STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota, by its Attorney General, Mike Hatch,

Plaintiff,

vs.

Medica Health Plans,

Defendant.

ORDER

File No. MC 01-004100

The case came on for trial over a course of five days before the undersigned Judge of District Court, running from Thursday July 28, 2005, through Wednesday, August 3, 2005. Pursuant to Rule 52 of the Minnesota Rules of Civil Procedure, this memorandum incorporates the Court's findings of fact and conclusions of law.

APPEARANCES:

Michael J. Vanselow, Deputy Attorney General, and Daniel S. Goldberg and Julie Ralston Aoki, Assistant Attorney Generals, appeared on behalf of Attorney General Mike Hatch and the State of Minnesota.

Marianne D. Short, Katie C. Pfeifer, and Mitchell W. Granberg, of the law firm of Dorsey & Whitney, LLP, appeared on behalf of Medica Health Plans.

This trial marks the climax of a four-year epic legal battle between the non-profit board of Minnesota's 1.3 million member strong health care insurer, Medica,[1] and the Attorney General of the State of Minnesota, Mike Hatch. The trial before this Court

[1] Medica provides fully-insured and self-funded health plans to employers, organizations, and individuals. It is Minnesota's second –largest provider of health maintenance organization products and other health plans. More than 1.3 people are Medica members, and over 10,000 employers in Minnesota are Medica members and customers. The Medica network includes over 15,000 physicians and health care professionals. *See* Exhibit 262.

featured testimony by the two top legal officers of the State of Minnesota -- Attorney General Mike Hatch, and Solicitor General Lori Swanson. Arrayed on behalf of Medica's board were some of the top business and legal minds of the State of Minnesota -- a hand-picked group personally recruited by Attorney General Hatch himself in early 2001, and at the time, touted by the Attorney General as a "blue ribbon" board.

This case began in March 2001 as an intervention by the Attorney General in a billion dollar Minnesota non-profit organization racked by allegations of corruption, fraud, and abuse. The 2001 intervention was lauded by the witnesses in this trial as an example of a partnership by government and business at its best. The Attorney General plunged into a swirling crisis, supervising an intensive and focused investigation. He issued a six-volume report, and took immediate action based on the report. Attorney General Mike Hatch testified at trial about the history of the crisis. So did Solicitor General Lori Swanson, who worked countless hours in early 2001 on what ultimately led to the six-volume report of health care abuse.

It was clear from the Attorney General's testimony why he impressed the cadre of top-flight, prospective board members and special administrators he recruited to address the Allina/Medica health care scandal in 2001. Former Minnesota Supreme Court Justice Esther Tomljanovich testified that when Attorney General Hatch presented the problem in a group meeting of prospective Medica board members in August 2001, he spoke for hours with impressive, detailed knowledge, without notes. The Attorney General's presentation induced former Justice Tomljanovich, and other distinguished citizens, to make time in their busy lives to accept the Attorney General's call to duty, when they were asked to join Medica's board and serve as court administrators. The commitment of both Attorney General Hatch and Solicitor General Lori Swanson to eradicating health care

waste and abuse resonated throughout the trial, and their expertise, sophistication, and intelligence on the issues was palpable.

The case has its genesis in a January 18, 2000 audit report of the United States Department of Health and Services, Office of the Inspector about problems found in 1997 in nine health maintenance organizations around the country, including Minnesota-based Medica.[2] This report garnered national and local media attention, due to its graphic findings of waste and abuse. These reports were sensational. Former Allina General Counsel Mark Mishek testified to the "awful day" when Allina was featured in a national television documentary entitled "The Fleecing of America." The trial testimony by Attorney General Hatch and Solicitor General Swanson about the scandalous waste was breathtakingly detailed, graphic, gripping, and alarming.

The report, and the related publicity, prompted the Minnesota Attorney General, at a suggestion from the legislature, to launch a comprehensive investigation in early 2001. That investigation resulted in a six-volume report by the Attorney General documenting numerous improprieties by both Allina and Medica executives, and failed governance by their respective boards of directors.

The report documents deficiencies in the areas of exorbitant travel and entertainment expenses, excessive and improper executive compensation, questionable consulting expenses, conflicts of interest, Medicaid fraud, kickbacks, and unwarranted administrative expenses.[3] At the same time, the United States Attorney and the Minnesota Attorney General conducted a lengthy, four-year parallel criminal grand jury investigation of Allina/Medica for fraudulently "upcoding" medical bills, to the detriment of its members.

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[2] *See* exhibit 250.

As part of the resolution of the Attorney General's civil investigation, Allina agreed to reorganize the company and divest itself of Medica.[4] The entire Medica board resigned, as did its chief executive officer. A new Medica was created in mid-2001, with the new board that is the subject of this lawsuit. Medica entered into a detailed Memorandum of Understanding ("MOU") with the Attorney General, with specific plans to clean up the abuse, report to the Attorney General, and make sure the problems did not recur.

The testimony of Medica's new board chair through early 2002, Ted Deikel, and his successor, John Buck, made clear that Medica's board chairs took the responsibility to clean up the problems of scandalous waste and abuse, and to ensure they did not recur, extremely seriously.

So did the rest of Medica's new post-2001 board. For example, Board member and former Justice Tomljanovich testified to the care with which Board members both reviewed internal reports, insisted that they were thorough, and exercised oversight, both internally and in the reports back to the Attorney General under the MOU.

Shortly before the MOU expired at the end of December 2002, Medica underwent a thorough and rigorous audit by the Attorney General, producing over 1500 pages of documents, and meeting for hours with the Attorney General's top staff on September 25, 2002. Medica understood that it did well on this audit, and no witness has testified to the contrary.[5]

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[3] *See* exhibits 3-10.

[4] *See, e.g.*, exhibits 18, 23, 281, 294, 297.

[5] The parties dispute whether the MOU expired on December 31, 2002, as the document provides. Medica claims that the document is a contract and should be read consistent with its terms. Attorney General Hatch testified that the MOU is a regulatory agreement; or as Solicitor General Swanson testified, it was intended to capture "the low hanging fruit," with the understanding the MOU defined the "basics," but not all problems. Former Medica board Chair

Immediately prior to trial, the State dismissed its claim that Medica failed to comply fully with the MOU.

No witness in this trial downplayed the seriousness of the state and federal findings of abuse, all of which predated the new Medica and the 2001 board whose actions are the subject of this case. All accepted them as serious and grave. There was no evidence that Medica failed to comply with the MOU – a significant, broad charter that created a regulatory forum to address the abuse and scandal. As part of the reform process, along with a new Board, "special administrators" were created pursuant to court order, to help launch the new Medica. The new board members and the new special administrators were one and the same people wearing two hats. They were all personally recruited by Attorney General Mike Hatch.

