

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On March 1, 2001 in Room 313-S of the Capitol.

All members were present except:

- Representative Geraldine Flaharty - Excused
- Representative Judy Morrison - Excused
- Representative Rick Rehorn - Excused
- Representative Dale Swenson - Excused

Committee staff present:

- Jerry Ann Donaldson, Legislative Research Department
- Jill Wolters, Revisor of Statutes Office
- Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:

- John Campbell, Senior Deputy Attorney General
- Representative Joe Shriver

Chairman O'Neal announced that the committee would receive a presentation on the Blue Cross & Blue Shield of Kansas Settlement & the Sunflower Foundation, from John Campbell, Senior Deputy Attorney.

Mr. Campbell thanked the committee for the opportunity to appear and discuss the Blue Cross & Blue Shield litigation and to answer questions regarding the case, its prosecution and the settlement. (Attachment 1)

Representative Joe Shriver appeared before the committee concerned as to whether or not the Attorney General had the power to establish a charitable trust from the \$75 million settlement when the money actually belongs to the State and should have gone into the general fund. (Attachment 2)

A copy of a memo dated 2/27/01 from Kathleen Sebelius, Kansas Insurance Commissioner, was provided to the committee. It addressed answers to questions which were posed at the Democratic Summit. (Attachment 3)

Chairman O'Neal provided the committee with a briefing on the tour of the Kansas Payment Center. (Attachment 4)

The committee meeting was adjourned at 5:00 p.m. The next meeting was scheduled for March 5, 2001.

## HOUSE JUDICIARY COMMITTEE

March 1, 2001

Testimony of

John W. Campbell  
Senior Deputy Attorney

*Blue Cross and Blue Shield of Kansas*

v.

*Carla Stovall, Attorney General, et al.*

In 1997, a proposed merger between Blue Cross and Blue Shield of Kansas, Inc. and a Missouri counterpart, Blue Cross and Blue Shield of Kansas City, Inc. was announced. Both the Attorneys General of Kansas and Missouri began investigations. In a letter to the President of Blue Cross and Blue Shield of Kansas, Attorney General Stovall made inquiries about the factual and legal basis for the proposed transaction. The primary concern of the Attorneys General was the preservation of charitable assets which they believed the companies held.

Requests for information regarding charitable assets are common. For more than 400 years Attorneys General have been protecting charitable trusts on behalf of the people. In 1601 Parliament enacted the Statute of Charitable Uses which codified portions of England's Attorney General's Common Law powers to bring suit to protect charitable trusts. Likewise the Kansas Legislature has enacted statutes which codify the Attorney General's *cy pres* powers (as nearly as possible) concerning the protection of charitable assets.

<sup>1</sup> The Kansas Attorney General's Office reviews about twenty charitable trust issues a year. Most do not involve a large amount of money. There are Kansas statutes which guide courts, citizens and the Attorney General in the management and disposition of charitable assets. None of these statutes allow for the conversion of these charitable assets to government funds. The objective of statutes is to insure that the purpose for which donors of charitable assets is honored. Unless that purpose was to donate money to the government, these assets must remain in private hands and be expended for the purposes intended by the donor.

Blue Cross Blue Shield provided the information requested by Attorney General Stovall. But we could not come to agreement as to what, if any, charitable obligation existed. Blue Cross and Blue Shield of Kansas, Inc. sued the Attorney General in May 1997. Blue Cross and Blue Shield sought a determination that it is not a charitable organization, but instead a mutual insurance company without charitable assets.

Attorney General Stovall filed a counterclaim to the lawsuit in which she sought a judgment that Blue Cross and Blue Shield held charitable assets and should not profit from the sale of those assets. The Insurance Commissioner was allowed to intervene and supported the Attorney General's position in the litigation.

Before and during the litigation the Attorney General sought the Legislature's assistance. In 1997, Senate Bills 283 and 372 were introduced at the request of the Attorney General. In 1998, House participation was sought by HB 2628. These bills would have codified a new process whereby the Attorney General implements her statutory authority over certain health care-related corporations, including nonprofit hospitals, health care providers and insurers that intend to transfer, restructure or convert their activities in conjunction with for-profit activities. The bills would have allowed for public notice, hearings and participation by other state agencies and experts before mergers like the one involving Blue Cross Blue Shields could take place. Unfortunately none of the bills ever made it out of committees.

Early in the litigation Blue Cross and Blue Shield filed a motion to dismiss the Attorney General's counterclaim. In its decision of January 1998, the Shawnee County District Court ruled that the Attorney General had the authority to bring an action for enforcement of a charitable trust where the public interest is involved. Discovery in the case continued. Efforts at court ordered mediation failed.

The case was submitted to the district court on motions for summary judgement in October 1999. In ruling on those motions in January 2000, the court found that Blue Cross Blue Shield had been originated as a charity and remained so until its status was changed by the Legislature in 1969. It further ruled that while the Legislature could change the status of the corporation it could not extinguish its charitable obligation to the people of the State of Kansas. The court found that obligation to be the present day net value of the 1969 assets of the corporation. That value was to be determined at trial.

The parties sought to appeal the court's decision before trial. That attempt failed. Blue Cross Blue Shield, the Attorney General and the Insurance Commissioner reentered into negotiations, I reported on the negotiations to the district court. This time they succeeded. In August 2000, a settlement was reached. In September, the district court approved the settlement.

*Sunflower Foundation: Health Care for Kansans*

As part of the settlement, Blue Cross Blue Shield agreed to pay \$75 million to a public health foundation, the Sunflower Foundation: Health Care for Kansans, Inc. Its purpose is to serve the health needs of Kansans, by providing health care and health care information to indigent, uninsured and under-insured persons and promoting preventive health care. In reaching a settlement agreement, the parties remained consistent with the intent of those who originally donated their time, effort and money to Blue Cross Blue Shield, which was providing health care to Kansans.

In accordance with the terms of the agreement, Blue Cross Blue Shield has transferred \$75 million to the Wichita Community Foundation. The Attorney General never had and does not now have possession of the \$75 million. That money will remain with the Wichita organization until the Sunflower Foundation Inc., obtains its IRS 501 (c)(3) status. The Sunflower Foundation is governed by nine trustees. The first eight were appointed by the Attorney General and one was appointed by Blue Cross Blue Shield. A list of the trustees and nominators is attached to this testimony. All statewide elected officials and the legislative leadership were solicited for nominations to the Board.

The trustees will invest the \$75 million. The proceeds will be used to further the Sunflower Foundation's charitable purpose. Each fiscal year, the Sunflower Foundation will distribute a minimum of 5 percent of its assets in grants in order to support health care related activities. At least once a year the trustees will report the foundation's affairs, financial condition and significant activities to the public and various government agencies.

By May of this year the settlement requires the Attorney General to appoint a nine-member Community Advisory Committee (CAC). The CAC members will be selected based on the same qualifications imposed on the trustees and also will serve similar staggered terms. CAC members will select three trustee candidates for each vacancy on the Sunflower Foundation's board of trustees, from which the Attorney General will appoint future trustees. The Governor was consulted in the drafting of this selection process as well as the process for the appointment of initial and future board members.

We realize there are those who are concerned with the manner by which appointments to the Board of Trustees are made. The manner chosen sought to maximize the independence of the Board in order that they could fulfill their fiduciary duties to the trust fund, duties which by statute and court order are limited to health care and do not encompass the wide variety of concerns faced by the various branches of government. In addition, federal tax law was considered. However, the Attorney General is certainly open to discussion on this matter with designees of the Legislature, which will give all an opportunity to more fully voice their concerns and possibly reach a consensus.



### *Other Concerns Voiced*

Thirty-one states, the District of Columbia and Puerto Rico have or are currently addressing the preservation and conversion of Blue Cross and Blue Shield's charitable assets. As in those other states, Blue Cross and Blue Shield did receive a release from claims that were or could have been brought in a charitable trust case. I know of no state claims pending against Blue Cross and Blue Shield of Kansas. But if such claims do exist, and they are not related to its charitable trust obligation, those claims were not released in this litigation.

There have also been concerns voiced regarding Blue Cross and Blue Shield state tax liability. The only special state tax exemption it has ever enjoyed was on local property taxes which ended in 1969. Blue Cross and Blue Shield of Kansas, Inc. has always paid the required state premium taxes, which has brought tens of millions of dollars into the State Treasury. Starting in 1992, when state statute required it to become a mutual insurance company, its has paid the same privilege tax that other mutual insurance companies paid. No domestic insurance company is subject to state income taxes. No claim for unpaid state taxes was or could have been part of this litigation.

There are other charitable trust issues in Kansas, most do not involve a great deal of money, but there is one in particular that potentially does. The Legislative Budget Committee has been advised in executive session of that case.

In addition, there may be other health care providers with charitable obligations which are considering privatizing those assets. The proposed Senate and House bills mentioned above would be of great assistance in identifying and protecting those assets. A reconsideration of those bills would be a wise investment of the Legislature's time. They could help answer many of the concerns of members of the Legislature in future large charitable trust cases.

## SUNFLOWER FOUNDATION BOARD OF TRUSTEES

Harry Craig - Topeka; Chairman and CEO of Martin Tractor Company; Nominated by Secretary of State Ron Thornburgh.

Brenda J. Gray - Wichita; Director of University Relations, K.U. School of Medicine - Wichita; Nominated by Carol Nazar, Member of Children's Cabinet.

Dave A. Lindstrom - Overland Park; Owner DML, Incorporated (Burger Kings); Nominated by Attorney General Carla Stovall.

Thomas L. Miller - Topeka; Former President of Blue Cross and Blue Shield; Nominated by Blue Cross and Blue Shield.

