to consumers and a rational way to handle multistate and cross-border issues.</i></p>			
<p><i>In short, these are not ordinary market conduct matters, or indeed market conduct matters at all, but involve complex matters of law and perhaps a need to substantially revise Vermont statutes to bring them into the present market era. As noted under the particular file numbers, the matters seem to have been unattended for some time until Deputy Commissioner Donegan took control of the files in October of 2011. Since then Deputy Commissioner Donegan, I as General Counsel, executives of the Vermont Blues and their inside and outside counsel have met and discussed this problem extensively. At our request, counsel for the Vermont Blues has produced a detailed memo on the matter and we have discussed with the Blues’ counsel possible short-term and longer-term solutions to these cross-border questions.</i></p>			
<p><i>I should note that while the focus above has been on the Blues, the same cross-border issues</i></p>			

Respondent	Exam #	Initiation Date	Comments
<p><i>(apart from the Blue Card) apply to #148 and #197.</i></p> <p><i>In short, these files are no longer unattended but the solution to the legal issues requires a careful and considered approach. We may be able to approach the Legislature next session with proposals.</i></p> <p><i>Some final notes. Under the prior administration a New York Blue was heavily fined for providing coverage for Vermont members of a New York agricultural cooperative – a classic cross-border issue. The insurer paid the fine and then left the state; as I understand it the Vermonters were placed by this Department in another plan which offered less favorable coverage. While the general fund gained the fine, it is far from clear that the Vermonters in question gained anything.</i></p> <p><i>Also, one out-of-state insurer faced with cross-border issues because their client had employees resident in both Vermont and New Hampshire, chose to lose business, turned the Vermont lives over to another insurer, and exited the Vermont market.</i></p>			
Cigna Health & Life Ins, Co.	182	09/08/2010	<p>The status is that the file has been reassigned to Deputy Commissioner Donegan for handling as of 10/11/11</p> <p><i>This matter should not have been opened as a market conduct item and will be closed.</i></p> <p><i>The last entry in the file by Market Conduct was July 15, 2010, after which the file apparently was unattended to for 15 months until Deputy Commissioner Donegan took it over.</i></p> <p><i>This concerns unintentional errors in data submitted by the insurer in connection with a mental health report for which data is collected by the Department. The insurer would find the errors and submit corrected data. The health care staff member directly involved in the data collection has since advised that the insurer's performance has improved.</i></p> <p><i>Further, questions have arisen as to whether this data collection function should more properly be at, e.g., the Green Mountain Care Board or the Department of Mental Health.</i></p>
United Healthcare	148	10/05/2009	This file has been on hold and no action has

Respondent	Exam #	Initiation Date	Comments
			<p>been taken in 2011.</p> <p><i>This matter had been closed when the insurer ceased to cover the company in question; it was then reopened as to the insurer's coverage of another company. The business of that second company was subsequently transferred to Cigna and the matter is now #197 below. There are various other matters in this file which go to the cross-border issues noted under #186 above. More than two years after the file was opened, on November 3, 2011 staff sent a memo to the market conduct examiner indicating that there were two remaining issues, on which the examiner's instructions were sought as to whether those remaining issues should be pursued. That appears to have been the first activity in the file for almost a year, the previous entry being in December, 2010. That no action was taken in 2011 appears to have been the fault of the market conduct examiner. There is no indication in the file that the examiner responded to the request for a decision. Deputy Commissioner now has the file. Since this is a cross-border matter, please see the note under #186.</i></p>
Cigna Health & Life Ins. Co.	197	12/06/2010	<p>this file has been on hold per mamagent [sic] instruction and no action has been taken in 2011</p> <p><i>Please see the note under #186 above. This file was opened December 6, 2010 and the last entry in the file is January 20, 2011. The matter is now under the direction of the Deputy Commissioner, who is dealing with the cross-border issues discussed above.</i></p>
Cigna Health & Life ins. Co.	195	11/10/2010	<p>File has been on hold per management instructions since Jan. 2011</p> <p><i>Minor technical violation. Certain backup documentation was correctly submitted for current period but was incomplete for a prior period. No consumer impact. No activity by the market conduct examiner in the two</i></p>

Respondent	Exam #	Initiation Date	Comments
			<i>months he had the case. Since the insurer is current on the documentation and there is no harm to the consumer, matter judged minor and will be closed.</i>
Bankers Life and Casualty	154	01/13/2010	Deputy Commissioner Donegan is discussing settlement options with this company <i>This matter is in active settlement mode. Negotiations are being conducted personally by Deputy Commissioner Donegan. We are not free to comment on the terms being discussed.</i>

3. Would you please provide some background information on an International Fidelity case which we have recently heard about which reportedly involved a \$20,000 fine which was subsequently refunded?

The case is apparently Docket No. 10-124-I, a contested case conducted under the Administrative Procedure Act and concerned charges for bail bonds. The case was settled by a stipulation and consent order signed by then-Commissioner Michael Bertrand on November 15, 2010. The settlement terms included payment of an administrative penalty of \$20,000 plus the Department's costs and expenses in the sum of \$9,294.30. Payment of both amounts was received November 22, 2010. We can find no evidence that any of that money was subsequently refunded. We conclude that your informant gave you incorrect information.

CP/