The abuse predated the new Medica that was created in early 2001, and its new Board that was put in place in August 2001. The scandal in the previous organization underscores three relevant themes that dominated this lawsuit. First, the importance of the special administrator position as a means of indemnifying the new directors from possible civil or criminal liability for actions that preceded their arrival. Second, the importance of the special administrator position as a means of ensuring that the prior abuses did not recur. And third, as a backdrop to the importance of a strong and independent board that would govern Medica and provide both strong oversight and a check against any new waste, corruption, and abuse.

In summary, the investigation resulted in an agreement between Allina and the Attorney General to separate Medica from Allina, and create a completely separate

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Ted Deikel agreed. He testified that the MOU was intended as "a snapshot . . .the starting point." Deikel's successor as board chair, John Buck, underscored the importance of the MOU as a charter. "It was very important. It was the right thing to do."

Medica organization of almost 800 employees, with its own board, leadership and structure. The investigation also resulted in the MOU. Finally, and the focus of a significant part of this trial, in August 2001, Medica's new board members were also designated as "special administrators." The significance of the designation is contested by the parties. By the time of trial, all of the special court administrators had resigned their appointment, pursuant to their appointment authority, and none of the board members were court administrators any longer.

Somewhere between 2001 and the day of trial, the harmonious relationship between the State and Medica disintegrated into a vitriolic, bitter dispute between the Attorney General and the very board that he had picked to shepherd Medica through this crisis. The story played out in this trial. The question in this trial is what happened since 2001 that would cause the Attorney General to seek to remove his own hand-picked group of leaders from the State's second-largest non-profit health care organization.

After hearing the testimony of 16 witnesses over five days,[6] and examining the some 300 exhibits offered by the parties, the Court concludes that this case lacks merit and should be dismissed. The Court finds that neither party has a monopoly on good intentions or the public interest. The Court finds, however, that the evidence at trial does not support the Attorney General's claim that the people he selected as board members (or court administrators), in his words, "hijacked the company" instead of returning it to its consumer members. The case does not support the State's claim that Medica's board (or the court "administrators") engaged in "self-dealing" or "deception."[7] It does not

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[6] The witnesses at trial included Attorney General Mike Hatch, Solicitor General Lori Swanson, Ted Deikel, John Buck, Daryl Durum, John Flittie, Krista Sanda, Austin Sullivan, Justice Esther Tomljanovich (ret.), Dr. Ben Bache-Wiig. Dr. Peter Kelly, Ivy Bernhardson, Professor Evelyn Brody, Paul Conley, Mark Mishek, and Mary Hipp Zilinski.

[7] The board accused of self-dealing had excellent credentials and testified at length about their

support the claims in the State's opening July 11, 2005, trial brief, which is full of self-indignation and sharp accusations ("these administrators hijacked the company for their own self enrichment . . . then held an uncontested "sham" election" . . .deceived real Medica members . . .engaged in self dealing . . .engineered to hijack Medica . . .permanently hijacked the company and enriched themselves . . .")

At the end of the trial, the State implicitly conceded in its closing argument either that much of its case had dissolved, or that the it had decided to prove a different theory of wrongdoing than the one it had alleged in its amended complaint, opening brief, and the evidence presented at trial. After hearing the State's evidence at trial, the Court was more than a little surprised to read the State's post-trial brief filed one week after the trial, and to discover that the State had recanted virtually all of the claims of nefarious conduct driving this four-year old litigation. Contrary to its complaint, opening trial brief, and testimony, the State turned an about-face, and pronounced at the end of the trial that this case was "not about whether the Medica board is doing a decent job. It is not about whether the State can challenge so-called "business judgments" of the board . . It is not about whether the board's compensation was excessive . . . ."[8]

Surely Medica, which presented evidence to rebut all of those claims, was equally surprised. Indeed, as Medica asked in its closing argument, "Where's the beef," or as it

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dedication, commitment, sacrifice to Medica. They were all people of stature. For example, board member Daryl Durum testified that he serves on a national task force to create model best practices for the insurance industry. Board member Austin Sullivan held national positions in the war on poverty and to improve race relations, and has made community service the focus of his life's work. The same is true for the other board members, such as former Minnesota Supreme Court Justice Tomljanovich, who is extremely active in public affairs, and Kris Sanda, whose whole career demonstrates that she is a champion for consumer rights. It is only out of a desire to keep this opinion at a manageable length that the Court does not devote the pages it would take to recount in detail the commitment and service of the board, as the testimony demonstrated with great power at trial.

[8] State of Minnesota's Written Closing Argument, August 12, 2005, p. 2.

stated in its own post-trial brief, "Throughout this litigation, one question has remained foremost in Medica's mind: what, exactly is the State alleging Medica did wrong. This question only became more confounding on the final day of trial when the Attorney General commended the six individuals he has targeted in this litigation . . .[and stated] that that they had done a good job at Medica . . .[and] abandoned the allegation of greed and self-dealing by these individuals."[9]

Lawsuits are supposed to be about wrongs done to people. At the end of the day, this Court is left wondering, as Medica does in its post-trial brief: "what exactly, is the State alleging Medica did wrong?" The Court considers too: Should the Court address the claims in the State's amended complaint? The opening brief? The trial? What the Attorney General testified to at trial? The post-trial closing argument brief of the State? Medica, and the Court, were left with a shifting target, and questions of what claims are really made, which claims required rebuttal testimony, and which require a decision by this Court.

What the State ultimately claims in this case, at the end of the trial, involves a complete about-face from what the State claimed at the beginning of the trial. No claims of personal self-dealing. No claims of deception. No claims of excessive compensation. Rather, an austere, extremely modest, almost academic claim: "This case is ultimately about preserving the integrity of the Court appointment process." In so many words, this four-year litigation, this five-day trial, and the State's 51-page post-trial brief boils down to this: The "court administrators" appointed to perform certain tasks pursuant to an August 2001 consent order, which also appointed them members of Medica's board of directors, should not have run for election. They should not have stayed on the board.

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[9] Medica's post-trial brief, August 12, 2005, p. 1.

Their duty was to clean up Medica, turn it back to its members, report to the Court and the Attorney General, and get out of the organization.[10]

Yet. Having said these things, and making the closing argument that the State is not accusing Medica board members of doing a bad job, of excessive pay, or other misdeeds, the State goes on to accuse Medica board members of all those things, in their capacity not as board members, but as "court administrators." Although the record is undisputed in this case that all of the court administrators were also appointed by the Court as board members, the State would have the Court ignore the words "board director" in the score of relevant documents, and focus on the word "court administrator."

The Court is left with the uncomfortable feeling that it is operating in the uncharted realm of legal metaphysics, rather than law and evidence. In truth, in the unique factual context of this case, the court administrators and the board members were one and the same. Having heard the testimony at trial of the board members and administrators whose integrity the State questions, the Court is certain that it matters not to them whether they are accused of wrongdoing under the aegis of court administrators, or board members. The accusations sting no matter what, because they are made against people, not titles.