Vernon A. Mills, MD - Leavenworth; Pediatrician; Nominated by Jerry Slaughter, Kansas Medical Society.

Mary Carol Pomatto - Pittsburg; Assistant to the President & Professor of Nursing for Pittsburg State; Nominated by Senator Jim Barone, Insurance Commissioner Kathleen Sebelius and State Treasurer Tim Shallenburger.

Cynthia H. Rainey - Lawrence; Former Red Cross State Financial Development Advisor, Volunteer; Self nominated.

Penney Schwab - Garden City; Executive Director of United Methodist Western Kansas Mexican-American Ministries; Nominated by Kansas Association for the Medically Underserved.

Greg Unruh - Scott City; Hospital Administrator; Nominated by Sheila Frahm.

**JOE SHRIVER**

REPRESENTATIVE, 79TH DISTRICT

COWLEY COUNTY

P. O. BOX 1324

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TOPEKA

**HOUSE OF  
REPRESENTATIVES**

## COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER  
FISCAL OVERSIGHT

## MEMBER

 APPROPRIATIONS COMMITTEE  
 GENERAL GOVERNMENT AND HUMAN  
 RESOURCES BUDGET COMMITTEE  
 GOVERNMENTAL ORGANIZATIONS &  
 ELECTIONS COMMITTEE  
 LOCAL GOVERNMENT COMMITTEE  
 JOINT COMMITTEE ON SPECIAL CLAIMS  
 AGAINST THE STATE

March 1, 2001

**TO: REPRESENTATIVE O'NEAL, CHAIR, JUDICIARY COMMITTEE AND MEMBERS OF THE COMMITTEE**

**FROM: REPRESENTATIVE JOE SHRIVER**

As public officials, we have a duty to uphold the Kansas Constitution. The state's constitution places legislative powers with the legislature. Among the legislature's powers is the exclusive right of appropriating public funds.

The concept of a republican form of government, and by implication, the doctrine of separation of powers is an inherent and integral element of the republican form of government. And, separation of powers, as an element of the republican form of government, is expressly guaranteed to the states by Article IV, Section 4, of the Constitution of the United States.

Generally speaking, the legislative power is the power to make, amend or repeal laws. The executive power is the power to enforce the laws and the judicial power is to interpret and apply the laws in actual controversies.

A usurpation of power exists where there is a significant interference by one department with operations of another department.

In determining whether or not a usurpation of power exists, a court should consider, (1) the essential nature of the power being exercised; (2) the degree of control by one department over another; (3) the objectives sought to be attained by the legislature; and (4) the practical result of the blending of powers as shown by actual experience over a period of time.

**POINT #1**

The Attorney General's essential nature of power being exercised under enforcement of a charitable trust which she utilized upon the announcement of a proposed merger between Blue Cross and Blue Shield of Kansas and Blue Cross and Blue Shield of Kansas City.

## **PAGE TWO**

### **POINT #2**

The Attorney General has expanded statutory control under the consumer protection code.

### **POINT #3**

The legislative intent is to allow the Attorney General to serve as Chief Law Enforcement Officer for the State of Kansas, giving the Attorney General unusual powers.

### **POINT #4**

In this case, Blue Cross and Blue Shield of Kansas v. Carla Stovall used the expanded powers to fashion an out of court settlement that allows the Attorney General's office to appropriate monies.

### **POINT #5**

When the Attorney General signed on to the settlement, she signed as both the Chief Law Enforcement Officer for the State of Kansas and as Attorney General overseeing the entire people of Kansas.

The power to appropriate money belonging to the state and rightfully in the state treasury and over which the legislature has the rightful control is a legislative power, and, except as it is restricted by the constitution, the legislature has the exclusive power to direct how, when and for what purpose the public funds shall be applied in carrying out the objects of the state government. State ex rel Anderson V. Fadley 180 Kan 652, Syl. 4, 308 P.2d 537 (1957).

### **POINT #6**

In this case, the parties argued that Blue Cross and Blue Shield of Kansas predecessors to be charitable and benevolent was made merely for the benefit of providing these companies with a tax exempt status in order to provide an incentive for the much needed service these companies were to provide. They took advantage of these benefits, clearly holding themselves out as charitable and benevolent corporations in order to gain such benefits.

K.S.A. 40-1910

Every corporation organized under the provisions of this act is hereby declared to be a charitable and benevolent corporation and its funds and property shall be subject to visitation by the state and the equitable jurisdiction of the courts to the same extent as other charities. P.20, January 7, 2000 order.

### **POINT #7**

Was Blue Cross and Blue Shield of Kansas a common law charity? The early characteristics of Blue Cross and Blue Shield of Kansas or its predecessor corporations were arguably common law charities. The trial court did not resolve this issue. P. 8, April 5<sup>th</sup> order.

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**POINT #8**

The court held numerous points of discussion on what were the assets and when Blue Cross and Blue Shield of Kansas' tax status changed. I will concede that Blue Cross and Blue Shield of Kansas' assets became a part of the charitable trust. A point should therefore be raised about the unpaid taxes because of the loss of tax exemption and tax credits that Blue Cross and Blue Shield of Kansas enjoyed. Does Blue Cross and Blue Shield of Kansas or the charitable trust owe (liabilities) to governmental units for unpaid taxes or benefits?

**POINT #9**

I feel the Attorney General has exercised a usurpation of power to obtain the 75 million dollar settlement and used her unusual powers beyond the legislative intent to fashion an out of court settlement to control both the Board of the Sunflower Foundation and the appropriation of its funds for the benefit of her office. I feel the trial judge made an error in not addressing the unresolved liabilities owed to other governmental units. I would ask my colleagues in the Kansas Legislature to take action to stop this usurpation of power never before exercised by the executive branch.

I would also ask the legislature to work for the enactment of legislation to establish the Sunflower Foundation as recommended by the courts.

**JOE SHRIVER**

REPRESENTATIVE, 79TH DISTRICT  
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HOUSE OF  
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## COMMITTEE ASSIGNMENTS

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## MEMBER

APPROPRATIONS  
 GENERAL GOVERNMENT AND  
 HUMAN RESOURCES  
 GOVERNMENTAL ORGANIZATION & ELECTIONS  
 LOCAL GOVERNMENT  
 JOINT COMMITTEE ON SPECIAL CLAIMS  
 NCSL ENERGY & TRANSPORTATION COMMITTEE

February 15, 2001

- 1) Could the Attorney General provide a copy of the Blue Cross/Blue Shield action against the Attorney General in the District Court of Shawnee County, Kansas - Case No. 97CV608?
- 2) Could the Attorney General provide a copy of the counter claim? What is the State of Kansas's theory of recovery?
- 3) Could the Attorney General provide the request for intervention by the Commissioner of Insurance?
- 4) Could the Attorney General provide copies of the district Court orders of January 7, 2000 and April 5, 2000?
- 5) Could the Attorney General provide the information on Blue Cross/Blue Shield-Kansas having denied certain allegations of the Attorney General's counter claim and the Attorney General has denied certain allegations of Blue Cross/Blue Shield-Kansas?
- 6) Could the Attorney General provide a copy of any changes submitted to the settlement order beyond the 21<sup>st</sup> day of August, 2000?
- 7) Could the Attorney General provide a copy of the Sunflower Foundation's articles of incorporation?
- 8) Could the Attorney General provide a copy of the Agreed Journal Entry of Dismissal with Prejudice in the Blue Cross/Blue Shield-Kansas case?
- 9) Does the Attorney General have any documentation on any tax benefits, state, federal or local, that Blue Cross/Blue Shield-Kansas may have obtained from the beginning of the world until the date of the Settlement Agreement?
- 10) Can the Attorney General provide an outline of disputed claims not addressed in the Settlement Agreement?
- 11) Could the Attorney General outline the reimbursement agreement with the Commissioner of Insurance on the fees and costs in the action along with how each intends to meet the \$375,000 agreed limit?
- 12) What legal authority or statute does the Attorney General rely on for overseeing the expenditure of the settlement fund?





State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215

FAX: 296-6296

February 19, 2001

The Honorable Joe Shriver  
Representative, 79<sup>th</sup> District  
State Capitol, Room 273-W  
Topeka Kansas 66612-1504

RE: *Blue Cross and Blue Shield of Kansas, Inc.*  
v.  
*Carla Stovall, Kansas Attorney General, et al*  
Shawnee County Case No. 97 CV 608

Dear Representative Shriver:

On Thursday, February 15, 2001, we received a list of questions from you. I have restated your questions in bold type and provide answers immediately following the questions.

**1. Could the Attorney General provide a copy of the Blue Cross/Blue Shield action against the Attorney General in the District court of Shawnee County, Kansas - Case No. 97CV608?**

Copies previously have been provided to the Legislative Branch. A copy of the Petition for Writ of Quo Warranto, Writ of Mandamus and Declaratory Judgment filed by Blue Cross and Blue Shield of Kansas, Inc. (BCBSK) on May 6, 1997, has already been provided to the Chair of the House Judiciary Committee. Further, it is our understanding that your staff in both the Legislative Research Department and the Revisor of Statutes Office have copies. If you are requesting still another copy please tell me; however, we understand legislative staff has been studying these documents as a result of your request.

**2. Could the Attorney General provide a copy of the counter claim? What is the State of Kansas' theory of recovery?**

Copies previously have been provided to the Legislative Branch. Copies of the Answer and Counterclaim (filed on June 16, 1997), as well as the Amended Counter Claims (filed on August 10, 1998) have already been provided to the Chair of the House Judiciary Committee. Further, it is our understanding that your staff in both the Legislative Research Department and the Revisor of Statutes Office have copies. If you are requesting still another copy, please tell me.

The State of Kansas was not a party in the above-mentioned action and thus it did not have a theory of recovery.

