

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Resident Insurance  
Producer License and the Resident Surplus  
Lines License of Duane R. Wolff and the  
Resident Insurance Producer License of  
Douglas Wolff

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge M. Kevin Snell on May 11, 2010, and June 24, 2010, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101 ("OAH"). Following the receipt of post-hearing reply briefs and submissions on July 19, 2010, the OAH record closed.

Christopher M. Kaisershot, Assistant Attorney General, St. Paul, MN, appeared on behalf of the Minnesota Department of Commerce ("Department"). John F. Hedtke, Esq., Hedtke Law Office, Duluth, MN, appeared on behalf of Respondent Duane R. Wolff. Julie H. Firestone, Esq., Briggs and Morgan, Minneapolis, MN, appeared on behalf of Respondent Douglas Wolff.

**STATEMENT OF THE ISSUES**

1. Did the Respondent Duane Wolff misappropriate monies and fail to remit insurance premiums in violation of Minn. Stat. §§ 60K.43, subds. 1(4) and 1(8) and 72A.20, subd. 18 (2008)?

The Administrative Law Judge finds that Respondent Duane Wolff misappropriated monies and failed to remit premiums paid by insureds to insurance companies and failed to remit returned premiums on cancelled policies, in violation of statute.

2. Did the Respondent Douglas Wolff fail to remit insurance premiums in violation of Minn. Stat. §§ 60K.43, subds. 1(4) and 1(8) and 72A.20, subd. 18 (2008), and Minn. R. 2795.1000 (2007)?

The Administrative Law Judge finds that Respondent Douglas Wolff did not fail to remit premiums paid by insureds to insurance companies or fail to remit returned premiums on cancelled policies.

3. Did Respondent Duane Wolff's business dealings demonstrate financial irresponsibility in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 60K.43, subds. 1(4) and 1(8) (2008)?

The Administrative Law Judge finds that Respondent Duane Wolff's operation of Wolff Agency, Inc., demonstrated financial irresponsibility, in violation of statute.

4. Did Respondent Douglas Wolff's business dealings demonstrate financial irresponsibility in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), and 60K.43, subds. 1(4) and 1(8) (2008)?

The Administrative Law Judge finds that Respondent Douglas Wolff's actions as an employee agent and minority stockholder of Wolff Agency, Inc., did not demonstrate financial irresponsibility.

5. Did Respondent Duane Wolff provide false and misleading information to the Commissioner about the location of a client's file and fail to produce that client file in response to a Commissioner's subpoena, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3) and 60K.43, subd. 1(8) (2008)?

The Administrative Law Judge finds that Respondent Duane Wolff did not provide false or misleading information to the Commissioner about the location of the client's file or fail to produce that file to the Commissioner.

6. Should all or part of the record in this matter be classified as "not public" data?

The Administrative Law Judge finds that this report, and all of the record except for Exhibits 5 and 27, shall be public data.

The Administrative Law Judge concludes that regulatory discipline is appropriate for the licenses of Duane R. Wolff.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

### **Background – Wolff Agency, Inc.**

1. Respondent Duane Wolff has been the President and principal shareholder of Wolff Agency, Inc. ("Agency") in Duluth, Minnesota, since he started it in 1964, and has always been in charge of the Agency and made all financial decisions.<sup>1</sup> Respondent Duane Wolff's most recent resident insurance producer license was issued on December 17, 1981. His most recent surplus lines license was issued on August 10, 1987. Respondent Duane Wolff's licenses were suspended effective October 31, 2009,

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<sup>1</sup> Testimony of Duane Wolff and Douglas Wolff; Ex. 5, track 5.

for failure to complete continuing education requirements.<sup>2</sup> Respondent Duane Wolff has always made the strategic and financial decisions for the Agency on his own.<sup>3</sup>

2. Respondent Duane Wolff's son, Respondent Douglas Wolff, was issued a resident insurance producer license on January 6, 1992, and became an employee/agent for the Agency in 1992 at age 23.<sup>4</sup> Until January 2010, the Agency also had several other employees, including an office manager and clerical staff.

3. The Agency sold multiple lines of insurance. Respondent Duane Wolff's primary area of expertise was insurance for the trucking industry. Insurance for the trucking industry represented approximately 80% of the Agency's business.<sup>5</sup> Respondent Douglas Wolff sells primarily health and life insurance and some property and casualty insurance.<sup>6</sup>

4. For advice on financial matters, Respondent Duane Wolff consulted his accountant – a member of the board of directors of Beacon Bank.<sup>7</sup> Respondent Duane Wolff signed all of the checks that related to insurance premiums for the trucking industry.<sup>8</sup>

5. Some time in the late 1990's, Respondent Duane Wolff advised Respondent Douglas Wolff that it was time he became a part owner of the Agency and told Respondent Douglas Wolff he was a 20% owner and a Vice President. Respondent Douglas Wolff paid nothing for this 20% ownership. No corporate minutes, stock purchase agreement, stock certificates or other written formalities were created to document this gift of partial ownership.<sup>9</sup>

6. Respondent Douglas Wolff's only managerial duties were as personnel manager of the several staff persons and he was responsible for payroll.<sup>10</sup> The bank account utilized by Respondent Douglas Wolff for payroll and office expenses was a Wells Fargo account, separate and apart from the bank accounts utilized by Respondent Duane Wolff at other banks for the trucking industry business.<sup>11</sup>

7. On January 4, 2002, Respondent Duane Wolff signed a Consent to Entry of Order for a Consent Order for a civil penalty of \$3,000.00 issued that day by the Department for Respondent Duane Wolff's failure to disclose his agency fees for service in violation of Minn. Stat. § 60K.14.<sup>12</sup>

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<sup>2</sup> Notice and Order for Hearing and Order for Summary Suspension ("Notice and Order").

<sup>3</sup> Test. of Duane Wolff and Douglas Wolff.

<sup>4</sup> *Id.*; Notice and Order.

<sup>5</sup> Test. of Timothy P. O'Neil, Vice Chairman of Universal Insurance Premium Corporation ("UPAC"); Ex. 7.

<sup>6</sup> Test. of Douglas Wolff.

<sup>7</sup> Test. of Duane Wolff.

<sup>8</sup> Ex. 5 at track 004.

<sup>9</sup> Exs. 1 and 2.