It was clear from the testimony that the State parses nomenclature. Only thus can the State quarrel with Medica's argument that the Attorney General's real goal is to control the decisions of Medica and to control the policy of an independent nonprofit organization. Having disavowed an intent to take over Medica's board and manage its decisions, and stating that this is not an attempt by the State to take over the board of

[10] State of Minnesota's Written Closing Argument, August 12, 2005, p. 1.

an independent nonprofit, the State goes on to criticize those decisions. (*Compare, e.g.* "The State of Minnesota is not in the business of permanently taking control of Minnesota corporations . . . [or] challeng[ing so-called 'business judgments' of the board" (State's brief, pp. 1-2) *with* criticisms of these judgments in the balance of the brief (pp. 23-24, 46).[11]

The Court will address the State's legal argument about the duties of Court administrators. Rather than speculate as to what claim of misconduct the State is really making, the Court will rely on what the State has alleged in count one of its amended complaint; after all, that is the pleading representing what the State intended to prove at trial.

After five days of intently listening to 16 witnesses and more time poring over 300 exhibits, and reviewing the State's complaint, pre-trial brief, and post trial argument, the Court confesses to some confusion about what the State is saying: On the one hand, the State concedes that the board consists of good people who did a good job. On the other hand, the State argues that they are deceitful and engaged in self dealing. Plunging the Court's beyond the depth of mere confusion, the State makes the final argument that "Ultimately, the Court need not conclude that the Administrators intentionally violated their duties under the Appointment order or that they did so

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[11] State of Minnesota's Closing Written Argument, August 12, 2005. The Court cannot be blamed if it is confused about what the State is saying: on the one hand, the State concedes that the board consists of good people who did a good job. On the other hand, the State argues that they are deceitful and engaged in self dealing. Plunging the Court's beyond the depth of mere confusion, the State makes the final argument that "Ultimately, the Court need not conclude that the Administrators intentionally violated their duties under the Appointment order or that they did so because of an improper motive. *Id.*, p. 42. Count one of the State's June 21, 2004 amended complaint, which is what the State ultimately rested on in going to trial, is replete with assertions of improper motive (the court administrators "took unauthorized actions to make their Court appointments more permanent and considerable more lucrative . . . staged a [sham] election . . .[engaged] in deception . . . [and] flaunted the rules . . . ."

because of an improper motive. *Id.,* p. 42. Count one of the State's June 21, 2004 amended complaint, which is what the State ultimately rested on in going to trial, is replete with assertions of improper motive (the court administrators "took unauthorized actions to make their Court appointments more permanent and considerable more lucrative . . . staged a [sham] election . . .[engaged] in deception . . . [and] flaunted the rules . . . ."

In summary, the Court heard testimony from virtually every Medica board member accused of deception, hijacking, and self dealing. This Court was attentive to any evidence that would justify these serious claims. After hearing the testimony of virtually the entire board, and key witnesses on both sides, the Court is compelled to conclude that the Medica board accused of deception, hijacking and self dealing is comprised of good and honorable people, with years of top leadership experience in business, law, and government.

To a person, the evidence established, without a doubt, that rather than engage in "self-dealing" as alleged by the State, the board members put aside their private lives and interests, and answered a call to duty and to serve the public interest when the Attorney General personally recruited them in 2001. The Attorney General's board accepted an invitation to take over the leadership of an organization awash in crisis, beset by federal, state, and local investigations of alleged criminality, corruption, waste, and self-dealing.

Whether they are called "special administrators" or "board members" as was the subject of much trial testimony, is of no great moment. They were both. They violated no law, no order, no by-law, no ethical precept, whether they are called court administrators, or board members. They were faithful to the duties of each.

Despite the fiery rhetoric in this trial about a "hijacked board" and a "stolen

election," when the smoke cleared, the rhetoric could not obscure the six central conclusions which emerged inescapably from the evidence at trial.

First, the board members whose actions are challenged by the State brought years of wisdom and experience to the table, and helped guide Medica through a severe crisis in confidence, guiding Medica to a position of national stature. In the four years that this lawsuit has been pending, Medica's membership has grown by a third, from 800,000 in 2001 to 1.3 million members in 2005. Contrary to the State's claim that Medica's members have been served poorly by their board (or the court by its administrators), the evidence shows that Medica has flourished and blossomed into an award-winning, nationally-recognized health services organization. As Board chair John Buck testified, Medica was recently named the "number one non-profit health plan in the country," has grown to a record 1.3 million members, and in December 2003, for the first time, issued a rebate of $80 million in premiums to its members through a "premium holiday."

Second, and arguably more importantly, given the context of this lawsuit, *none* of the lurid allegations of corruption and abuse that led to the Attorney General's investigation in 2001 have resurfaced under the current board. After four years of pre-trial discovery, none were presented as evidence at trial.[12] The board that the Attorney General seeks to remove has dealt with the issues that led this extraordinary intervention by the Attorney General. The Attorney General has failed to prove that this board fell short in its mission, or that Medica suffered on its watch.[13] To the contrary, the evidence

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[12] As noted earlier, Medica complied fully with its reporting obligations under the MOU, and successfully completed a rigorous audit in late September 2002, several months before its formal expiration. *See* exhibit 32.

[13] Apart from the allegations of board "self-dealing" which are addressed at length in this opinion, and continuing criticism at trial by the Attorney General of Medica's compensation practices, failure to pursue certain litigation claims, and excessive reserves (all unproved and all discussed below) there were only two incidents offered by the State as evidence of compensation

from witness after witness was the board has matured, come into fruition, and developed into a hard-working, cohesive, thoughtful group that is providing firm and intelligent oversight and leadership for its 1.3 million members.

Third, the evidence demonstrated conclusively that none of the individual board members, or the board as a whole, whether as board members or court administrators, did anything wrong, illegal, improper, or unethical, under Medica's by-laws or state or federal law. The State's claim that the entire 2001 board engaged in self-dealing by running for election is unsupported by a balanced analysis of the actual facts. As discussed in more detail below, the same is true for the State's claim that three board members improperly received free health care policies in 2002, which they never used, for the purpose of maintaining their status as consumer board members in 2002. The testimony of board member after board member, unrebutted on cross examination, established that each brought years of wisdom, knowledge, and experience to the

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abuse. (That said, it should be noted that the State has abandoned any claim that the compensation practices are illegal, and explicitly says so in its closing argument),

One incident challenged by the Attorney General was a bill for $64.00 submitted by board chair Ted Deikel three years ago, for a dinner meeting at the Capielo restaurant with the Attorney General and Medica executive John Morrison. The evidence at trial included the fact that Mr. Deikel and Mr. Morrison ordered appetizers, sea bass, and two salads. *See* exhibit 339. The Attorney General emphasized that he did not eat, but that he purchased his own two drinks. Whatever the propriety of Medica paying for a business meeting of its board chair with the Attorney General, Mr.Deikel reimbursed Medica when questioned rather than make it an affair of state.