**3. Could the Attorney General provide the request for intervention by the Commissioner of Insurance?**

We request that you contact the Insurance Commissioner for documents which may be relevant to her position in the case.

**4. Could the Attorney General provide copies of the District Court orders of January 7, 2000 and April 5, 2000?**

Copies of the two Memorandum Decision and Orders of January 7, 2000, previously have been provided to the Legislative Branch. Copies have already been provided to the Chair of the House Judiciary Committee (rulings on motions ## 21, 22 & 24). Further, it is our understanding that your staff in both the Legislative Research Department and the Revisor of Statutes Office have copies. If you are requesting still another copy, please tell me. As to the Court's two Memorandum Decision and Orders of April 5, 2000 (rulings on motions ## 31 & 32) copies are attached.

**5. Could the Attorney General provide the information on Blue Cross/Blue Shield-Kansas having denied certain allegation of the Attorney General's counter claim and the Attorney General has denied certain allegations of Blue Cross/Blue Shield-Kansas?**

During the more than three years of litigation between BCBSK, the Attorney General and the Insurance Commissioner there were a variety of pleadings and discovery requests which present the BCBSK's defenses. Those defense presentations include BCBSK's Motion to Dismiss Counterclaim and Memorandum in Support of Motion to Dismiss; Motion for Protective Order and Memorandum in Support Motion for Protective Order; Objections to Subpoena Duces Tecum, Response Memorandums to Intervener's Motion to Compel Production of Documents and Testimony; Motion for Partial Summary Judgement and Memorandum in Support; Motion to Clarify and Memorandum in Support; as well as, its Motion for Reconsideration and Memorandum in Support.

In addition to the above, BCBSK filed for an interlocutory appeal with the Kansas Court of Appeals in appellate court case number 00-85094-A. Plaintiff's Application for Permission to take a Civil Interlocutory Appeal, includes its reasoning for contending that there was no charitable obligation on the part of the corporation.

You may also wish to consider the Attorney General's and Insurance Commissioner's responses to those pleadings as well as the various courts' responses to those motions, if so please tell me. All tolled, there are in excess of several thousand pages of pleadings and supporting documentation covering this subject.

To review these documents, we suggest you or staff review the public files in the Shawnee County District Court and the Kansas Appellate Court Clerk's office.

**6. Could the Attorney General provide a copy of any changes submitted to the settlement order beyond 21<sup>st</sup> day of August 2000?**

The Settlement Agreement was signed on August 21, 2000 and filed with an Agreed Journal Entry of Dismissal with Prejudice on September 6, 2000. To the best of our knowledge no one has submitted to District Court Judge Parish, or any other person, a request to change the Settlement Agreement.

**7. Could the Attorney General provide a copy of the Sunflower Foundation's article of incorporation?**

The Articles of Incorporation is a public record on file with the Secretary of State. Please also be advised that the Sunflower Foundation, Health Care for Kansans, Inc. is an independent legal entity which is represented by the law firm of Stinson, Mag & Fizzell of Leawood, Kansas, more specifically by the former Dean of the University of Kansas School of Law, Mike Davis. I would suggest that legal questions concerning the corporation can best be answered by Dean Davis.

**8. Could the Attorney General provide a copy of the Agreed Journal Entry of Dismissal with Prejudice in the Blue Cross/Blue Shield-Kansas case?**

A copy of the Agreed Journal Entry of Dismissal is attached.

**9. Does the Attorney General have any documentation on any tax benefits, state, federal or local, that Blue Cross/Blue Shield-Kansas may have obtained from the beginning of the world until the date of the settlement Agreement?**

Yes. The Office's case file is open for inspection by you or any member of your staff. Please call me and I will make the arrangements. I would add only this caveat, some of the materials obtain from BCBSK was done so under a protective order issued by the Shawnee County District Court. Sensitive material such as tax returns may be protected by both the Court's order and statute. Prior to the public release of any such information, we would consult

with Blue Cross and Blue Shield of Kansas, Inc.'s legal counsel and the legal department of the Kansas Department of Revenue. Also, please be advised that the office files consist of 31 boxes of documents.

**10. Can the Attorney General provide an outline of disputed claims not addressed in the Settlement Agreement?**

All disputed claims relating to the charitable obligations of Blue Cross and Blue Shield of Kansas, Inc. were resolved in the above-mentioned litigation. No other claims were at issue.

**11. Could the Attorney General outline the reimbursement agreement with the Insurance Commissioner on the fees and costs in the action along with each intends to meet the \$375,000 agreed limit?**

As part of the settlement agreement, BCBSK paid \$375,000 to the Office of the Attorney General and another \$375,000 to the Office of the Insurance Commissioner for attorneys fees and costs.

As to the Attorney General's Office and as previously reported to the Legislative Research, a \$307,725.10 check to the Attorney General from BCBSK was deposited with the state treasurer November 13, 2000. In addition, a \$67,274.90 check to the Attorney General from BCBSK was deposited with the state treasurer November 28, 2000.

The \$307,725.10 was deposited into the Kansas Tort Claims Fund for the direct costs it had previously paid for outside counsel billings, deposition costs, etc. The remainder, \$67,274.90, was deposited to the State General Fund in reimbursement for in-house attorney time and other unspecified costs of the litigation. The Legislative Research Department previously was provided with receipt voucher copies of these transactions.

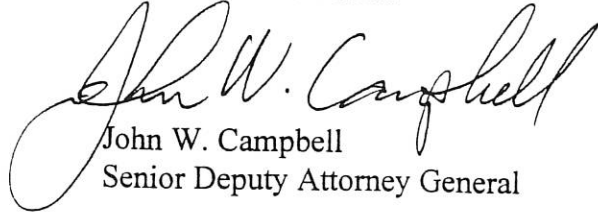
As to the Insurance Commissioner, I do not know what arrangements that Office has made and suggest you contact the Commissioner directly.

**12. What legal authority or statute does the Attorney General rely on for overseeing the expenditure of the settlement fund?**

Assuming by "settlement fund" you refer to the \$75 million paid by BCBSK for the benefit of the Sunflower Foundation of Kansas, Inc., the Attorney General does not oversee the expenditures of the settlement fund. That is the responsibility of the Board of Trustees of the Sunflower Foundation of Kansas, Inc.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
CARLA J. STOVALL



John W. Campbell  
Senior Deputy Attorney General

cc: Kenny Wilk, House Appropriations Committee Chair  
Mike O'Neal, House Judiciary Chair  
Jo Ann Pottorff, Subcommittee Chair  
Kathy Greenlee  
Mike Davis, Attorney at Law  
Mark Buck, Attorney at Law

February 20, 2001

The Honorable Carla J. Stovall  
Attorney General  
102 S.W. 10<sup>th</sup> Avenue  
Topeka, KS. 66612-1597

RE: Blue Cross and Blue Shield of Kansas, Inc.  
v.  
Carla Stovall, Kansas Attorney General, et al  
Shawnee County Case No. 97CV608

Dear Attorney General Stovall:

On Monday, February 19, 2001, I received a letter from John W. Campbell, Senior Deputy Attorney General. First, I would like to apologize if your office feels my questions were repetitive in nature. I admit I am not an attorney, so my request may have seemed repetitive. I thought my request to your office for information was in compliance to the Kansas Open Records Act.

I did not know you had provided all of the information to other sources and thought that since you handled the case for both the beneficiaries of the charitable trust and the State of Kansas that your office would be willing to comply with the Kansas Open Records Act.

On Friday, February 16, 2001, the office of the Revisor of Statutes, provided me with a memorandum. This came after I made the request to your office. My question to Revisor Jim Wilson in the House Appropriations Committee was simply in regard to the Attorney General's statutory and constitutional authority. My request, having been done in committee, is subject for review by the minutes of the committee and are on tape. The request to Revisor Jim Wilson was modified by unknown persons. I asked Revisor Norman Furse on Friday 16, 2001, about the dual role the Attorney General has in representing the members of the charitable trust and the State of Kansas. I ask this question because I have serious concerns about the separation of powers and the known or unknown benefits Blue Cross and Blue Shield of Kansas enjoyed while operating as a mutual insurance company while listed as a charitable trust.



PAGE TWO

I would like to thank your agency for it's assistance in identifying all the agencies I must contact to receive the requested information.

Sincerely,

Joe Shriver  
State Representative  
District #79

JS:hh

cc: Kent Glasscock, Speaker, House of Representatives  
Kenny Wilk, House Appropriations Committee Chair  
Mike O'Neal, House Judiciary Chair  
Jo Ann Pottorff, House General Government and Human Resources Budget Committee Chair

February 22, 2001

Mr. Ron Thornburgh  
Secretary of State  
Memorial Hall, First Floor  
120 SW 10<sup>th</sup> Ave.  
Topeka, KS. 66612-1594

Dear Secretary Thornburgh:

Could your office provide me with the Articles of Incorporation for the Sunflower Foundation, Health Care For Kansans, Inc.?

Thank you in advance for you help in this matter.

Sincerely,

Joe Shriver  
State Representative  
District #79

JS:hh

cc: Kent Glasscock, Speaker, House of Representatives  
Kenny Wilk, House Appropriations Committee Chair  
Jo Ann Pottorff, House General Government and Human Resources Budget Committee Chair

February 22, 2001

Mr. Mike Davis  
Stinson, Mag and Fizzell, Attorneys  
1181 Overbrook Rd.  
Leawood, KS. 66211

Dear Mr. Davis:

I serve on both the Kansas House Appropriations Committee and the Budget Committee on General Government and Human Resources. One of the budgets I am reviewing is the Kansas Attorney General. It is my understanding that you are the contact person for the Sunflower Foundation, Health Care For Kansans, Inc. I have read the court settlement agreement and I don't understand the status of appointed legislative members. Could you enlighten me regarding the authority that these members were appointed by? I have requested a copy of the Articles of Incorporation from the Secretary of State which also might assist me.