<sup>10</sup> Test. of Duane Wolff and Douglas Wolff.

<sup>11</sup> *Id.*; Ex. 5 at track 004.

<sup>12</sup> Ex. 26.

8. On August 18, 2006, Respondent Duane Wolff signed a Consent to Entry of Order for a Consent Order for a civil penalty of \$5,000.00, which was issued on September 5, 2006 by the Department for Respondent Duane Wolff's providing misleading and incomplete information to the Commissioner and failure to notify the involved insurer or engage in the processing of a claim reported to Respondent Duane Wolff by a claimant in violation of Minn. Stat. §§ 45.027, subd. 7(3) and 72A.201, subd. 4.<sup>13</sup>

### **Respondent Duane Wolff, the Trucking Industry, UPAC, FIFC, and Beacon Bank**

9. Because the cash flow at many trucking companies does not allow them to pay an annual insurance premium in a lump sum in advance, there are premium finance companies that will finance the premiums for a fee. The premium finance company enters into an agreement with an insured where it will pay the entire annual premium, in exchange for periodic payments by the insured.<sup>14</sup>

10. Respondent Duane Wolff established a relationship with Universal Insurance Premium Corporation ("UPAC") to finance the insurance premiums of the Agency's trucking company insureds.<sup>15</sup> Because of the long term and successful relationship between UPAC and the Agency, UPAC established a special program with the Agency whereby the agency insureds were allowed a lower down payment on premiums (10-15%), in return for the Agency and its owner's personal guarantee of any balance due. Respondent Duane Wolff was the sole guarantor under this arrangement. This program was effective for many years for both parties, with UPAC generating a 35%+ return on equity or \$150,000+ annually in net margin.<sup>16</sup>

11. For returned premiums from the insurance companies on cancelled policies, Respondent Duane Wolff acted as an agent for the insurance companies in accepting the returned premiums. His responsibility was to return those premiums to UPAC. UPAC routinely sought and received written confirmations from the insurance companies that Respondent Duane Wolff had the authority to accept those returned premiums.<sup>17</sup>

12. As part of its arrangement with the Agency, UPAC would allow the Agency 120 to 180 days to hold and use insureds' returned premiums on cancelled policies before requiring the balances to be repaid in full, with interest, to UPAC.<sup>18</sup>

13. Insurance for the trucking industry is highly specialized, the insurance premiums are large and very risky in a number of ways. For example, an independent trucker in another state will finance his annual premium and then disappear or walk away during the year. In this instance the Agency is responsible to repay UPAC

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<sup>13</sup> Ex. 26.

<sup>14</sup> Test. of T. O'Neil and Duane Wolff; Ex. 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Test. of T. O'Neil.

<sup>18</sup> *Id.*

premiums due before the Agency discovered that the trucker is no longer in business and the insurance can be cancelled.<sup>19</sup>

14. The Agency's annual premiums written for the trucking industry ranged from \$8 million in 1998 to \$12 million at its peak in 2006. The United States economic downturn in 2007 had a significant effect on the trucking industry and caused a reduction of the Agency premiums to an estimated \$6 million in 2008.<sup>20</sup>

15. In approximately September 2005, Respondent Duane Wolff decided to enter the premium finance business and formed Interstate Premium Finance Company, LLC ("PFC") to fund insurance premiums for the trucking industry. Respondent Duane Wolff made this decision because he knew the profit margins and returns being realized by UPAC and the Agency trucking insurance business was doing well.<sup>21</sup> Respondent Douglas Wolff was skeptical but trusted his father because he had been successful for many years and agreed to go along with Respondent Duane Wolff's decision.<sup>22</sup>

16. The Agency borrowed \$200,000.00 from Beacon Bank ("Beacon") on September 2, 2005. Beacon required both Respondents to guarantee the note because they were the owners of the entity.<sup>23</sup>

17. PFC borrowed \$500,000.00 from Beacon on September 14, 2005. Beacon required the Agency and both Respondents to guarantee the note because they were the owners of the entity.<sup>24</sup> Respondent Duane Wolff alone signed the backup withholding certifications.<sup>25</sup>

18. In June 2006, Figgins Transport ("Figgins"), an Agency insured trucking company for over 15 years, had a trailer stolen in Montreal, Quebec. Figgins reported the loss directly to Adriatic, its liability carrier according to the Certificate of Insurance issued by Respondent Duane Wolff. Adriatic notified them that they had never insured the trailer. Further investigation by Figgins revealed that none of their trailers, step-decks or vans were covered by Adriatic insurance and had not been since 1997, although Figgins had been paying premiums for coverage of those vehicles all that time.<sup>26</sup>

19. Further investigation by Figgins revealed that, unknown to Figgins, Respondent Duane Wolff had been routinely financing the Figgins insurance through UPAC even though Figgins had paid the full amount of its premiums in advance. Rather than forwarding the fully paid premiums to the insurance companies,

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<sup>19</sup> Test. of Duane Wolff.

<sup>20</sup> Test. of T. O'Neil; Ex. 7.

<sup>21</sup> Test. of Duane Wolff; Ex. 22.

<sup>22</sup> Test. of Douglas Wolff.

<sup>23</sup> Id.; Test of Duane Wolff; Ex. 21.

<sup>24</sup> Id.; Test of Douglas Wolff; Ex. 20 at 1285-1288.

<sup>25</sup> Ex. 20 at 1288.

<sup>26</sup> Ex. 1 at 36-37.