The other incident was a disputed event when Medica's acting CEO, John Buck, allegedly told the Attorney General after a dinner meeting that he planned to become a part-time CEO of Medica and pay himself $400,000. Mr. Buck and the Attorney General have testified to completely opposite memories of this conversation. Mr. Buck testified that the Attorney General suggested that he become CEO and receive a $400,000 salary, which he viewed as a "compliment" but refused. The Attorney General testified that Mr. Buck made the suggestion himself, and that he was outraged by it. Whatever the truth, which recedes in the foggy recesses of time, memory, and the uncertainty that attends post-dinner conversations, Medica did not offer Mr. Buck the CEO position, and if it had, Mr. Buck testified that he would not have taken it. So no money was spent, and whatever truly was said that evening, the incident does not prove that Medica money was improperly paid.

position, each is a person of honor and integrity, and each chose to remain on the board in order to serve the public interest in good health care and the needs and interests of Medica members. The claims of "deception," and "self-dealing" were completely unproven.

Fourth, with regard to the State's central claim that the board members "hijacked" the organization and "stole" the 2002 election, it is undisputed that the consumer board members challenged by the Attorney General were elected not once but twice by the membership of Medica -- in both 2002, in the election challenged by the State, and 2005, in an unchallenged election. The credible evidence establishes overwhelmingly that none of the board members were told they could not run for re-election, or in their dual capacity as court administrators, that they were required to clean up the company, report to the court, get out, and not run for re-election as board members. The 2002 election was undertaken for good and proper business reasons. It was aired fully with State officials, including the Attorney General's chief deputy, Alan Gilbert, and yet another emissary of the Attorney General, Jim Miller, months before the actual election, and approved. It was aired with the Minnesota Department of Health, which regulates such elections, without objection. The election complied with legitimate principles of nonprofit corporate governance, Medica's by-laws, state and federal law, and all orders of this Court.[14]

Fifth, the State has completely failed to rebut the reasonable and sound corporate judgment offered by Medica, to explain why it kept the Attorney General's hand-picked, "blue ribbon" board in place in 2002. It was a given in this trial, conceded by both the

[14] Under Minnesota law, 40% of the board was subject to election as "consumer directors." The other directors could be appointed and need not be consumers, or policy holders, of Medica. The State has challenged all of the directors who were appointed in 2001 , asking that all be unseated.

State and Medica, that Medica needed dramatic changes in oversight and governance to address a history of waste and abusive spending. The Attorney General attested vigorously, and at length, to the importance of strong, independent board oversight, and continuity of board leadership to provide that strength. The State and Medica put that board in place in August 2001, and created a new organization. Medica put the Attorney General's hand-picked board in place. The State has argued that the entire board should have resigned in August 2002, and that it should not have run for re-election. The State have given short shrift to Medica's entreaty that to do so would destabilize the organization and wreak havoc. The Attorney General's desired outcome would have left Medica with no board at a time when it also had no president.

This action would have decapitated Medica. To use the Attorney General's own words when he criticized Medica for taking "excessive time" to fill the president position, the Attorney General would have created a "rudderless" one-billion dollar organization with a million members and almost 900 employees, at a time when tight, controlled, vigorous leadership was necessary to right the wrongs of the past. The State's position is neither credible nor sensible. It is inconsistent with the Attorney General's own testimony emphasizing the importance of board continuity, independence, and expertise. It is inconsistent with the Attorney General's own testimony emphasizing the importance of board accountability and oversight. It is inconsistent with the whole reason for the Attorney General's 2001 intervention: one of "*failed governance* by [the previous] board of directors . . . [which permitted] documented deficiencies in the areas of exorbitant travel and entertainment expenses, excessive and improper executive compensation, questionable consulting expenses, conflicts of interest, Medicaid fraud, kickbacks, and

unwarranted administrative expenses" (emphasis added).[15]

Sixth, the evidence supports Medica's claims that the times surrounding the 2002 consumer election was especially tumultuous and challenging, and that it was critical to avoid further disruption through a complete board turnover during a time of organizational instability. The evidence showed, without dispute, that in the months leading up to the June 2002 election, Medica's board chair, Ted Deikel, resigned, in order to try to resurrect the Fingerhut company, and save 11,000 Minnesota jobs. At about the same time, Medica's president and chief executive officer, Jane Rollinson, was "separated" because the board, exercising the type of oversight desired by the Attorney General, was dissatisfied with her performance.[16] To boot, Medica was implementing a large reduction in force. The new board had barely been in place for one year, and Medica's Memorandum of Understanding with the State -- outlining a plan to rid Medica of the vestiges of past abuse -- had six months of hard work left undone. The task of righting the ship of Medica, which included reducing its work force to avoid unnecessary cost, putting in a sound human resources department, and working out the bugs of creating a separate and new billion dollar organization, was enormously time-consuming, and required intensive board leadership.

In the face of these six intertwining themes and cords of evidence, the State began this trial by underscoring the weakness of its claim, immediately dismissing prior to trial four of the five claims of Medica's wrongdoing.[17] The remainder of the claims of

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[15] State of Minnesota's Proposed Findings of Fact, Conclusions of Law, and Order for Judgment, August 12, 2005, p. 2, par. 5.

[16] *See, e.g.* exhibits 31, 307.

[17] The original complaint filed by the State on March 20, 2001 sought access to books and records, and information, and made no substantive claim of illegality. The State amended its complaint on June 21, 2004. On the eve of trial, the State dismissed four of the five counts of its June 21, 2004 amended complaint. The State dismissed its claims that Medica violated Minn.

personal wrongdoing by the board have either been abandoned by the State in its closing argument, or have been encapsulated in a legal argument that court administrators cannot run for permanent board positions without violating their duty to the court.

The five-day trial in this case focused on one narrow claim (a claim still broader than the State's closing argument claim). The State alleges that Medica violated a 2001 Court Appointment Order which placed Medica under Court supervision and directed that the eight individuals appointed as directors of Medica in the Appointment Order act as court administrators. The State alleges that Medica violated the 2001 Court order in five different ways.