Thanks for any assistance you can give. Given your background, I would enjoy a conversation about the constitutional authority of the development of the foundation.

Thanks again.

Joe Shriver  
State Representative  
District #79

JS:hh

cc: Kent Glasscock, Speaker, House of Representatives  
Kenny Wilk, House Appropriations Committee Chair  
Jo Ann Pottorff, House General Government and Human Resources Budget Committee Chair

February 22, 2001

Kathleen Sebelius  
Commissioner of Insurance  
420 SW 9<sup>th</sup> St.  
Topeka, KS. 66612-1678

RE: Blue Cross and Blue Shield of Kansas, Inc.  
v.  
Carla Stovall, Kansas Attorney General, et al  
Shawnee County Case No. 97CV608

Dear Commissioner Sebelius:

The following three requests are for information on the above case:

- 1) Could you provide me with a copy of the request for intervention in the above mentioned case?
- 2) In the above mentioned case, Blue Cross and Blue Shield of Kansas, Inc. filed a interlocutory appeal with the Kansas Court of Appeals, Appellate Case Number 00-85094-A. Could you provide copies of all the Insurance Commissioner's responses to all the various court responses?
- 3) Could you provide me with an outline for reimbursement of fees and costs as agreed upon with the Attorney General's office? The settlement calls for up to \$375,000.

Thank you for any assistance you may provide.

Sincerely,

Joe Shriver  
State Representative  
District #79

cc: Kent Glasscock, Speaker, House of Representatives  
Kenny Wilk, House appropriations Committee Chair  
Jo Ann Pottorff, House General Government and Human Resources Budget Committee Chair

February 23, 2001

The Honorable Carla J. Stovall  
Attorney General  
102 S.W. 10<sup>th</sup> Avenue  
Topeka, KS. 66612-1597

RE: Blue Cross and Blue Shield of Kansas, Inc.  
v.  
Carla Stovall, Kansas Attorney General, et al  
Shawnee County Case No. 97CV608

Dear Attorney General:

In the letter of February 19, 2001, Senior Deputy Attorney General John W. Campbell indicated your office files on this case consist of 31 boxes of documents. As the Kansas Legislature heads into its mid-term break, I would like to ask if arrangements can be made so that I can start reviewing the public documents in the above mentioned case.

I am available during normal business hours on Tuesday, February 27, 2001. I may also want to utilize legislative proforma days in the future. Please let my office know if this is workable. My office number is 785-296-7648.

Sincerely,

Joe Shriver  
State Representative  
District #79

JS:hh

cc: Kent Glasscock, Speaker, House of Representatives  
Kenny Wilk, House Appropriations Committee Chair  
Mike O'Neal, House Judiciary Chair  
Jo Ann Pottorff, House General Government and Human Resources Budget Committee Chair



State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

TELECOPIER MESSAGE  
COVER SHEET

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

Telecopier Number: (785) 296-6296

DATE: February 27, 2001

NUMBER OF PAGES INCLUDING COVER SHEET: 2 + cover

PLEASE DELIVER MESSAGE ASAP TO:

NAME: **HONORABLE JOE SHRIVER**

LOCATION: Kansas House of Representatives - State Capitol Building

TELECOPIER NUMBER: (785) 368-6365

FROM: John Campbell, Chief Deputy Attorney General /Judy Copeland  
Phone No. (785) 296-2215

Re: Blue Cross and Blue Shield of Kansas v. Stovall, et al

**This document and the information herein is protected by the attorney-client privilege. It shall not be disclosed except to the persons to whom it is addressed. Any other disclosure is inadvertent, unintentional and does not amount to any waiver of any applicable privilege. Any unauthorized use of this document or the information contained herein is prohibited. If you are an unintended recipient of this document, please return it immediately to Office of the Attorney General, 301 S.W. 10th Avenue, Topeka, Kansas 66612-1597.**

If you experience any problems in receipt or transmission, please call (785) 296-2215 and ask for Judy Copeland.

27 FEB 2001





State of Kansas

Office of the Attorney General

120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

February 26, 2001

MAIN PHONE: (785) 296-2215  
FAX: 296-6296

The Honorable Joe Shriver  
State Representative, 79<sup>th</sup> District  
Room 273-W  
State Capitol  
Topeka, Kansas 66612-1504

RE: *Blue Cross and Blue Shield of Kansas, Inc.*  
v.  
*Carla Stovall, Kansas Attorney General, et al*  
Shawnee County Case No. 97CV608

Dear Representative Shriver:

Pursuant to your letter of the 19<sup>th</sup>, as well as our conversation of the same day, please be advised that you are welcomed whenever it is convenient for you to come over. Our regular office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, but if you need other arrangements, just call me and we'll work something out.

Your best contact on viewing documents would be Debbie Williams, Civil Litigation Secretary (368-8418). Also, Assistant Attorney General Eliehue Brunson or I can help. I would suggest that you could begin your review by examining the major pleadings in the case, copies of which have been grouped together, are at Ms. Williams' desk, and for which we have an index. Also, I have some publications, which not case-specific, might be useful in your review.

As to the 31 boxes, there is an index identifying the types of materials in each box. The boxes themselves are in our basement storage area. While it is a nice basement and does have a desk by the files, we certainly can bring up as many of the boxes as you wish to the 3<sup>rd</sup> floor where Ms. Williams can find a place for you to work.

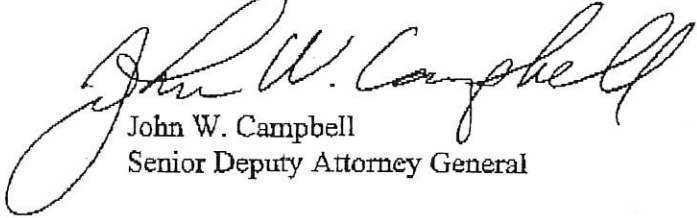
The only request I have is that if you want a copy of any particular document that you let us make it and that you do not remove any original document from the building without discussing the matter with me. This will maintain the integrity of the files should the issue ever come up.

February 26, 2001  
Page 2

I hope that these arrangements are satisfactory, if not please give me a call. Also, if you wish to discuss this case, or litigation procedures in general, I would be happy to do so.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL  
CARLA J. STOVALL



John W. Campbell  
Senior Deputy Attorney General

JWC:dsw

- cc: Kent Glasscock, Speaker
- Kenny Wilk, House Appropriations Committee Chair
- Mike O'Neal, House Judiciary, Chair
- Jo Ann Pottorff, Subcommittee Chair.

Memorandum

To: Norman Furse

From: Darrell McNeil *DM*

Date: February 28, 2001

Re: Blue Cross and Blue Shield of Kansas, Inc.  
v. Carla Stovall, Kansas Attorney General, In her  
Official capacity (97 CV 608, Shawnee County)

At our meeting on February 16, 2001, Representative Kline expressed his desire to know whether the Attorney General had used the tax exempt status of BCBSK as a basis for recovering charitable assets held by BCBSK. A copy of the petition and answer is enclosed. Please refer to paragraphs 18 and 34 of the declarations in the counterclaim, pp. 9 and 11, respectively, of the answer, and paragraphs 106 and 108 of the count based on estoppel, pp. 23 and 24, respectively, of the answer. On this point the Attorney General argued, inter alia, that KHSA and KPS received donations in the form of valuable tax exemptions from the state of Kansas and the United States, and because of such should be estopped from denying its charitable status. On page 22 of her order of January 7, 2000, however, Judge Parrish stated

"The fact that BCBSK received tax exemptions over the years is not the issue. Instead at issue are the assets which are now impressed with a charitable trust. Because the statutes were repealed in 1969, it was then that BCBSK ceased being a charitable corporation, and thus, it was at that time that the assets held by BCBSK were impressed with a charitable trust. It is the equivalent of those assets now which are impressed with a charitable trust."

Both the trial judges considered the legislative enactments affecting BCBSK and concluded that such legislation was not intended, and indeed could not, transform charitable assets into the private assets of a mutual insurance company; but neither considered the issue of whether on conversion units of government were entitled to recover the value of tax exemptions enjoyed by BCBSK during the life of the charitable organization. Judge Parrish stated that a liberal construction is appropriate in determining what is a charitable activity, and a narrow construction is used when an organization's tax exempt status is concerned, but stated BCBSK was not a charity for tax purposes only. In ruling that the assets held by KHSK and KPS on December 31, 1969, were impressed with a charitable trust with the repeal of K.S.A. 40-1810 and 40-1910, she stated that these assets were not and could not be turned into private assets by this legislative action. Similarly, Judge Jackson, in commenting on the enactment of K.S.A. 40-19c12 in 1991 which required BCBSK to convert to a mutual insurance company, stated there was no legislative intent to transform charitable assets into private

assets--and that the disposition of charitable assets was to be accomplished by the judiciary, not the legislature.

Judge Parrish did, however, consider the question of what assets were charitable and ruled by assets she meant the net assets of the company as of December 31, 1969, i.e. the gross assets of the charitable organization minus the liabilities of the company. (See p.2 of Judge Parrish's order of April 5, 2000.) Thus, the charitable tax exempt status that existed prior to the date of conversion continued on as to the net assets which were continued as an impressed charitable trust.

CONCLUSIONS:

- (1) The assets to be impressed with a charitable trust were the net assets of the company as of December 31, 1969;
- (2) The case is res judicata as to the issues decided.

Enc.