Respondent Duane Wolff executed financing agreements with UPAC in Figgins' name, without authority from Figgins.<sup>27</sup>

20. UPAC sent cancellation notices on Figgins policies because Respondent Duane Wolff failed to pay the installments to UPAC on time. Respondent Duane Wolff told Figgins to forward all UPAC correspondence to him without opening them, which they had done until after June 2006. For example, on November 24, 2006, UPAC sent Figgins a Notice of Cancellation of their March 1, 2006, insurance policy with Lincoln General Insurance Company for failure of payment in the amount of \$78,255.52 due November 1, 2006, out of a total policy premium of \$207,361.00. The cancellation notices have affected Figgins' credit scores.<sup>28</sup>

21. In a December 7, 2006 letter, Respondent Duane Wolff sent Figgins a letter stating that the Agency "will be responsible to pay all UPAC accounts for Figgins . . . ."<sup>29</sup>

22. Throughout his years of operation of the Agency, Respondent Duane Wolff utilized returned premiums to pay: premiums for other insureds, salaries and expenses of the Agency.<sup>30</sup>

23. On January 18, 2007, Figgins sent the Department a letter with the reference of "Insurance Fraud" regarding Figgins' discoveries about the activities of Respondent Duane Wolff with regard to its insurance coverage problems and premiums.<sup>31</sup>

24. In May 2007, Timothy O'Neil, Vice Chairman of UPAC, visited the Agency and spoke with Respondent Duane Wolff about slowing payments to UPAC, beyond the 180-day agreement. Respondent Duane Wolff stated that business was down, the economy had caused the insurance companies to lower their premiums, and it all caused the Agency to slow down its payments to UPAC.<sup>32</sup> UPAC and Respondent Duane Wolff made an informal agreement placing the Agency on a payment plan requiring payments of \$20,000.00 per week until such time as the Agency came within the 180-day agreement. Respondent Duane Wolff followed the payment plan for several months, but by the end of 2007, he no longer maintained the \$20,000.00 per week on the returned premiums.<sup>33</sup>

25. In mid-2007, UPAC also notified Agency insurance companies that all future returned premiums on cancelled policies were to be sent directly to UPAC rather than be returned via the Agency.<sup>34</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> Ex. 1 at 42.

<sup>29</sup> Ex. 1 at 43.

<sup>30</sup> Test. of Duane Wolff.

<sup>31</sup> Ex. 1.

<sup>32</sup> Test. of T. O'Neil.

<sup>33</sup> Ex. 7.

<sup>34</sup> Test. of T. O'Neil.

26. Two UPAC representatives visited the Agency again in September 2007, and met with Respondent Duane Wolff because of the continuing decline in premium repayments and conducted an account-by-account review with him to determine the extent of returned premiums due UPAC.<sup>35</sup>

27. Although a majority of the agencies doing business with UPAC were able to move on and survive the economic downturn, the Agency was part of the 20% that were unable to do so because of its heavy reliance on trucking. The trucking industry was affected more than most industries because of the downturn in the United States' economy.<sup>36</sup>

28. By the end of 2007, the Agency was in arrears to UPAC in excess of \$1 million.<sup>37</sup>

29. On November 19, 2007, Respondent Duane Wolff signed, both individually and on behalf of the Agency, a premium Financing Agreement with First Insurance Funding Corporation ("FIFC") purportedly to finance the annual insurance premium for Preferred Transit. FIFC forwarded \$329,810.00 to Respondent Duane Wolff. Respondent Duane Wolff failed to use the funds to pay National Indemnity Company the premiums for Preferred Transit. National Indemnity cancelled Preferred Transit's policy no later than March 22, 2008.<sup>38</sup>

30. On April 30, 2008, the Agency, PFC, and Respondents consolidated the September 2005 Agency and PFC loans from Beacon into one \$700,000.00 loan.<sup>39</sup>

31. On June 30, 2008, Respondent Duane Wolff executed a promissory note wherein he agreed to pay FIFC the sum of \$329,810.00, together with interest and various costs.<sup>40</sup> Respondent Duane Wolff paid FIFC a total of approximately \$25,000.00 towards the amount owed.<sup>41</sup>

32. In June 2008, Mr. O'Neil met with Respondent Duane Wolff and Respondent Douglas Wolff. Mr. O'Neil "took a strong position" that both Respondent Duane Wolff and Respondent Douglas Wolff would have to sign personal guarantees and enter into an agreement to repay arrearages of \$2,359,787.67 to UPAC, sign a promissory note, treat any commissions due the Agency as credits against the note, sign a security agreement giving UPAC a lien on all assets and receivables of the Agency, and assign their stock in the Agency to UPAC. In addition Respondent Duane Wolff was required to purchase a \$2,000,000.00 life insurance policy on his life with

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Test. of T. O'Neil.

<sup>38</sup> Ex. 18.

<sup>39</sup> Ex. 23.

<sup>40</sup> *Id.*

<sup>41</sup> Test. of Duane Wolff.

UPAC as the beneficiary. Respondent Duane Wolff and Respondent Douglas Wolff entered into the required agreement on June 10, 2008.<sup>42</sup>

33. The June 2008 meeting with UPAC was when Respondent Douglas Wolff first acquired knowledge of the Agency's precarious financial situation.<sup>43</sup>

34. The \$2,359,787.67 represented returned premiums overdue for over 100 insured truckers or trucking companies.<sup>44</sup>

35. The Agency failed to meet the requirements of the June 10, 2008 agreement with UPAC. On November 21, 2008, UPAC declared a default under the promissory note and agreement and accelerated the payments due under the promissory note.<sup>45</sup>

36. Between June 28, 2000 and May 20, 2009 the Agency tendered over 200 checks to UPAC that were returned as insufficient funds ("NSF"). Ten of the NSF checks were for amounts between \$30,000.00 and \$73,697.47. Eighteen of the NSF checks were for amounts between \$10,000.00 and 30,000.00. Forty-one of the NSF checks were for amounts between \$5,000.00 and 10,000.00. Seventy-four of the NSF checks were for amounts between \$1,000.00 and 5,000.00. Sixty-two of the NSF checks were for amounts less than \$1,000.00.<sup>46</sup> All of the NSF checks were eventually paid by the Agency.<sup>47</sup>

37. UPAC is now seeking payment of the returned premiums owed by the Agency directly from the insurance carriers because, as principals, they are primarily liable for the premiums sent to the Agency on their behalf.<sup>48</sup>

38. On November 17, 2008 the Department's Chief Examiner issued the Agency an Administrative Subpoena, requiring that a Department investigator be given immediate access to:

1. All areas and places of Wolff Agency's business office . . . and/or any other business office addresses including, but not limited to, all desks, files, any other types of cabinets, storage units, computers or other electronic devices, safes, and/or vaults maintained in the office(s).
2. Any and all books, accounts, papers, computer identifications, passwords, and/or access codes, other records, files, correspondence, memoranda, agreements, and/or documents, whether in paper or electronic form.

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<sup>42</sup> Exs. , Testimony of Martin Fleischhacker; Test. of Wolff ; Test. of Wolff .