- First, by holding "sham elections" in the summer of 2002, in which "four of the eight Court-appointed administrators ran for election as Medica consumer director on ballots sent to Medica members with only the Court administrators' names and no alternatives"; the State contends that the other four non-consumer board members were improperly installed as Medica directors by Medica without court approval.[18]
- Second, by issuing free Medica health insurance policies to three of the four Court-appointed administrators, so that they could run as consumer directors. The State alleges that this "deception" "flaunted the rules", and

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Stat. § 317A.751, subd 5, the Minnesota NonProfit Corporation Act by an unauthorized act, contract, conveyance, or excessive use of its powers (count two); dismissed claims that Medica violated Minn. Stat. § 316.02, by engaging in "unauthorized corporate acts" and "usurped, exercised, or claimed any franchise, privilege, or corporate right not granted to it" (count three); dismissed claims that Medica violated its "common law fiduciary duty to its health plan members, as well as to the State, which exempts if from certain taxes based on its nonprofit purpose (count four); and dismissed claims that Medica violated a "Memorandum of Understanding" entered into with the State on September 24, 2001, which "was intended to help rectify spending and governance abuses identified by the State during its investigation, and which prohibited the issuance of certain types of bonuses and contained conflict of interest and ethics requirements" (count five).

violated Medica's own bylaws and Minnesota law, and that Medica failed to inform the Court of its actions or to obtain court approval.[19]

- Third, by giving themselves "significant" raises in early 2002, and increasing their pay to "approximately $50,000 per year to serve on a non-profit board," when in contrast, the predecessor "Allina board of directors volunteered their time to rectify the abuses at that company." The State alleges that Medica failed to inform the Court "or obtain the Court's approval of the large raises the Court administrators gave themselves while purporting to act as Court administrators."[20]
- Fourth, by adopting an executive "retroactive bonus plan" in March 2002, without court approval, which was "retroactive because it offered rich sums of money to executives if they met certain goals, many of which had been achieved when plan was adopted." The State alleges that this "multi-million dollar plan" awarded money to a "small number of Medica executives," rather than returning "excess sums of money" to Medica health plan members, as its board chairman had publicly promises. The State contends that Medica failed to inform the Court of its new bonus plan or to obtain court approval, "despite the fact that it remained under Court supervision."[21]
- Fifth, by failing to correct "additional operational and other problems due to inadequate governance by the Court-appointed administrators." As alleged in the State's complaint, "the Court appointees failed to timely choose a full-

[18] Amended Complaint, June 21, 2004, paragraphs 19-21.
[19] *Id.*, paragraph 22.
[20] *Id.*, paragraph 23.

time chief executive officer, leaving the company rudderless for over a year; failed to recruit and select enrollees from among Medica's one million members to administer the company (but rather installed themselves); failed to address, much less rectify, an expensive and questionable contract with United Health Group; and failed to address serious and abundant service quality programs."[22]

At the outset, Medica asserts that the August 2, 2001 court order which the State invokes to support these five claims supports none of them. Medica contends that the August 2, 2001 order is narrow in scope, that it was jointly agreed to by Medica and the State, and that the State cannot add terms to a consent order without its consent, or at least, rudimentary due process, such as a trial. In other words, Medica asserts that the State has attempted to build a mountain out of a molehill. The Court of Appeals seems to have agreed, holding that Medica was not put on notice of the claims made by the State, reversing an order for "rehabilitation" of Medica under Court supervision,[23] and leading the State to file the amended complaint in June 2004.[24]

The parties take sharply divergent views of the powers and duties of the court administrators appointed pursuant to the August 2, 2001 order issued by then Judge Harvey Ginsburg, as well as the meaning and scope of the order.

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[21] *Id.*, paragraph 24.

[22] *Id.*, paragraph 25.

[23] The August 2, 2001 order does not by its terms warrant a broad "rehabilitation" order subjecting Medica's daily business decisions to court review. The State's position, already rejected by the Court of Appeals in this case, would subject Medica to intrusive court supervision without a trial or notice of a much broader charter of authority than one can find in the August 2, 2001 consent order. *State v. Allina Health System*, 679 N.W.2d 400 (Minn. Ct. App. 2004).

[24] The original complaint filed by the State on March 20, 2001 simply required that Medica provide access to documents and witnesses as part of the State's civil investigation of alleged mismanagement. That action was resolved within one month of filing by a stipulation and dismissal in which Allina, the predecessor to Medica, agreed to provide access to records and

Several salient, undisputed facts about Judge Ginsburg's August 2, 2001 order emerged from the trial. It undisputed that the order was jointly sought by the parties. There was no contested hearing, and the order was consensual, both by its explicit terms ("The State of Minnesota and Allina Health System have jointly requested an order to appoint co-administrators of Medica Health Plans"),[25] and the uncontradicted testimony about the process leading up the order.

This case thus presents the question of whether the plain language of Judge Ginsburg's consent order controls in determining whether the Medica special court administrators were in violation of the consent order. It is well-settled law that consent judgments are contractual in nature. "A consent decree, while prospective in its effect, is the product of a negotiated agreement similar to a contract." *City of Barnum v. Sabri,* 657 N.W.2d 201, 205 (Minn. Ct. App. 2003), citing *Phila. Welfare Rights Org. v. Shapp,* 602 F.2d 1114, 1119-20 (3rd Cir. 1979). A consent decree is a "mere agreement of the parties under sanction of the court, and is to be interpreted as an agreement." *Elsen v. State Farmers Mut. In. Co.*, 17 N.W.2d 199, 206-207 (Minn. 1967)(a "consent judgment is a contract between the parties approved by the court, and its terms may not be extended beyond the agreement entered into"). Therefore, the Court must apply contract analysis in construing the consent order.

In essence, the State alleges that the consent order creates implied fiduciary obligations on the part of the special administrators. The State analogizes the appointment of special administrators to the court appointment of a receiver. The State maintains that receivers and special administrators, as fiduciaries, may not act in their

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employees for the State's investigation. (Exhibits 251-252).

[25] Order for Appointment of Co-Administrators, August 2, 2001, Judge Harvey Ginsburg, Hennepin County District Court. (Exhibit 261).

own self-interest. The State concludes that based on the similar roles of special administrators and receivers, the appointment of special administrators in itself creates implied fiduciary obligations.

The State further argues that contract principles permit this Court to look beyond the plain language of the consent order to the parties' intent. To support its contention, the States cites to several Minnesota cases. In *William Lindeke Land Co. v. Kalman,* the Minnesota Supreme Court remarked that "[t]he *language of a contract* should be construed so as to subserve and not subvert the general intention of the parities." 252 N.W. 650 (Minn. 1934) (emphasis added). *See also Turner v. Alpha Phi Sorority House,* 276 N.W.2d 63 (Minn. 1979); *Ruddy v. State Farm Mut. Auto Ins. Co.,* 596 N.W2d 679 (Minn. Ct. App. 1999).

The language of the consent order does not contain terms referring to either a "receiver" or any other special obligations on the part of the special administrators. Rules of construction do not permit this Court to affix terms to the consent order and give credence to what the parties believe the agreement *should* say: "[t]he meaning of a contract is to be ascertained from the writing alone, if possible, the duty of the court being to declare the meaning of what is written in the instrument, not what was intended to be written." *Carl Bolander & Sons Inc. v. United Stockyards Corporation,* 215 N.W.2d 473, 476 (Minn. 1974), citing *Hicks v. Mid-Kansas Oil & Gas Co,* 76 P.2d 269 (Okla. 1938). "Where the words of a written contract are plain and unambiguous, its meaning should be determined in accordance with its *plainly expressed* intent." *Id.* (emphasis added). In *Brookfield Trade Ctr., Inc. v. County of Ramsey,* the Minnesota Supreme Court expressed that it will not "construe the terms so as to lead to a hard and absurd result." 584 N.W.2d 390, 394 (Minn. 1998). Thus, the consent order's language should not be strained so as

to include additional fiduciary obligations.