## Minority Report

### 2001 General Government and Human Resources Budget Committee

#### FY 2001 and FY 2002

I wish to voice my objection to the agreement reached August 21, 2001, between the Attorney General and the Insurance Commissioner, representing the State of Kansas, and Blue Cross and Blue Shield of Kansas, Inc.

Under the agreement, Blue Cross and Blue Shield of Kansas, Inc., agreed to pay \$75.0 million to an appropriate charitable entity under terms and conditions provided by the settlement agreement.

My objection is that the Judicial Branch of government has determined that an elected state official in the Executive Branch will have virtual control of setting up an organization that will decide how to spend \$75.0 million, plus interest, without input from the Legislature. The Attorney General's appointment authority for all but one member of the Board of Trustees gives one person in state government control over the direction the Foundation will take. In addition, state employees on the Attorney General's staff worked on the litigation with state dollars and presently are employed with the Sunflower Foundation.

- The Attorney General is responsible for incorporating the Sunflower Foundation, which will receive the money and make charitable distributions, and for organizing the first meeting of trustees and helping the Foundation qualify as a tax-exempt charitable organization.
- The Attorney General is responsible for appointing eight of the nine members of the Sunflower Foundation Board of Trustees.

I understand that a distinction is being made between "state" money, which is subject to appropriation, and "public" money, which belongs to residents of Kansas in general and not to state government, but my argument is that the Legislature and other governmental entities were excluded from the mediation process that led to the agreement. My objection is that the district court, in fashioning the agreement, ignored the Legislative Branch of government and its subordinate governmental units and deprived them of the opportunity to raise issues and to question other benefits Blue Cross and Blue Shield of Kansas, Inc., may have obtained.

I also wish to voice my objection to the Attorney General's budget for the following reasons:

- The Budget Committee has had insufficient time to fully review the activity in this budget.
- The Budget Committee should receive assistance for a more complete audit of the funding shifts that have occurred with this budget.



- Because of staff time, the Budget Committee was only able to meet with assigned research staff on a limited basis.
- The Committee limited debate on this budget and requested all questions to be submitted in writing to the Attorney General.
- Further research into this budget should be focused on what appears to be use of funds for one purpose dedicated for use by the Legislature and used by the agency on the litigation of the Sunflower Foundation and then reimbursed by the agency upon the settlement agreement.
- Further research should focus on contracts offered by the agency to employees of the agency to litigate and/or operate the Sunflower Foundation while under state employment.
- An employee of the Attorney General is operating the Sunflower Foundation as reported by the Attorney General when she gave the budget report to the Committee.
- This budget has a number of funding shifts from fee funds to the State General Fund.
- This budget contains a trend from the past few years that funding shifts of employment from temporary to permanent employment from fee funds that may or may not support the positions in the future.

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Representative Joe Shriver

33535(2/19/1(8:41AM))

November 14, 2000

**To:** Legislative Budget Committee

**From:** Carolyn Rampey, Principal Analyst

**Re:** Major Points of Settlement Agreement Involving Blue Cross and Blue Shield of Kansas, Inc.

The predecessor organizations to Blue Cross and Blue Shield were incorporated under Kansas law in the 1940s as "charitable and benevolent" corporations. The designation as a "charity" occurred at a time nationally when commercial health insurance was not widely available and was part of a national social movement that resulted in Blue Cross and Blue Shield becoming established in other states as nonprofit financial companies that made health care affordable to all. In Kansas, the predecessor organizations evolved into mutual insurance companies over the years and the statutes that gave them charitable status were repealed in 1969.

In recent years, the issue arose as to whether Blue Cross and Blue Shield continued to have charitable obligations, based on assets they had acquired during the time they were statutorily designated charitable and benevolent corporations. (This question has been raised in a number of other states in connection with Blue Cross and Blue Shield and in cases involving the assets of charitable hospitals that change ownership and become private entities.)

In Kansas (and in other states), the Attorney General is the official who generally is responsible for ensuring that charitable organizations operate within applicable guidelines. When Attorney General Stovall raised the issue that Blue Cross and Blue Shield of Kansas, Inc., had money it had acquired when it was a charity that should be disposed of for charitable purposes, Blue Cross and Blue Shield filed an action against the Attorney General in the District Court of Shawnee County contending that it, in fact, had not been a charity and did not hold any charitable assets. The Attorney General filed a counterclaim and was joined by the Kansas Insurance Commissioner, whose role in the action was to ensure that, whatever the outcome, Blue Cross and Blue Shield would remain financially solvent and customers of the insurance company would not be adversely affected.

On August 21, 2000, a settlement agreement was reached between Attorney General Stovall and Insurance Commissioner Sebelius, acting for the state, and Blue Cross and Blue Shield of Kansas, Inc. Main points of the agreement are the following:

- Blue Cross and Blue Shield of Kansas, Inc., agreed to pay \$75.0 million to an appropriate charitable entity on the terms and conditions provided by the settlement agreement.

- The immediate disposition of the money (within 30 days after execution of the agreement) was that it was transferred to the Wichita Community Foundation, where it will be held until the "Sunflower Foundation: Health Care for Kansas" is created as a tax-exempt charitable organization. The Attorney General is responsible under terms of the settlement to incorporate the Sunflower Foundation, organize its first meeting of incorporators or trustees, and apply for its tax exemption.
- The Sunflower Foundation's assets will be managed by a nine-member Board of Trustees, eight of whom will be appointed by the Attorney General. The ninth member will be appointed by Blue Cross and Blue Shield and may not be a current officer or employee of the company. All Trustees are to serve staggered three-year terms and can be reappointed to two additional consecutive terms. In making their appointments, the Attorney General and Blue Cross and Blue Shield are to give consideration to ensuring that the Board as a whole represents the geographic, ethnic, gender, age, socioeconomic, and professional diversity of the state. Trustees will be paid expenses for serving on the Board, but not compensation, and no member of the Board may be an elected official or a candidate for elective office. Following appointment of the initial Trustees, subsequent members of the Board will be selected by the Attorney General from among at least three names submitted for each vacancy by the Community Advisory Committee, a nine-member committee appointed by the Attorney General. Terms of appointment and qualifications of the Community Advisory Committee are identical to those of members of the Board of Trustees.
- The settlement agreement requires the Sunflower Foundation to make annual charitable distributions that are equal to at least 5 percent of its assets. Under terms of the settlement, the Sunflower Foundation's charitable purpose is "to serve the health needs of Kansans including providing health care and health care information to indigent, uninsured and underinsured persons; promoting preventive health care including, but not limited to, activities aimed at reducing the number of Kansas adults and youth who use and are addicted to tobacco products; and other health-related services."



**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**

# Memo

**To:** Senate and House Democrats  
**From:** Kathleen Sebelius  
**Date:** 2/27/01  
**Re:** Blue Cross & Blue Shield Settlement

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Thank you for allowing me the opportunity to speak to you on February 14<sup>th</sup> at the Democratic Summit. As promised, I have had Kathy Greenlee, the General Counsel for the Insurance Department, put together a memo regarding the Blue Cross and Blue Shield settlement and the Sunflower Foundation which was formed as a result of the settlement.

I hope that this memo answers the questions you expressed at the Democratic Summit. If you have any additional questions, please feel free to contact Kathy Greenlee at the Insurance Department.

Thank you again for allowing me the opportunity to speak to you at the Democratic Summit. Please do not hesitate to contact me if there is any way that I, or the Kansas Insurance Department, can be of assistance in the future.



Kathleen Sebelius  
Commissioner of Insurance  
**Kansas Insurance Department**

MEMORANDUM

TO: Members of the Kansas Legislature

FROM: Kathy Greenlee, General Counsel *Kathy Sebelius*

RE: *Blue Cross and Blue Shield of Kansas, Inc. v. Stovall*  
Shawnee County Case No. 97 CV 608

DATE: February 27, 2001

On August 21, 2000, Kathleen Sebelius, Commissioner of Insurance ("Commissioner"), entered into a settlement agreement with Carla Stovall, Attorney General ("Attorney General"), and John Knack, President of Blue Cross & Blue Shield of Kansas ("BCBSKS").

BCBSKS filed suit seeking a declaration that it held no charitable assets. The Attorney General filed a counterclaim asserting that BCBSKS held charitable assets and that such charitable assets should be subject to a *cypres* proceeding. The Commissioner of Insurance intervened asserting that the BCBSKS assets were impressed with a charitable obligation. The Commissioner, as regulator of BCBSKS, sought input into the manner in which charitable obligation would be funded.

The Commissioner of Insurance agreed to the settlement for three primary reasons.

First, the settlement amount of \$75 million reasonably reflects the charitable obligations of BCBSKS within the parameters established by Judge Parrish in her rulings of January 7, 2000 and April 5, 2000.

Second, the Sunflower Foundation is an appropriate way to carry forth the charitable purposes of the original Blue Cross and Blue Shield organizations. According to the *cypres* doctrine, charitable trust assets must be used to continue the charitable purposes of the former nonprofit. According to K.S.A. 59-22a01, the Attorney General may apply to the court for an order administering a charitable trust which has become illegal, impossible, or impracticable of fulfillment.

Third, the settlement adequately protects the ability of the Kansas Insurance Department to continue to regulate BCBSKS.

The *cy pres* doctrine and the matter of charitable trusts clearly fall within the jurisdiction of the Attorney General. For those reasons, the Kansas Attorney General took the lead in creating the new charitable health foundation. The issues presented in the Kansas litigation are not unique to this state. I have attached a document prepared by Patrick Cantilo, the attorney who represented the Kansas Insurance Department in the recent litigation. This document will provide you with basic information about how other states have handled Blue Cross & Blue Shield conversions and the foundations resulting therefrom.