<sup>43</sup> Test. of Douglas Wolff, Duane Wolff and T. O'Neil.

<sup>44</sup> Ex. 6 at 307-312.

<sup>45</sup> Ex. 6 at 293; Test. of T. O'Neil.

<sup>46</sup> Exs. 8 and 9.

<sup>47</sup> Test. of T. O'Neil.

<sup>48</sup> *Id.*; Ex. 10.

39. On November 26, 2008, the Department investigator sent an e-mail to the Agency, together with two attachments labeled "TENNESSEN WARNING." The e-mail stated:

Duane or Doug – As Duane and I recently discussed by telephone, our department will need a complete copy of Figgins Transportation's file to complete our investigation of a complaint. This request for the requested file includes, but is not limited to, any and all documents or other information whatsoever that you and/or your agency has related in any way to Figgins Transportation, and/or any similarly named insured or client, and/or Darlene Figgins. Please read the attached document before responding to this request.<sup>49</sup>

Your response is required within 10 days of your receipt of this e-mail. If you have any questions, please call me at 651.297.3239. the response should be sent to the following address: Attn: Martin Fleischhacker, Minnesota Department of Commerce, 85 7th Place E., Suite 500, Saint Paul, MN 55101.

40. On or about December 4, 2008, Respondent Duane Wolff directed the Agency office manager to ship the Figgins file to the Department by FedEx Ground service, as requested by the Department, which she did.<sup>50</sup>

41. On June 4, 2009, the Department's Chief Examiner issued the Agency an Administrative Subpoena, requiring that a Department investigator be given immediate access to the same information as in the November 17, 2008 Administrative Subpoena.

42. On or about June 4, 2009, FIFC filed an action against the Agency and Respondent Duane Wolff in St. Louis County District Court to recover \$366,557.93.<sup>51</sup> This action was dismissed and was refiled on March 2, 2010 in United States District Court for the Northern District of Illinois seeking the recovery of \$385,293.59, plus interest, costs and attorneys' fees.<sup>52</sup> The Agency and Respondent Duane Wolff defaulted on the Illinois lawsuit.<sup>53</sup>

43. The Agency, PFC, and Respondents defaulted on the April 30, 2008, \$700,000.00 loan from Beacon.<sup>54</sup> On July 15, 2009, the Agency, PFC, and Respondents entered into a Forbearance Agreement with Beacon whereby they:

- a. Acknowledged the amount due under the note was \$677,013.30; and
- b. Acknowledged the default under the loan agreements; and

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<sup>49</sup> Ex. 38 at 7645.

<sup>50</sup> Ex. 14; Test. of Duane Wolff.

<sup>51</sup> Ex. 16.

<sup>52</sup> Ex. 18.

<sup>53</sup> Test. of Duane Wolff.

<sup>54</sup> Ex. 23.

- c. Agreed to utilize their best efforts to sell the Agency; and
- d. Agreed to pay Beacon \$3,000.00 per month; and
- e. Assigned the agency lease to Beacon; and
- f. Signed a Confession of Judgment; and
- g. Signed a Stipulation for entry of a Replevin Order; and
- h. Signed a Voluntary Surrender Agreement; and
- i. Signed a Pre-Bankruptcy Waiver; and
- j. Granted Beacon a Power of Attorney.<sup>55</sup>

44. In 2009 Agency insureds were receiving cancellation notices on their insurance even though they had paid their premiums in full to Respondent Duane Wolff. Respondent Duane Wolff attempted to correct these problems by talking to the insureds on the telephone. In addition, several trucking insurance companies ceased doing business with the Agency because of unpaid Agency bills.<sup>56</sup>

45. On July 23, 2009, Respondent Duane Wolff deposited into an Agency account a \$100,000.00 premium payment on a total annual \$110,235.00 renewal premium for Yellow Cab company. The cab company paid the \$10,235.00 balance on August 20, 2009. Respondent Duane Wolff set up a premium finance account and paid 25% of the premium as a down payment. Respondent Duane Wolff then fell behind on the payments to the premium finance company by four months until he had Beacon Bank wire \$41,715.90 on March 1, 2010 to bring the account current.<sup>57</sup>

46. The Agency, PFC and Respondents defaulted on the July 15, 2009 Forbearance Agreement with Beacon. Beacon exercised its rights under that agreement. On January 11, 2010, a Replevin Order issued from St. Louis County District Court directing the Sheriff to seize the Agency and its assets. Soon thereafter Beacon took over the Agency and its assets in accordance with the Replevin Order.<sup>58</sup>

### **Respondent Douglas Wolff**

47. Respondent Douglas Wolff neither withdrew funds, dispersed funds nor wrote any checks on the Beacon accounts for trucking premiums, returned premiums, UPAC or UPC payments. Respondent Douglas Wolff never issued a payroll check to Agency employees that were returned NSF.<sup>59</sup>

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<sup>55</sup> Ex. 24.

<sup>56</sup> Ex. 5 at track 004.

<sup>57</sup> Ex. 15.

<sup>58</sup> Ex. 23; Test. of Duane Wolff and Douglas Wolff.

<sup>59</sup> Test. of Duane Wolfe and Douglas Wolff.

48. Respondent Douglas Wolff had no involvement with the First Insurance Funding business or agreements.<sup>60</sup>

49. During Mr. O'Neil's May 2007 visit to the Agency, the only contact he had with Respondent Douglas Wolff was social conversation over lunch.<sup>61</sup>

50. On March 14, 2008, Respondent Douglas Wolff received an e-mail from Caliper regarding an unpaid bill that had been previously sent to an Agency employee on January 24, 2008. Caliper is a company that conducts testing and assessments for prospective and current employees. Respondent Douglas Wolff sent out a check for payment that day and responded to the e-mail stating, "Check's in the mail today."<sup>62</sup>

51. The June 2008 meeting with UPAC was when Respondent Douglas Wolff first acquired knowledge of the Agency's precarious financial situation.<sup>63</sup>

52. Prior to June 2008, Respondent Douglas Wolff received a total of nine emails regarding the trucking insurance business. On all but one, he was one of multiple Agency addressees, including Respondent Duane Wolff and other Agency employees. In each case regarding past due matters, Respondent Douglas Wolff would either walk across the hall to see his dad or call him on the intercom. In either case, he would ask if Respondent Duane Wolff was taking care of it and, when receiving an affirmative response, thought no more about each, considering the inquiries routine. The e-mails were:

- a. June 12, 2006 e-mail from Lincoln General Insurance Company ("Lincoln") to Melissa, Respondent Duane Wolff and Respondent Douglas Wolff and others:

Melissa, We received your check #2449 \$222,437 this morning toward your March statement, thus leaving a balance of \$119,000 still due for Figgins PAP2365130306 according to [sic] Also, the April statement balance of \$99,119 is due IN OUR OFFICE no later than June 15<sup>th</sup>. . . .<sup>64</sup>

- b. July 18, 2006 email from Lincoln to Melissa, Respondent Duane Wolff and Respondent Douglas Wolff and others;

Melissa, Douglas and Duane, The May statement balance of \$174,581 was not received yesterday, July 17<sup>th</sup> when due. The Account is now past due.<sup>65</sup> . . .

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<sup>60</sup> Stipulated by the Department and Respondents on the hearing record.

<sup>61</sup> Test. of T. O'Neil.

<sup>62</sup> Ex. 38 at 7612-7613.

<sup>63</sup> Test. of Douglas Wolff, Duane Wolff and T. O'Neil.

<sup>64</sup> Ex. 38 at 7568.

<sup>65</sup> Ex. 38 at 7563-7564.

- c. July 20, 2006 e-mail from Lincoln to Melissa, Respondent Duane Wolff and Respondent Douglas Wolff and others;

Melissa, Douglas and Duane, The May statement balance of \$174,581 has been past due since 7/17/06. If your check is in the mail, please provide me with the check number, amount of check and date. . . .<sup>66</sup>

- d. November 16, 2006 e-mail from Erickson-Larsen, Inc. to Melissa and Doug:

Doug, per our telephone conversation today, attached are copies of statements for all three offices of E&L (here, Fargo & Madison). The balance in September which was due October 15 is \$50,693.98 (way past due) and the balance due yesterday is \$109,276.55. I need your check for the October 15 balance of \$50,693.98 in the mail today and then I need by no later than November 22 the balance of \$109,276.5[sic] Really appreciate your getting on this right away. Neither of us need more problems that could develop with E&L having to notify insureds that their [sic] Thanks & look forward to receipt of Oct. payment in a day or two.<sup>67</sup>

- e. October 15, 2007 e-mail from Lincoln to Respondent Duane Wolff and Doug:

Duane and Dog [sic] Wolff, Above attachment detail of what is still open on Wolff agency account of \$51,985 due today. We have not received a payment, notification of payment, phone call concerning payment etc since your check#4329 of \$32,693 arrived August 28<sup>th</sup>.

No payment to clear Midwest for June, No payment for July statement and today August statement is due. Have you already sent a check and I haven't received it as yet? If so, please let me know the check # and amount today. Otherwise, I shall expect your payment of \$51, 985 in overnight mail.<sup>68</sup>

- f. January 2, 2008 e-mail from Lincoln to Respondent Douglas Wolff and Respondent Duane Wolff:

Douglas and Duane, Attached is a copy of the October statement for Wolff Agency. Once again I must remind you that your account

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<sup>66</sup> Ex. 38 at 7567.

<sup>67</sup> Ex. 38 at 7575.

<sup>68</sup> Ex. 38 at 7534.

is again past due in payment. Payment of \$53,527 is due in our office by Friday 1/4/08 via overnight delivery.<sup>69</sup>

- g. March 3, 2008 e-mail from CRC Insurance Service, Inc. ("CRC") to Jennifer, Respondent Duane Wolff, Respondent Douglas Wolff and others:

Good morning, Please see attachment. Your agency is behind in several accounts due to CRC. Total amount due \$271,739.89. Please be advised we need payment in our office this week. I have tried several attempts to collect this from your accounting, with no response. If your agency does not send payment, or make contact with our agency, your agency will be put on hold. Please let me know as soon as possible, by e-mail or you may call me at 205-414-2490.<sup>70</sup>

- h. April 18, 2008 e-mail from Cori Nolan to Doug:

Liz @ UPAC called me about this account. They must be calling to verify policies and these are their issues:

- 1) Great American: G.A. said that the policy was cancelled for non-payment by agency? She wants to know why they have not seen a "premium return" applied on the account. This was the one where Mike asked us to apply the return as part of his Feb. payment.
- 2) They called Adriatic and received a response that they could not find the file #. Last year Duane had us start assign a "in house" policy number for financing. We keep a running list in the system. Liz wants to know what is going on. Can you let me know how to respond to these questions? Thanks!<sup>71</sup>

- i. April 30, 2008 e-mail from American Underwriting Services, LLC to Jennifer and Doug:

Please see email below that was sent on 4/23, if payment is not received by tomorrow all past due accounts will be sent for Cancellation.

April 23, 2008 to [csr@Wolffagency.com](mailto:csr@Wolffagency.com)

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<sup>69</sup> Ex. 38 at 7626-7627.

<sup>70</sup> Ex. 38 at 7499.

<sup>71</sup> Ex. 38 at 7497.

Please see the attached Broker Statement. Please send payment on the following items by Thursday, April 24, 2008. . . .<sup>72</sup>

53. On March 26, 2009, Respondent Douglas Wolff received a FAX from Skaggs Mobile Home Transport complaining about an unpaid insurance bill. Respondent Douglas Wolff responded on March 27, 2009, apologizing and giving assurance that the Agency had sent payment and assuring the insured that the insurance would be reinstated by March 31, 2009.<sup>73</sup>

### Procedural Findings

54. On June 4, 2009, and again on September 18, 2009, Mr. Fleischhacker visited Wolff Agency's office in Duluth, Minnesota, to interview employees and review files.<sup>74</sup>

55. The Department investigator recorded statements of Respondent Duane Wolff on June 4, 2009, June 22, 2009, October 14, 2009 and March 12, 2010, without providing Tennessen warnings to him.<sup>75</sup>

56. On March 12, 2010 the Department issued a Notice and Order for Hearing and Order for Summary Suspension to the Respondents, summarily suspending the licenses of Respondents, and setting a hearing on for April 9, 2010.<sup>76</sup>

57. The Administrative Law Judge issued an Order for Hearing and Protective Order on April 5, 2010.<sup>77</sup>

58. The Administrative Law Judge granted a second continuance for good cause shown, rescheduling the hearing for June 24, 2010.<sup>78</sup>

59. At the May 11, 2010, hearing the Department sought and was granted a continuance due to newly discovered evidence in the form of 20,000 to 30,000 emails to the Respondents and the Wolff Agency. After review of the e-mail evidence by the parties, the hearing was reconvened on June 24, 2010 to hear additional testimony regarding e-mails<sup>79</sup> considered relevant by the Department.