The Minnesota Supreme Court has articulated that extrinsic evidence should only be considered if the plain language of the consent order is ambiguous. *Metro. Sports Facilities Comm'n v. Gen. Mills, Inc.,* 470 N.W.2d 118, 123 (Minn. 1991). "A contract is ambiguous is its language is reasonably susceptible to more than one interpretation." *Brookfield Trade Ctr., Inc. v. Ramsey,* 584 N.W.390, 394 (Minn. 1998). The language of the consent order does not lend itself to more than one interpretation.

The language of the consent order clearly outlines three terms: 1) that certain named individuals "shall serve as administrators pursuant to Chapter 309 and will serve as the Board of Directors of Medica"; 2) the individuals "shall acts as expeditiously as possible to adopt Restated Bylaws and Articles of Incorporation necessary to effect the reorganization "; and 3) the "President and Chief Financial Officer of Medica shall enter into an indemnification agreement with each director of Medica in the form attached to this Order." Exhibit 261, at 5. Even if this language were ascertained to be ambiguous, there are no terms in the consent order that can be construed as assigning additional obligations to the special administrators. Exhibit 261, at 5.

In accordance with the rules of construction, it would be improper for this Court to assign additional terms to the consent order without both parties' consent. *See Hentschel v. Smith*, 153 N.W.2d 199, 206 ("the decree rests on the consent of the parties" and "should not be modified without their actual consent"). Because this Court's duty is limited to ascertaining the agreement between the parties, this Court must turn to the express terms of the consent order, not the general concept of fiduciary obligations, to determine whether the special administrators violated the consent order.

That the order means what it says, and not more, is clear from its language, the

findings agreed to by the parties and recited in the order, and the understanding of the parties involved in negotiating the consent order and presenting it to the court for approval. All were the subject of testimony at trial.

The August 2, 2001 order recites findings agreed to by the parties. The findings are identical to the testimony at trial regarding the purpose of the order. As noted above, Allina was under intense scrutiny by state and federal officials with respect to a wide range of alleged unlawful conduct, including a criminal federal Grand Jury and state and federal civil investigations by multiple agencies of government. To address detailed state and federal administrative findings of wrongdoing, Allina agreed with the Attorney General to reorganize Medica and Allina, and to create a new and separate Medica Helath Plans organization headed by a new board of directors. Pursuant to this reorganization, and the order issued by Judge Ginsburg on August 2, 2001, the existing Medica board members resigned, and the Attorney General appointed a new board, which was approved by the Court.

The August 2, 2001 order by its explicit terms was intended to protect and indemnify the new board members from lawsuits or claims arising from the widespread abuse found under the prior regime: "The Attorney General represents that qualified candidates for membership on the . . . Board . . . are reluctant to participate. . . ."[26] The testimony of every board member appointed pursuant to the order reflects a common understanding of the purpose of the order. Each testified that the purpose of the order was to protect board members and to provide indemnity from suit. The testimony of the Medica lawyers who helped draft the order reflects that purpose. And the testimony of the Attorney General at trial is consistent with the stated purpose of the order in its

[26] Order, paragraph 12, exhibit 261.

findings section. This understanding of Medica board members came directly from conversations with Attorney General Mike Hatch, who personally recruited the board members and court administrators. In summary, the purpose of the special administrator order was to allow Medica to start afresh with a new board of directors, who could seek to right the organization unhampered by criminal or civil liability for conduct by Medica that preceded their appointment. This recollection is further shared by all of the attorneys for Allina and Medica who were involved in the negotiation and drafting of the August 2, 2001 consent order which Judge Ginsburg ultimately signed.[27]

It is as close to being undisputed, factually, as anything in a trial can be.

The State asserts in this litigation that the August 2, 2001 order creates a broad charter for court supervision of Medica over the past four years, and requires Medica to seek approval from the Court before taking the actions which are contested in this litigation. The August 2, 2001 order is, necessarily, the basis for the State's broad argument about the sweeping powers and duties of the court administrators appointed pursuant to the order.[28] There is no other order.

The August 2, 2001 order does not contain the broad language argued by the State.[29] The August 2, 2001 order which the State asserts has been violated in the five

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[27] The Consent order was negotiated at the highest levels of Allina/Medica and the Attorney General. The draft was circulated, among others, Chief Deputy Attorney General Gilbert, Mary Ford, from the Allina Office of General Counsel, and John French, Faegre & Benson, then counsel for Allina. (exhibit 259-260)

[28] The special administrator appointment affidavits were signed by board members and special administrators. *See, e.g.* exhibits 7, 11, 12-17. The duties and authority of special administrators are derived from Judge Ginsburg's August 2, 2001 order.

[29] Neither the trial record nor any order supports the State's position that the special administrators are akin to receivers, with broad powers to manage a financially-distressed company under close court supervision. None of the directors/administrators considered themselves to be receivers, and the court appointment order does not refer to the administrators as receivers. Former Justice Tomljanovich, as a former district court judge who had formerly appointed receivers, testified that her role as a special administrator was completely different

ways enumerated above contains only two short paragraphs in the section titled "order." None of the five claims made by the State fall within the terms of the order.

What does the order say? First, the order provides that "The following individuals who have been appointed Special Administrators by the Attorney General shall serve as administrators pursuant to Chapter 309 and will serve as the Board of Directors of Medica: Theodore Deikel, Esther Tomljanovich, John Flittie, Brian Short, John Buck, Kris Sanda, Austin Sullivan, Daryl Durum." The order provides that "These individuals shall act as expeditiously as possible to adopt Restated ByLaws and Articles of Incorporation necessary to effect the reorganization." Second, the order provides that "The President and Chief Financial Officer of Medica shall enter into an indemnification agreement with each director of Medica in the form attached to this Order."

The State has never alleged that Medica failed to do the two explicit things ordered by Judge Ginsburg in the consent order. As Medica points out, and the State concedes by its silence, the State could not, and has not, ever brought a contempt proceeding asserting that Medica has violated the terms of the order. [30]

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from the role of a receiver. Board member Daryl Durum, who had also served elsewhere as a receiver, testified to the same distinction. Based both upon the understanding of the board members and special administrators, and Judge Ginsburg's order, is clear as a matter of law that the special administrators were not cloaked with the powers of receivers. Only one receiver is appointed to manage a company; a board of eight was appointed here. A receiver is called a receiver, not a special administrator. A receiver manages a financially-distressed company under close court supervision. Medica was not, and is not, an organization in financial distress, and there was no reporting or supervision ordered by Judge Ginsburg. Moreover, with respect to the State's claim that Medica is under a "rehabilitation" scheme, this is not about a rehabilitation, receivership, or liquidation of a health maintenance organization. *See State v. Allina Health System,* 679 N.W.2d 400, 407 n.3 (Minn Ct. App. 2004). Moreover, the power to institute a rehabilitation of a health maintenance organization is entrusted to the Commissioner of Health, not the Attorney General. *See* Minn. Stat. § 62D.18. There is no evidence in this case that the Commissioner of Health has instituted a rehabilitation action against Medica. Lastly, the State concedes in its written closing argument that "This case is not about whether Medica is under a formal 'rehabilitation' . . . ." State of Minnesota's Written Closing Argument, p. 2.