According to the terms of the settlement, the Attorney General shall select and appoint eight individuals to serve on the Sunflower Foundation Board of Trustees. The ninth individual is selected by BCBSKS. Appointment of the charitable foundation board is handled differently in each state. In Maine and New Hampshire, the Attorney General selects the members of the board. In Colorado, the Governor makes the appointments. In some states, the Commissioner of Insurance or other state officials are involved in nominating trustees. The matter of appointing the members of the board of trustees is typically handled through settlement negotiations subject to approval of the court.

# The Conversion of Blue Cross and Blue Shield Plans From Charitable Organizations To For Profit Companies

In the past few years, newspapers across the country have reported attempts by Blue Cross and Blue Shield plans (“Blue Plans”) to convert from one form of organization to another. Typically, state regulators have been concerned when such a conversion would change the Blue Plans from a nonprofit to a for profit organization. Such regulators typically claim that such plans were organized as a form of charitable organization, and that conversion would require such organization to convey part or all of its assets to another entity which will continue the original charitable purpose (called the “*Cy Pres*” Doctrine).<sup>1/</sup> Most Blue Plans have taken steps away from their charitable roots and towards an existence as a for profit insurance company.<sup>1/</sup> However, this article is intended to only give a general description of those Blue Plans which have completed the journey from charitable organization to for profit insurance company. To truly understand the significance of this trend, one must first understand the general history of all Blue Plans.

## Early History of the Blue Cross Blue Shield Plans

Nonprofit pre-paid health plans (using the trade marks “Blue Cross” or “Blue Shield”) exist all over the nation and Puerto Rico because they share a common ancestry; they are “children” of the Great Depression and the response of the American Hospital Association (“AHA”) to its consequences.<sup>1/</sup> In order to create a mechanism by which people of modest means could finance extraordinary costs of hospitalization, the AHA and local hospital organizations sought to create a special class of nonprofit corporations.<sup>1/</sup> Through existing statutes or by special enabling legislation, they sought to encourage the creation of charitable and benevolent corporations which would be endowed with certain advantages and privileges including exemption from the general insurance laws, exemption from the obligation of maintaining the reserves required of commercial insurance companies, and tax exemption. This special status was justified by express corporate purposes to serve the social welfare needs of the community rather than the private interests typically served by for-profit enterprises.

The following is one author’s explanation of the origins of such plans:

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<sup>1/</sup> *Cy Pres* (meaning “near as possible”) is a rule of equity by which the intention of a party which created a charitable trust is carried out as near as may be, when it would be impossible or illegal to give it continued legal effect.

<sup>2/</sup> For example, many of such plans have converted to nonprofit mutual insurance companies.

<sup>3/</sup> Sylvia A. Laws, Blue Cross: What Went Wrong, Chapter 2 (1994).

<sup>4/</sup> Get to Know Blue Cross and Blue Shield (visited 1/17/99) <<http://www.bluecares.com/know/index.html>>. Most states already possessed one or more of the necessary statutes. Those which did not (e.g., Kansas) passed special enabling statutes for that very purpose.



The largest of the early prepaid health care plans, and a predecessor to the Blues, was created [in 1929] by Dr. Justin Ford Kimball, executive vice president of Baylor University in Texas, as part of an effort to resolve the problem of numerous unpaid medical bills of teachers at that university. The Baylor Plan and other early prepaid health care plans soon faced inconsistent treatment by state insurance regulators. Some regulators believed that the plans were subject to the insurance laws; others ruled that the plans were service contracts and were therefore not subject to the legal requirements of insurance. In response to these problems, the American Hospital Association (AHA) and other local hospital organizations sought, in various state legislatures, special enabling legislation that would treat prepaid health care plans differently from insurance companies. The AHA eventually acquired the special enabling legislation that provided prepaid health care plans with several privileges, including exemption from the general insurance laws of the state, status as a charitable and benevolent organization, and tax exemption. The justification for the special legislation was the promise that the prepaid health care plans would service the community, in particular, low-income families (emphasis added).

The best-known of the early service benefit plans is Blue Cross, which was created by the American Hospital Association in response to the need for medical care during the Great Depression. During this period, there was a growing recognition of the need for some mechanism by which middle-income people could finance the extraordinary costs of hospitalization, particularly since hospital insurance was virtually nonexistent at the time. This need to provide hospitalization for the great bulk of people of moderate means, coupled with the need for a stable source of income for hospitals, also served as the impetus for the creation of many other early prepaid health care plans . . . .

In recognition of the fact that the Blues were operated on a nonprofit basis and were providing health care coverage that was virtually nonexistent in the commercial field, the IRS determined that the Blues were exempt from federal taxation as social welfare organizations . . . (emphasis added).

In 1936, the AHA set up a special committee on hospital service and its first Executive Commissioner, Dr. Rorem, was quoted as declaring:

'Hospital service plans are unique, historically and geographically. . . . They deal with a service which has long been recognized as a community responsibility. Hospital care must be provided for all persons regardless of their ability to pay. Such a responsibility cannot and should not be assumed by a private insurance company, the first concern of which should be the financial interests of the policyholders and stockholders. . . . Government controlled hospitalization or health insurance is a second alternative to the nonprofit hospital service plan. . . . But low-cost hospital service plans may reach many persons employed at low incomes who



would otherwise require the aid of philanthropy or taxation  
'(emphasis added).<sup>5/</sup>

Recognizing that the AHA's model special enabling legislation for hospital services corporations gave principal regulatory oversight to insurance regulators, the National Association of Insurance Commissioners ("NAIC") drafted its own model, in part, to give support to the AHA's efforts to seek uniformity among the states. In 1946, the NAIC released for consideration, "An Act to Provide for the Incorporation and Regulation of Nonprofit Hospital Service Plan Corporations", (the "NAIC Model Act").<sup>6/</sup>

The NAIC Model Act required corporations to be organized on a not-for-profit basis under the general corporation laws, limited their charters to certain expressed purposes, declared them to be charitable and benevolent institutions, and provided that all of their funds and property would be exempt from taxation.<sup>7/</sup> A large percentage of states enacted laws reflecting the NAIC Model Act. Blue Plans were created very soon thereafter. In addition, federal tax laws were interpreted to provide substantial incentives for Blue Plans established as social welfare organizations. Blue Plans were recognized to be tax exempt social welfare organizations under the Internal Revenue Code until 1986.<sup>8/</sup>

In 1986, Congress revoked the Blue Plans' tax exempt status based on a policy decision that subsidizing them was no longer necessary, given that commercial insurers had gradually stepped into the breach initially filled by the pioneering Blue Plans. Congress' repeal of the Blue Plans' tax exempt status was not based upon any determination that the Plans were not engaged in a charitable purpose (i.e., the promotion of health on a nonprofit basis) or that they no longer promoted the social welfare. Indeed, despite the general repeal of their tax exempt status, Blue Plans nonetheless continued to receive substantial federal tax benefits based upon their continued community-based enrollment and social welfare commitments.<sup>9/</sup>

### Blue Cross and Blue Shield Plans' Submission to *Cy Pres*

Since the early 1990s (in order to increase capital and market share) many Blue Cross and Blue Shield plans have pushed for the ability to convert to some form of mutual insurance company, for-profit stock company, or a hybrid of the two. In 1994, the national Blue Cross Blue Shield Association ("national association") succumbed to long standing pressure by some Blue Plans to delete its long standing licensing requirement that only nonprofit organizations could use the Blue Cross and Blue Shield brand names. The capitulation by the national association opened the doors to a flood of Blue Plan conversions and mergers. In most of these cases, state regulators have been able

<sup>5/</sup> Laws, supra p. 8, Chapter 2.

<sup>6/</sup> NAIC Model Laws, Regulations and Guidelines, 80-1, Archived.

<sup>7/</sup> Id. at §§ 1, 14.

<sup>8/</sup> See I.R.C. §§ 501(c)(3) & 501(c)(4).

<sup>9/</sup> See I.R.C. § 833 and the Tax Reform Act of 1986 Committee Reports thereunder.

to preserve at least a portion of the charitable assets accrued over the years by the Blue Plans, and redirect the charitable funds back to the purpose for which such organizations were originally founded: to both educate the public on important health issues and provide subsidized health care to low income individuals. Many states have addressed or continue to address how the funds transferred from Blues Plans converting to for profit status should be used, and what form of charitable entity is best for implementing the charitable purposes. The following summarizes how this issue has been or is being resolved across the nation:

## 1. California

Blue Cross of California ("BCCAL") transferred a majority of its assets to a for-profit subsidiary in 1993. The transaction was originally approved by state regulators without any formal charitable asset distribution. Subsequently, the Department of Corporations ("DOC") determined that the transaction failed to protect the charitable assets of the former nonprofit corporation. California's regulators entered into discussions with BCCAL. DOC ultimately determined that BCCAL's 1993 transaction was an outright conversion which required that all of its assets be distributed to other charitable corporations. As a result, assets valued at roughly \$3.2 billion, were transferred to two grant-making health care foundations.

California's regulators hired independent consultants for assistance in determining the appropriate valuation of the company and the mission, governance, and structure of the new foundations. The charitable conveyance consisted of a combination of cash and equity interests in the new for-profit company. Thus, it was not necessary to impair the company's surplus or ability to provide health coverage.

Of the two foundations established, one was created as a social welfare organization falling under the provision of I.R.C. § 501(c)(4) and another was created to fall under I.R.C. § 501(c)(3). The California HealthCare Foundation was established in May 1996 as a result of the conversion of Blue Cross of California from a non-profit health plan to WellPoint Health Networks, a for-profit corporation.

The California HealthCare Foundation was vested with the majority of outstanding WellPoint stock and is charged with responsibility for:

- Gradually divesting the Foundation of WellPoint stock and transferring 80% of the proceeds to The California Endowment for its philanthropic efforts and,
- Developing the Foundation's own independent grantmaking program with the remaining 20% of the funds from stock sales.