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<sup>72</sup> Ex. 38 at 7601.

<sup>73</sup> Ex. 29.

<sup>74</sup> *Id.*

<sup>75</sup> Test. of Duane Wolff; Ex. 5 tracks 10, 12, 13 and 14. The term "Tennessen warning" is used to describe the Minnesota Governmental Data Practices Act procedure which obliges government officials seeking private or confidential data from private citizens to warn those individuals of their rights and responsibilities with respect to providing the requested information. See, e.g., Minn. Stat. § 13.04 (2) (2008); *Edina Educ. Ass'n v. Board of Educ. of Indep. Sch. Dist. No. 273*, 562 N.W.2d 306, 311 (Minn. App.) *review denied* (Minn. 1997).

<sup>76</sup> Notice and Order for Hearing and Order for Summary Suspension.

<sup>77</sup> Order for Hearing and Protective Order.

<sup>78</sup> Order for Continued Hearing.

<sup>79</sup> Ex. 38.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 60K.43.

2. The Notice of Hearing was proper and the Department has fulfilled all procedural requirements for presenting this matter for a decision.

3. The commissioner may deny, suspend, or revoke the authority or license of a person subject to the duties and responsibilities entrusted to the commissioner, or censure that person, if the commissioner finds that the order is in the public interest and the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.<sup>80</sup>

4. The commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a civil penalty, for any one or of the following causes:

- (a) improperly withholding, misappropriating, or converting any money or properties received in the course of doing insurance business;
- (b) using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, whether or not involving the business of insurance in this state or elsewhere.<sup>81</sup>

5. The Department proved by a preponderance of the evidence that Respondent Duane R. Wolff improperly withheld and misappropriated monies Wolff Agency received during the course of doing insurance business by failing to pay premiums received from Figgins, Preferred Transit and the Yellow Cab Company to their respective insurance companies, failing to remit returned premiums to UPAC, and failing to repay Beacon Bank.<sup>82</sup>

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<sup>80</sup> See, Minn. Stat. § 45.017, subd. 7(a)(4) (2008).

<sup>81</sup> See, Minn. Stat. § 60K.43, subd. 1(4), 1(8), and 1(14) (2008).

<sup>82</sup> Compare, Minn. R. 2795.0800, 1 (B) (2007) ("A supervising agent shall have the duty to ... promptly remit all premiums and return premiums, refunds, claim settlements, or other money or things of value in the agents' possession obtained as a result of an insurance transaction and due and payable to any person, firm, or insurer"); Minn. R. 2795.1300 (2007) ("An agent who receives funds from a client in connection with an insurance transaction receives and holds those funds in a fiduciary capacity").

6. The record does not support a finding that Respondent Douglas Wolff had both sufficient knowledge of the circumstances and voting power over the Agency to complete the Figgins, Preferred Transit, Yellow cab company, or UPAC payments.<sup>83</sup>

7. The Department proved by a preponderance of the evidence that Respondent Duane R. Wolff demonstrated financial irresponsibility during the course of doing insurance business by failing to repay the debts owed to Beacon Bank and UPAC.

8. The record does not support a finding that Respondent Douglas Wolff had both sufficient knowledge of the circumstances and voting power over the Agency or UPC to repay the Beacon Bank and UPAC obligations.<sup>84</sup>

9. The Department proved by a preponderance of the evidence that Respondent Duane R. Wolff improperly withheld monies that were received in the course of doing insurance business in violation of Minn. Stat. § 60K.43, subd. 1(4) (2008). His management of the Agency fell below the standards of fair dealing and ordinary insurance practice.<sup>85</sup>

10. The power of a shareholder to take action requires an affirmative vote of a majority of the voting power of the shares of the corporation.<sup>86</sup>

11. The record does not support a finding that Respondent Douglas Wolff had both sufficient knowledge of the circumstances and voting power to insist upon proper management of Wolff Agency.

12. The record does not support finding that Respondent Douglas Wolff demonstrated untrustworthiness or financial irresponsibility in violation of Minn. Stat. § 45.027, subd. 7(4) (2008).

13. The record does not support finding that Respondents provided false and misleading information to the Commissioner about the location of a client's file and failed to produce that client file in response to a Commissioner's subpoena, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(3) and 60K.43, subd. 1(8) (2008).

14. Ex. 5 tracks 10, 12, 13 and 14 are inadmissible into the record because the Department failed to provide Respondent Duane Wolff with Tennesen warnings prior to recording the conversations.<sup>87</sup>

15. Minn. Stat. § 13.41, subd. 5 provides in applicable part:

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> See, Minn. Stat. § 45.027, subd. 7(4) (2008); Minn. Stat. § 60K.43, subs., 1(2), 1(4) and 1(8) (2008); Minn. Stat. § 72A.20, subd. 18 (2008); Minn. R. 2795.0800, 1 (B) (2007); Minn. R. 2795.1000 (2007); Minn. R. 2795.1300 (2007).

<sup>86</sup> Minn. Stat. § 302A.437 (2008).

<sup>87</sup> Minn. Stat. § 13.04 (2), (5) (2008); *Edina Educ. Ass'n v. Board of Educ. of Indep. Sch. Dist. No. 273*, supra.

Licensing agency minutes, application data on licensees except nondesignated addresses, orders for hearing, findings of fact, conclusions of law and specification of the final disciplinary action contained in the record of the disciplinary action are classified as public, pursuant to 13.02, subdivision 15. The entire record concerning the disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action.

16. Minn. Stat. § 14.60, subd. 2 provides in applicable part:

The administrative law judge . . . may . . . issue necessary protective orders, and seal all or part of the hearing record.