[30] The State's prayer for relief in its amended complaint seeks a finding that Medica is in

In the four years since the order, the State has never gone back to the Court to allege that a practice, act, or omission should be curtailed based on the order.[31] Until this trial, years after the events, the State has not sought a finding of contempt.

The State did not bring a motion to enjoin or timely undo the alleged summer 2002 "sham election" of the Medica board.

The State did not bring a motion before the Court seeking to enjoin the issuance of the "free Medica Health insurance policies" that were issued to three board members in June 2002.

The State did not bring a motion challenging the board compensation decided in early 2002, and again, only challenged this action in its June 2004 complaint.

The State did not bring a motion challenging the executive compensation bonus plan announced in March 2002.

The State did not bring a motion to the Court's attention addressing the panoply of other deficiencies alleged in count five of its complaint – the alleged service quality problems, the contract with United Health Group, the alleged lack of a president for a year.

All of these problems are time-sensitive, and difficult to address by injunctive relief

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contempt of Court. The State has not explained what provisions of the order could support a finding of contempt of court there are none. In order to invoke a court's contempt powers, a court must conclude that "the decree of the [issuing] court clearly defined the acts to be performed by a party to the proceedings." *Hopp v. Hopp,* 156 N.W.2d 212, 216-217 (Minn. 1968); *see also Afremov v. Amplatz*, No. A04-952, 2005 WL 89475 at * 5 (Minn. Ct. App. Jan. 18, 2005).

[31] On May 16, 2003, Medica moved to dismiss this case for lack of jurisdiction, or alternatively, summary judgment before Judge David Duffy, who presided over this case until it was reassigned to this judicial officer in March 2005. It bears noting that while Judge Duffy issued a lengthy and thoughtful decision in August 2003 which agreed with many of the arguments that the State has made here, Judge Duffy made his decision without the benefit of a five day trial record with 16 witnesses and almost 300 exhibits. Judge Duffy's lengthy August 2003 decision was made based upon legal argument, and prior to the trial itself.

years after they have happened. None give rise to a request for damages, and no request for damages has been made by the State.

The State alleges that Medica had the responsibility to advise the Court of all of its actions. But the order itself imposes no such responsibility on Medica. Credible evidence of record reflects that the State had notice of the alleged problems and issues before or shortly after they happened. The truth is simply that the narrow scope of the consent order is limited to the two items actually ordered -- a conclusion supported by the fact that over the life of the order, the State has never gone back to court with a motion, seeking a remedy for a violation of the order. A party wishing to bring a problem to the attention of a court does so by motion. See Minn. R. Civ. P. 7.02 The one time the State argued for broad rehabilitative relief to the Court, in May 2003 before Judge David Duffy, led to reversal by the Court of Appeals. As the Court of Appeals held, Medica had no notice that the State "sought any affirmative relief," and "neither the complaint nor the consent order even hint at the possibility of a rehabilitation procedure." *State of Minnesota v. Allina Health System*, 679 N.W.2d 400, 406, 407 (Minn. App. 2004).

The Court is compelled to find that the August 2, 2001 special administrator order does not subject the parties to either ongoing court supervision by this Court, or a reporting or approval obligation to the court. The order did not by its terms place Medica under a duty or plan of rehabilitation, receivership, or control by the State or the Court. The parties are and were well-equipped to draft a broader, more comprehensive consent order if they saw fit to do so; the trial record contains examples of such orders negotiated by the same attorneys in this case, and others.

Rather, the record suggests that the parties contemplated that the substantive relief to clean up the problems at Medica was fully described and contained in the

September 26, 2001 Memorandum of Understanding (MOU) between Medica and the Attorney General, which by its terms expired on December 31, 2002;[32] the MOU is no longer alleged by the State as a basis for any claim of wrongdoing by Medica. Thus, the case rises or falls based upon the August 2, 2001 order, and the record reflects no broader charter of authority to the State under the umbrella of this action. In so concluding, the Court makes no sweeping pronouncements about the powers of the Attorney General or the power of Court administrators in general; the Court simply construes the August 2, 2001 order to mean what it says.

The State argues that the parties could not contemplate the wide range of alleged illegal conduct that occurred after the August 2, 2001 order, and that it should be interpreted as a living document which is flexible enough to embrace the events in this case. The problem with the State's argument is that it eliminates all of the requirements of the Rules of Civil Procedure, which include pleadings that put the parties on notice of what is challenged, an opportunity to conduct discovery, a motion practice, and trial. Even if the Attorney General is correct, as the aggrieved party, it had the normal obligation of a litigant to file a motion if it believed that Medica had violated the order. Medica was not required under the terms of the order to file a motion asking for prior court approval for actions it believed were neither unlawful nor subject to court supervision. And as ultimately happened here in April 2004, on remand from the Court of

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[32] *See* exhibit 271, the Memorandum of Understanding. That the memorandum of understanding was intended to preclude further litigation, if followed, is suggested by letters sent to Medica board members by the Attorney General before the memorandum was executed. For example, a representative letter from Attorney General Hatch to board member Daryl Durum on August 14, 2001 asks him to read the six-volume compliance report of waste and abuse at Medica that was written by the Attorney General. The August 14, 2001 letter, exhibit 268, notes that the report typically leads to a response, a conference with the board of directors, and the execution of a compliance agreement. The Attorney General writes that "assuming the above steps are followed *the need for further litigation or review is avoided*"(emphasis added).

Appeals, the State could and did file an amended complaint that put Medica on notice of the claims. Thus Medica could, and ultimately did through this trial, bring its claims to the attention of a court.

This Court's conclusion that the August 2, 2001 special administrator order is limited to what was ordered means that the State's broader claims under the umbrella of the order must be dismissed.[33] Nonetheless, the Court will address the claims made on their merits in the interest of finality and judicial economy.

The summer 2002 consumer board elections

In the summer of 2002, Medica sent ballots to its members for a board election. Medica at the time had a board of eight directors. Because the entire previous Medica board had resigned in August 2001 and been replaced by Attorney General Hatch's hand-picked group, all of the incumbent board directors in the summer of 2002 were relatively new. There were four consumer board members slated for election, and all four were both "court administrators" and "board directors" who had been recruited by the Attorney General in the preceding summer. Minnesota law requires that 40% of the board of health care nonprofit organizations be "consumer members," or policy holders, which defines the consumers of a nonprofit health organization.[34] The remainder of the board were slated for election as non-consumer directors.