The California Healthcare Foundation's grantmaking is statewide and focuses initially on five programs: 1) managed care and special populations; 2) the uninsured; 3) health policy; 4) health care quality; and 5) public health.

The other foundation is the California Endowment which is the principal charitable entity. Its mission is to expand access to affordable, quality health care and to promote fundamental improvements in the health status of Californians. The focus is on the uninsured and medically underserved populations. During 1998, the two foundations made grants exceeding \$129 million.

## 2. Colorado/Nevada

Early in 1999, Blue Cross Blue Shield of Colorado (“BCBSCO”) placed itself up for sale by soliciting bids for its purchase from a handful of large for-profit insurance companies. Eventually, Anthem Insurance Companies, a for-profit mutual insurance company (“Anthem”), was announced as the highest bidder. The Colorado Commissioner of Insurance approved the terms of a deal which has been implemented and will place \$155 million in a charitable foundation to be used for the health benefits of the citizens of Colorado.

The charitable foundation (“Caring for Colorado”) is governed by a board of directors. Each director is appointed by the Governor of Colorado from a list of qualified candidates created by a community advisory committee. The community advisory committee is required to nominate no less than three candidates for each trustee vacancy. The members of the community advisory committee are appointed by the board of directors. In selecting members for the community advisory committee, the board of directors is required to reflect the diversity of the citizens of Colorado.

### **3. Connecticut**

On December 2, 1997, the Connecticut Special Attorney General filed a suit to prevent Anthem from acquiring and transferring out of Connecticut assets that are rightfully subject to a charitable trust. The Special Attorney General also alleged that Anthem and BCBSCT breached their fiduciary duties by refusing to maintain the assets of the BCBSCT plan for charitable purposes.

On July 27, 1999, a settlement was reached for \$40.8 million to be transferred to two new charitable foundations that will help the needy, uninsured, and under-insured of Connecticut. The Connecticut Health Advancement and Research Trust (“CHART”) is an umbrella foundation which accepts donations from other companies. State officials (including the Attorney General and State Comptroller) appoint CHART’s board of directors. CHART, in turn, appoints most of the board of directors of the second charitable foundation (“Anthem Foundation of Connecticut”) which will receive the settlement funds. Anthem will appoint one member on Anthem Foundation of Connecticut’s board of directors. While the foundations were created, the settlement funds were held temporarily by the Hartford Foundation for Public Giving.

### **4. Georgia**

In 1998, WellPoint and BCBSGA announced their planned merger. Under the current terms, WellPoint will pay about \$80 million in its stock and \$1 million cash to a new nonprofit health care foundation as settlement of certain litigation.

The purpose of the foundation, Healthcare Georgia, will be, “the advancement of healthcare for all Georgians”. The specifics of the creation and governance of the foundation are still being developed.

### **5. Kansas**

Starting in 1985, Blue Cross Blue Shield Kansas (“BCBSKS”) encouraged the Kansas Legislature to pass legislation which would allow it to become a mutual insurance company. Finally, in 1991 the Kansas Legislature passed legislation which required BCBSKS to mutualize. On July 1, 1992, Plaintiff became a nonprofit mutual insurance.

In 1997, BCBSKS went into negotiations to merge with Blue Cross Blue Shield Kansas City. That same year, a lawsuit was initiated by BCBSKS against the Kansas Attorney General seeking a determination that BCBSKS was never a charitable corporation and was never to be subject to a *Cy Pres* proceeding. In January 2000, the trial court granted summary judgment in favor of the Kansas

Attorney General that BCBSKS had been a charitable corporation for half of its existence and was subject to a *Cy Pres* proceeding.. In August 2000, the parties eventually agreed that BCBSKS would give \$75 million to a new charitable foundation which would reflect BCBSKS' original purposes.

6. Kentucky

In 1993, Blue Cross Blue Shield of Kentucky ("BCBSKY") merged with Anthem. The Kentucky Department of Insurance approved the merger without any consideration of BCBSKY's obligation to protect and preserve its charitable assets. In 1996, the Kentucky Department of Insurance requested that the Kentucky Attorney General's office audit BCBSKY's 1993 merger, because a routine investigation by the Kentucky Department of Insurance had raised questions about Anthem's use of reserves. In March 1997, Anthem filed a lawsuit against Kentucky's Attorney General and Department of Insurance, alleging that the merger investigation exceeded the regulator's scope of authority.

On October 22, 1997, the Kentucky Attorney General filed a countersuit against Anthem seeking to recover millions in charitable assets that Anthem absorbed when it merged with BCBSKY. In early December, 1999, the Kentucky Attorney General and Anthem agreed to settle the case by Anthem establishing a \$45 million foundation for the benefit of Kentucky health care.

While the foundation is being created, the settlement funds have been temporarily placed in a secured account controlled by the trial court. However, the specifics of organizing the foundation have still not been determined because (before the foundation was organized) the Kentucky House of Representatives passed a bill which would appropriate the settlement funds, appoint a nine-member state appointed board of directors, give state auditors the authority to monitor the foundation's actions, and force foundation board members to respond to inquiries by the legislature. The Kentucky Attorney General opposes the bill. Therefore, the organization and purpose of the charitable foundation are still to be determined.

Prior to the action of the Kentucky legislature, the foundation was to have an independent temporary Community Advisory Committee to organize the foundation, appoint its initial board of trustees, and establish its purposes. Then a new Community Advisory Committee was to oversee the actions of the foundation's board of trustees, and appoint their replacements.

7. Maine

In July 1999, BCBSME announced that it would merge with Anthem. Anthem proposed to pay \$120 million for BCBSME with at least \$81.69 to be paid to a new charitable foundation designed to meet the state's health care needs by "serv[ing] Maine's unmet health care needs, particularly with regard to medically underserved and uninsured populations and to provide access to care and improve the quality of care for those populations". Maine's Attorney General ("Maine AG") and Insurance Superintendent approved the proposal.

The new charitable foundation, Maine Health Access Foundation, Inc., will have a board of trustees to direct its affairs. Initially, the Maine AG will appoint the original Board of Trustees after considering the nominations made by the general public. Subsequently, each trustee shall be appointed by the Maine AG from a list of candidates nominated by a community advisory committee. The Maine AG will also be responsible for appointments to the Community Advisory Committee.

8. Missouri-St. Louis



Blue Cross Blue Shield of Missouri ("BCBSMO") "restructured" in 1994, placing approximately 80% of its business into a publicly-traded, for-profit subsidiary, RightChoice. The Missouri Department of Insurance ("MDOI") originally approved the transaction. Subsequently, MDOI sought review, articulating that the plan failed to protect BCBSMO's charitable assets. BCBSMO sued both MDOI and the Missouri Attorney General, who each filed counterclaims.

In February 1999, a settlement was reached. The settlement called for BCBSMO to merge with RightChoice while creating a health care foundation with nearly \$13 million in cash and 80% of RightChoice's stock. The foundation would then sell the stock within seven years. The trial court eventually approved the settlement.

The foundation created, the Missouri Foundation for Health, has at least three members on its Board of Directors. A community advisory committee will have the role of selecting the Missouri Foundation for Health's initial Board of Trustees. Missouri's Attorney General and Governor will each appoint subsequent members of the Board of Trustees from a list of candidates nominated by the community advisory committee. All members of the Board must be determined to be qualified and independent. The community advisory committee is selected by Missouri's Attorney General and Governor respectively after they have consulted with five specified public advocacy organizations, and solicited public notification and comment.

#### **9. New Hampshire**

On October 27, 1999, Anthem acquired Blue Cross Blue Shield of New Hampshire ("BCBSNH") for \$120 million. Final approvals for the transaction were received from the New Hampshire Department of Insurance and the appropriate court in October 1999.

As part of the transaction, a foundation was established with \$80 million in cash. This foundation, Endowment for Health Inc., is dedicated to serving the health care needs of the people of New Hampshire. The foundation will be governed by a fifteen-member board of directors. The board of directors will report to the Health Advisory Council which will also work with the board of directors in selecting qualified candidates for consideration as board members. The New Hampshire Attorney General appoints the members of the board from the nominated candidates.

The Health Advisory Council (containing 30 members) is also appointed by the New Hampshire Attorney General, and reflects the diversity of citizenship in the state. To ensure broad representation, the Health advisory Council must include at least one member from each county in the state (ten members) at all times. Moreover, a majority of the members must be from the "general public". For these purposes, an individual is from the general public unless such individual: 1) is a director; 2) is engaged in the practice of a health care profession; or 3) is an employee, officer or director of an organization that primarily sells health care services.

#### **10. New York**

In 1996, the BCBS plan announced that it would convert completely to a for-profit corporation. The plan has proposed to convert to a stock company and transfer 100% of its stock to a nonprofit foundation, provided that the foundation own less than 20% of its stock in five years. Currently, Empire BCBS holds assets of \$1.76 billion and statutory capital of \$538.3 million. The issues before regulators include determination of the fair market value of the nonprofit plan, as well as the appropriate mission, governance, and structure of the resulting foundation.

In August 1997, the plan filed its conversion documents with the Attorney General and Department of Insurance. The plan includes Empire BCBS becoming a stock company which

transfers the capital gained from sale of common stock to a charitable foundation. The Department of Insurance approved Empire BCBS' proposal for conversion in January of 2000. The Attorney General recently announced an agreement with Empire BCBS. The New York Department of Insurance is now reviewing the agreement to determine whether the agreement will comply with insurance law.

The terms of charitable foundation organization and purpose have yet to be developed.