17. This report and the entire record of this proceeding, except for Exhibits 5 and 27, are public data.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that the Commissioner rescind the suspension of the Resident Insurance Producer License of Douglas Wolff and impose discipline upon the:

- (a) Resident Insurance Producer license of Duane R. Wolff; and
- (b) Resident Surplus Lines license of Duane R. Wolff.

Dated: August 26, 2010

s/M. Kevin Snell

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M. KEVIN SNELL

Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each

party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the sanction to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## **MEMORANDUM**

During the evidentiary hearing, and through their written submissions, Respondents argue that the hearing does not establish the claimed misconduct, and that if there were regulatory violations, the lapses were not so serious as to warrant discipline. The Department's claims and the Respondents' defenses are addressed in turn below.

### **Respondent Duane R. Wolff**

#### **Timely Remittance of Insurance Premiums and Payments to Creditors**

Substantial evidence in the record supports the conclusion that Respondent Duane Wolff: failed to remit premiums to the insurance companies that were paid in full by insureds; misappropriated monies he held in a fiduciary capacity for insureds and premium finance companies; and failed to repay loans received from Beacon Bank. Respondent Duane Wolff's business model of utilizing funds rightfully belonging to others for Agency and other purposes worked as long as new monies came into the agency. The record is clear that Respondent Duane Wolff relied on this scheme to maintain the Agency rather than operate the Agency on earned commissions. This business model began to collapse in 2007 with the downturn in the economy and the Agency's premiums were cut in half. It was improper for Respondent Duane Wolff to operate over so many years on the monies that belonged to others. The fact that UPAC and Respondent Duane Wolff had an agreement allowing a 180 day delay in repaying returned premiums, and both considered that standard industry practice, does not change the conclusion that this practice is contrary to law and rule in Minnesota. Respondent Duane Wolff's management of the firm fell below the standards of fair

dealing and ordinary insurance practice.<sup>88</sup> The imposition of regulatory discipline is appropriate against the Resident Insurance Producer's license and Resident Surplus Lines license held by Respondent Duane Wolff.

### **Respondent Douglas Wolff's Knowledge and Activities**

The Department maintains that, because Respondent Douglas Wolff was a 20% owner and a Vice President of the Agency, he failed in a responsibility to learn about, investigate and prevent the misappropriation of insurance premiums by his father, Respondent Duane Wolff.<sup>89</sup>

The deciding and overriding problem with the Department's position is that, even if he knew about Respondent Duane Wolff's financial and business practices in running the trucking insurance portion of the Agency's business, Respondent Douglas Wolff lacked the legal power to alter his father's practices. Policy and strategic decisions of corporations are made by a corporation's board of directors. By having an 80% ownership interest, Respondent Duane Wolff had essentially absolute power to appoint the Board members and officers and control all decision making. The reliable evidence in the record indicates that Respondent Duane Wolff exercised that power. There is no evidence in the record to suggest that Respondent Douglas Wolff was a member of the Agency board of directors. There is no evidence in the record to suggest who was the Treasurer of the Agency. The evidence in the record relating to whom Respondent Duane Wolff consulted regarding Agency financial matters is that Respondent Duane Wolff consulted his accountant – a member of the board of directors of Beacon Bank.<sup>90</sup>

The Department went to great lengths to recover the 20,000 to 30,000 e-mails discovered by the subsequent operators of the former Agency insurance business in its effort to prove that Respondent Douglas Wolff knew about and participated in his father's financial decisions and transactions related to the trucking portion of the Agency's business.<sup>91</sup> The Department sought to prove that Respondent Douglas Wolff knew about the precarious financial condition of the Agency prior to June 2008 to impeach his testimony in that regard. The Department concluded that 181 pages of e-mails, many duplicate copies, were relevant to that issue. The Administrative Law Judge concludes that there were nine e-mails over a period of three years that were relevant to that issue.<sup>92</sup>

However, neither those nine e-mails nor the remainder of the reliable evidence in the record is sufficient to prove by a preponderance of the evidence that Respondent Douglas Wolff knew of his father's financial practices.<sup>93</sup> The Administrative Law Judge

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<sup>88</sup> See, Minn. Stat. § 45.027, subd. 7(4) (2008); Minn. Stat. § 60K.43, subds. 1(2), 1(4) and 1(8) (2008); Minn. Stat. § 72A.20, subd. 18 (2008); Minn. R. 2795.0800, 1 (B) (2007); Minn. R. 2795.1000 (2007); Minn. R. 2795.1300 (2007).

<sup>89</sup> Test. M. Fleischhacker.

<sup>90</sup> Finding 4.

<sup>91</sup> Finding 57.

<sup>92</sup> Finding 50.

<sup>93</sup> *In Re Kane*, 473 N.W.2d 869, 874 (Minn. Ct. App. 1991) *rev. denied* (Sept. 25, 1991).

concludes that the four 2006 e-mails would be considered routine by Respondent Douglas, as he so testified, particularly in light of the fact that the Agency trucking business was still doing well that year – the year in which its premiums peaked at \$12 million. The Administrative Law Judge concludes that the one October 17, 2007 e-mail would be insufficient to cause alarm by Respondent Douglas Wolff, as he so testified. Similarly, the Administrative Law Judge concludes that the January, March and April e-mails, each from different insurance entities, either individually or combined, could be considered routine by Wolff, as he so testified. The Department presented no persuasive, direct evidence to contradict the testimony of the Respondents and the Vice Chairman of UPAC and recorded statements of former Agency employees on Respondent Douglas Wolff’s lack of knowledge of his father’s financial activities and financial control of the Agency.<sup>94</sup>

The Administrative Law Judge has the impression that the Department continues to suspect that Respondent Douglas Wolff had greater knowledge and participation than can be determined from the record in this case. However, speculation and suspicion are insufficient to establish a violation of law or rule. The evidence must carry “heft” or substantial weight.<sup>95</sup> Although Respondent Douglas Wolff was a Vice President and 20% owner of the Agency, those facts alone are insufficient to establish that he knew or should have known about the financial practices of Respondent Duane Wolff. Furthermore, although there were additional employees at the Agency, the record contains no testimony regarding their knowledge about the Respondents or the Agency. In this case, substantial weight is lacking with regard to Respondent Douglas Wolff’s knowledge and/or participation in the established violations of law and rule by Respondent Duane Wolff.