#### **11. Ohio-Cincinnati**

In 1995, Community Mutual Insurance of Ohio ("CMIO"), a Blue Cross Blue Shield plan, merged with Anthem. After the Ohio Attorney General investigated the merger and determined that CMIO held charitable assets which should have been preserved, Anthem agreed through settlement to preserve \$28 million for a charitable foundation to assist Ohio citizens in their health needs.

The foundation was created as merely a subsidiary of the Greater Cincinnati Foundation in order to lower administrative costs.

#### **12. Wisconsin**

On June 3, 1999, Blue Cross Blue Shield of Wisconsin ("BCBSWI") announced that it planned to convert to a stockholder-owned corporation from a service insurance corporation. The BCBSWI board voted on June 2, 1999, to change the corporate structure and turn over the equity value of the company's stock, valued at \$250 million, to a new foundation dedicated to public health. The Medical College of Wisconsin in Wauwatosa and the University of Wisconsin Medical School in Madison will be the principal recipients of the funds.

Under the terms of the Insurance Commissioner's approval of the conversion plan, at least 35% of the funds are to be used to meet public health needs in the state. Each of the medical schools are required to create "public and community health oversight and advisory committees" to oversee the spending of the 35% for public health use "in collaboration with community organizations".

The proceeds of the sale of BCBSWI stock are to be funneled through a foundation whose members are appointed to five-year terms by the state insurance commissioner. The initial board members selected by the Insurance Commissioner were the exact persons nominated previously by BCBSWI and the medical schools. However, the foundation will probably function as little more than a simple transfer mechanism for exchanging stock and transferring money to the medical schools. Several consumer groups have recently filed suit to block the conversion.

#### **Conclusion**

More and more Blue Plans are recognizing the fact that they must comply with the law of Cy Pres if they want to convert to a for profit company. Still, it can be expected that not all such plans will turn over millions of dollars without a fight.

STATE OF KANSAS  
HOUSE OF REPRESENTATIVES

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FISCAL OVERSIGHT  
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KANSAS JUDICIAL COUNCIL

**MEMORANDUM**

**RE: Feb. 28, 2001 Governor's Tour of KPC**

On Wednesday, February 28, 2001, Gov. Graves, Senators Vratil and Morris, and I toured the Kansas Payment Center facility here in Topeka. The visit to the KPC had been arranged by and at the suggestion of the Governor's office, in the wake of questions and controversy over the quality of collections and disbursements through the KPC since it's October 2000 startup. The KPC had little notice of the visit, so that we could evaluate to the greatest extent possible a typical day at the KPC. We were accompanied by Susan Mahoney, Legislative Liaison with the Governor's office and Marilyn Jacobson with SRS. The visit, due to our various schedules, took place beginning at 3:00 p.m.

We were met by Debbie Keeton, the Director of Operations for the KPC. She was very friendly and cooperative and gave us a tour of the facility and explained the Center's operations. She has extensive background in centralized and automated child support collection and distribution and came across as candid and forthcoming. The facility is sparse but functional, i.e., nothing fancy, just the bare necessities. The facility is housed in old shopping mall space and it appeared that few capital improvements had been necessary. Personnel were officed in functional cubicles with computers, printers, scanners, phone equipment, etc., set up in/on portable stands without "built-ins".

Ms. Keeton described how operations start each day at 6:00 with the first mail deliveries. Mondays are the heaviest days, with the remaining business days being about equal in volume. Mail is processed by loading envelopes in an automated mail-opening

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House Judiciary  
3-1-01  
Attachment 4

system. Mail is opened from the top and one side. The machine then lays open the envelop so the contents can be removed and processed. "Stray" mail, i.e., mail that is misdirected to the KPC is identified at that point and placed in bins representing each of the counties in the state. All checks are metered at this location to show that the check was handled by the KPC. There have been some claims that checks have been returned by the KPC in error. If the check has the KPC metered stamp, then the KPC did handle the check. Otherwise, they wouldn't have.

Checks are batched in quantities of 50 for quality control. Checks are reviewed for obvious errors or other discrepancies, in which case they are tagged with an "exception" form. These may be problems that are easily cured by return of the instrument, e.g., where the numeric amount differs from the written amount. The KPC metered stamp also assigns a KPC transaction number that will follow the check through the whole process. Staff then log in all checks, including exceptions, and all pieces of mail, i.e., check, envelope, notes, etc. are scanned so that a permanent record is kept. The staff can then enter into the system the date the check was received and processed in the system.

Assuming all the information that is required appears on the check or any accompanying documentation, a disbursement check can be cut the next day and mailed out. Checks come out of the St. Louis distribution center because they were the only vendor who would bid on this size of job. Five trucks leave St. Louis each day with checks for delivery from 5 distribution points in Kansas. Next day mail is accomplished for those payments that came through the KPC without problems. That part of the process appears to function well. Staff that we observed working on "excepted" checks were handling checks that had been received the previous day. The staff person was very courteous and knowledgeable.

The main problem with centralized collection and disbursement occurs when the information accompanying the check is absent or inadequate. The computer processing



of checks to match up amounts with current court orders apparently takes place at night, consistent with the way many businesses operate. Checks that contain missing or inadequate information, then, will be placed in suspense beginning the second day. Staff are to make a computer notation attached to the check record to help identify the problem, i.e., identify the information that is lacking. The KPC has staff dedicated to "research". Their task is to act as detectives in an effort to match up a receipt with the correct recipient.

We were shown a graphic depiction of the status of "suspense" files on the wall of the "research" room. Each month of KPC operation (Oct. 2000 - Feb. 2001) was represented by a column of information on the wall. Each date there was a check placed in "suspense" was shown, along with the number of files still open for that date. At the bottom was a total of the files in "suspense", which, Ms. Keeton emphasized, represented "real people" who were waiting on money. To the side of each month's graphic was a total for the month, indicating the total \$ amount of funds still in suspense. As of this date, there is still over \$80,000 in funds in suspense from the first month of operation. For February there is over \$300,000 in suspense. Cumulatively, somewhere around \$1 million is currently in "suspense".

There are any number of reasons why a check would be put in "suspense". Some checks come in literally with no identifying information other than it's a check made out to the KPC. We were shown one check from October from the State of Pennsylvania in the amount of \$5.77 on behalf of an individual whose name does not appear anywhere in the system and without identifying the intended recipient. It is no wonder this check is still in suspense. However, some problems seem very easy to solve. For example, I had just that day received an e-mail from a lady who had just been awarded a temporary order of support. Her husband had written a check dated 2-12 and sent it to the KPC. It had been received and processed into the system 2-14. The lady didn't know how long to wait but knew from her husband that his check had cleared his bank. She elected to be patient

and didn't call to inquire as to the status of her check until 2-24. She claims to have waited 1/2 hour on hold and then was told that no payment had been made or posted to her SSN. When she advised that the check had cleared his bank, they then looked and found the item in "suspense". She was told that it looked like the case # was missing a digit (it had 5 digits and not 6). The case # was correct and all that it needed was a zero added to the front (#004361, instead of #04361!). She was told the check would come out of suspense that day, posted to her account on Monday the 26th and mailed the next day. When she didn't get her check she called back and was told by someone else that they couldn't find any record of the payment. This, she was told, meant the payment was "in transit" to her computer account with KPC and would be mailed the 27th. She called on the 27th and was told the check had not been posted yet and it could take from 4-7 days.

I gave Ms. Keeton this information while we were in the "research" room and she immediately gave it to someone to research. I was then told the problem was with the original order. When the check came in there was no order in the system to match the check to. Sedgwick County hadn't sent in the information establishing the order. I asked what information had been noted in the comments attached to the computer record of the check when it was initially received and we learned that a "no order" notation had been correctly added, but no one had followed up during the entire time between 2-14 and 2-24 when the payee called in to check on her check. In fact, it appears that it was her call that prompted KPC to act. When we first entered the KPC we were shown the office of the OJA (Office of Judicial Administration) on-sight staff person. This is, essentially, the KPC's liaison with the courts. No one bothered to ask the OJA staff person to call Sedgwick County to check on the status of the order. This would have taken a matter of minutes to solve. (Before I left the KPC I was advised the check to the recipient had been cut and mailed. Coincidence? Maybe.)

We spent a limited amount of time discussing the customer service area. We met with the customer service supervisor. Their software and equipment is set up to monitor

calls. She can tell which of her staff is on a call, how long the call lasts and how long the caller was on hold. They claim hold time averages are down to less than 2 minutes. She was very courteous and appeared to be well trained. They had no particular response to the claim by the lady mentioned above that she held 30 minutes on the 24th. They do have the ability to go back and check that date for hold times. Time did not permit a check as it was past 5 o'clock and we needed to leave. Ms. Keeton did confirm that there has been a good deal of turnover in customer service. Some is expected in the nature of the business. Four staff were terminated for cause (out of 14) and they have been replaced.

Overall, everything at the KPC appears to function quite well until a file is placed in "suspense" status. It appeared to me that at that point the KPC was too much a slave to technology when a little common sense and human "networking" could solve a number of the cases. There was noticeable reluctance on the part of the KPC (or Ms. Keeton) to involve the clerks and trustees. Little if anything has been done to include them to date. The KPC appears to be too proprietary in that regard. SRS has outsourced the customer service aspect and so there is no "caseworker" procedure in place.

We stressed the need to network better with existing human resources and adopt a more "caseworker" based philosophy with regard to cases needing research. We also suggested that those who call in for automatic telephone access to their accounts or who access the website for information on their accounts be advised of the "mail" date, if any. Date of "processing" carries little significance to a payee (or a payor, for that matter). If the record shows a processing date but no mail date within the next day, this is a clear clue that there may be an informational problem with the check and the payee may then be in a position to provide some of the missing information in a timely way. This is not to suggest that there are not other problems that need to be addressed. I will have additional suggestions later.