The reliable evidence in the record suggests that Respondent Douglas Wolff promptly dealt with the financial matters for which he was responsible: he never bounced a payroll check<sup>96</sup> and immediately paid the Caliper statement when it was brought to his attention.<sup>97</sup> In addition, he promptly remedied the situation of an unpaid trucking insurance premium indicated by the one communication in the record regarding a transportation company that Respondent Douglas Wolff received on March 26, 2009, which was long after he knew of the financial problems of the Agency.<sup>98</sup>

Finally, the Department argues that the mere fact that Respondent Douglas Wolff failed to repay the Beacon Bank loans and the UPAC obligations established financial irresponsibility on his part. Respondent Douglas Wolff argues that he took the responsible action by agreeing to guaranty the Beacon Bank consolidated loan and the UPAC note in an attempt to keep the Agency going. The reliable evidence in the record clearly shows that Respondent Douglas Wolff had no practical choice in those situations

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<sup>94</sup> Because the Administrative Law Judge has concluded that the recovered e-mails (Ex. 38) failed to establish that Respondent Douglas Wolff was a knowledgeable participant in his father’s financial improprieties, his argument regarding surprise and prejudice with regard to Ex. 38 will not be addressed.

<sup>95</sup> *Id.*; *Pomrenke v. Commissioner of Commerce*, 677 N.W.2d 85, 94 (Minn. Ct. App. 2004).

<sup>96</sup> Finding 56.

<sup>97</sup> Finding .

<sup>98</sup> Finding .

because both of those creditors insisted that both owners of the Agency guaranty those obligations. In addition, the evidence in the record also suggests that by the time those events occurred, the financial situation of the Agency was unrecoverable, even though Respondent Douglas Wolff did not want to believe that fact and still had faith that the business could recover. Had Respondent Douglas Wolff not taken that action, one can reasonably surmise that those creditors would have taken immediate action to recover the Agency debts. The Administrative Law Judge concludes that Respondent Douglas Wolff's inability to repay Beacon Bank and UPAC does not, in and of itself, establish financial irresponsibility on his part.

When significant regulatory discipline is sought against a license holder, the state appellate courts have required a closer nexus between the misconduct, and the duties of the regulated profession, than is presented by this record with regard to Respondent Douglas Wolff.<sup>99</sup> There are no allegations by the Department and there is no evidence in the record to suggest that Respondent Douglas Wolff committed any impropriety in the area of insurance for which he was responsible at the agency and seeks to continue: his Life and Health license. The Administrative Law Judge concludes that there is insufficient evidence in the record to establish that Respondent Douglas Wolff's Property and Casualty license should be subject to discipline.

### **Tennessee Warnings and Exhibit 5**

Respondent Duane Wolff argues that Exhibit 5, the recorded conversations between him and the Department investigator, should be inadmissible because the investigator failed to give him Tennessee warnings prior to the recording. The Department argues that an alleged November 26, 2008 Tennessee warning was sufficient and, in the alternative, that the Department did give Respondent a Tennessee warning prior to the June 4, 2009 recording. The Administrative Law Judge concludes that the November 26, 2008 Tennessee warning related only to Figgins file, if it was received by Respondent Duane Wolff. In addition, only Respondent Douglas Wolff acknowledged receipt of the November 26, 2008, e-mail. The Administrative Law Judge observes that there are no copies of any Tennessee warnings in the record.

The Department investigator's testimony was equivocal about whether or not he delivered a Tennessee warning to Respondent Duane Wolff prior to the June 4, 2009 conversation with Respondent Duane Wolff. The Department investigator testified that he thought he delivered a Tennessee warning to Respondent Duane Wolff, that it is his usual procedure to do so in these types of investigations, but that he could not state with certainty that he did so. Respondent Duane Wolff's testimony was unequivocal that he was not given a Tennessee warning by the Department investigator.

The weight of the evidence suggests that Respondent Duane Wolff did not receive Tennessee warnings prior to the June 4, 2009 and subsequent recorded

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<sup>99</sup> Compare generally, *In re Haugen*, 278 N.W.2d 75, 80-81 (Minn. 1979); *In re Insurance Licenses of Kane*, 473 N.W.2d 869, 877-78 (Minn. App.) review denied (Minn. 1991); accord, *In re Revocation of Family Child Care License of Burke*, 666 N.W.2d 724, 728 (Minn. App. 2003).

conversations with the Department investigator. Therefore, the Administrative Law Judge concludes that tracks 10, 12, 13, and 14 of Exhibit 5 are not admissible. Those recordings were not considered by the Administrative Law Judge in making the Findings of Fact for this report and recommendation.

### **Public or Non-Public Record**

The Department argues that the entire record of this proceeding is public data. Respondent Duane Wolff argues that the entire record of this proceeding should be sealed as not public data.

The Department's position is correct. The hearing in this proceeding was a public hearing and there were no requests that any portion of the hearings be non public. However, the administrative law judge may issue necessary protective orders, and seal all or part of any hearing record.<sup>100</sup> At the hearing, Exhibit 27 was submitted under seal as "non-public" investigative data. Exhibit 27 is the "Figgins file" and contains over 300 pages. Most of Exhibit 27 is irrelevant to the issues in this proceeding. Much of the file relates to workers' compensation insurance. The relevant portions of Exhibit 27 primarily show that only Respondent Duane Wolff signed nearly all of the Figgins' Certificates of Insurance. Respondent Douglas Wolff signed no Certificates of Insurance for Figgins. Because most of the document is not relevant to this proceeding, there is no public purpose to be served by making the information public.

Exhibit 5 contains the recordings of conversations between the Department investigator and two former employees of the Agency. It also contains the recordings between the Department investigator and Respondent Duane Wolff that the Administrative Law Judge has determined are inadmissible. No overriding public purpose will be served by revealing the identities of the two former Agency employees. For those reasons Exhibit 5 will remain non-public in its entirety and subject to the April 5, 2010, Protective Order in this matter.

### **Conclusion**

Because the failures and improprieties in this case relate to Respondent Duane R. Wolff's management and operation of the Agency insurance business, the Department's regulatory discipline should focus solely upon his violations of law and rule.

**M. K. S.**

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<sup>100</sup> Minn. Stat. § 14.60, subd. 2 (2008).