This election was a major focus of the trial. The Attorney General has vigorously challenged this election, asserting that it was a "sham election," that the board members "hijacked" the organization by running for election unopposed, and that the board

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[33] As noted earlier, immediately prior to trial, the State dismissed the alternate theories of liability in its complaint, and relied solely on the Special Administrator order.

[34] Minn. Stat. § 62D.06, subd.1 requires that forty percent of Medica's directors be "consumer" directors, defined by statute as (1) enrollees or members of the health insurance organization (i.e. covered by the health plan); and (2) elected by the enrollees and members.

members engaged in "self-dealing" by running for election rather than resigning and allowing consumer members from Medica's one million members to run for election. As evidence of this self-dealing, the State points to the alleged largesse of board compensation in the range of $50,000 to $70,000 per year, to Medica's action in issuing free Health insurance policies to consumer board directors (and covering the tax value of the policies) so that they could comply with state law requirements that they be "consumers" of Medica, and Medica's action in waiving underwriting requirements before issuing insurance policies to the consumer directors The ultimate self-dealing is that these allegedly over-compensated directors were not supposed to run for election in the summer of 2002.[35] From the Attorney General's point of view, the board he put in place in the summer of 2001 was supposed to "clean up" Medica, put the civil and criminal problems swirling around the company to rest resign, and return the leadership of the organization to its members.

The Court finds that the evidence does not support the State's claims. By all accounts, the summer 2002 consumer board elections occurred under extraordinary but not unlawful circumstances. Just one year earlier, the entire previous board had resigned amid allegations which rocked the organization. The six volumes of findings of the Attorney General's 2001 compliance report speak to the importance of vigilant board leadership, and underscore the importance of board members remaining in place who had detailed knowledge of the historical problems, which required strict oversight to prevent their recurrence. As discussed above, there were sensational allegations in the media, and active criminal and civil investigations, of criminal and corrupt behavior. In the

[35] As noted earlier, four of these board members were not subject to election as consumer directors. These four were appointed to new terms by Medica's holding company – the State alleges that these appointments well represented self dealing, deception, and a hijacking of the

summer of 2001, when the new board was put in place as a direct result of the scandal, it was critical that Medica have strong, intelligent, impeccably-credentialed leadership in place, whose integrity was beyond reproach, to right the wrongs of the past, and to lead firmly and fairly. Medica's some 800,000 in 2001 members depended on the board for strong leadership.

Attorney General Michael Hatch demonstrated extraordinary leadership in 2001 in intervening in the Medica crisis. The board members who were personally recruited by Attorney General Michael Hatch, specifically named by him a court administrators and board directors, and selected to pull the company out of crisis all share certain characteristics. They were selected by the Attorney General in order to restore public and member confidence in Minnesota's largest non-profit health organization. Their selection was no secret to the public or the membership of Medica, and in fact, the Attorney General announced their selection with a press release and a press conference, emphasizing the fact that he had put in place a "blue ribbon" board.

The Attorney General of Minnesota put his public and personal credibility on the line when he intervened in the Allina/Medica crisis in the summer of 2001. He impressed a cadre of distinguished leaders from Minnesota's business, legal, and political realm, and persuaded them to lead an embattled and demoralized organization at a time when indictments, investigations, and major lawsuits were all that was promised or likely.

The Attorney General's selections had other options. All had busy lives with other opportunities. All could afford to be selective. As Allina and Medica announced publicly, "This is an incredible team. The individuals – to a person -- are strong, thoughtful and

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organization.

independent."[36] As the Attorney General said, they were "a blue ribbon board."

It is testimony to the power and influence of Attorney General Hatch that virtually none of these appointments turned him down.[37] Ted Deikel, retired chairman and CEO of Fingerhut, then one of Minnesota's largest employers, was selected to chair the new Medica board. The others answered the Attorney General's call. John Flittie was a retired president and chief operating officer of ReliaStar Financial Corporations. John Buck was the former president and chief operating officer of Fingerhut Companies, Inc., the chief executive officer of Whitefish Ventures, and the former Chair of the Board of Blue Cross Blue Shield of Minnesota. Esther Tomljanovich was a retired Minnesota Supreme Court Justice and a actively-sitting Minnesota district court judge. Brian Short was the president of the Leamington Company and a former United States Magistrate Judge. Daryl Durum was a senior insurance executive and a Special Deputy Commerce Commissioner of the State of Minnesota. Austin Sullivan was a Senior Vice President for Corporate Relations at General Mills. Kris Sanda was a former Commissioner of Consumer Affairs of the State of Minnesota and a Public Member of the Minnesota Board of Medical Practice.

The evidence at trial does not support the State's claims that these individuals, by running for election or remaining on the board, "hijacked" the board of Medica, engaging in "self-dealing," or ensconced themselves in lucrative board positions for personal benefit. To the contrary, the testimony at trial established overwhelmingly that these individuals responded to the call of public service, and to the invitation of the Attorney General of the State of Minnesota. The Court heard extensive testimony directly from each of these board members at trial. They were credible, vigilant, independent-minded

[36] Exhibit 262.

[37] One person approached by the Attorney General did decline – the president of the College of Saint Catherine. The record does not say why. The Court presumes that her college duties as

people, each of whom brought unique talents and service to Medica's board. They were unscathed on cross examination with even an insinuation of mismanagement, failure to correct waste or abuse, deception, hijacking, or self dealing.

The lack of such cross examination suggests that the State really had no evidence of misconduct to offer, despite the serious allegations of self dealing, deception, and hijacking in its opening argument and briefs to the Court. After publicly attacking their integrity, the State finally concedes in its written closing argument that they are good people who did a good job, and abandons its claims of deceit and misconduct. [38] The Attorney General finally conceded that this board consisted of good people who had done a good job -- at the end of the trial.

At most, the State proved for each board member that each was a court administrator as well as a board member, and that for those where it was true, that several of the board members were issued a health insurance policy without cost, which they did not use, for one year only (in 2002), so that they could serve as a consumer member of the board. This policy did not violate Medica's by-laws, was consistent with past practice and history, was approved at the time of by the Attorney General's chief deputy, presented without objection to the Minnesota Department of Health (which administers the consumer election statute for health care organizations), and resulted in no financial benefit to the board members, while allowing them to render substantial service to Medica.

When the smoke cleared, the Attorney General conceded at trial that the board members he put in place are "good people" who did a "good job." There was no

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president say enough.

[38] Perhaps too late for board members subject to a vitriolic public attack, but to the State's credit, better late than never.

evidence at trial that any of these board members did anything wrong, other than the allegation that they should not have remained as board members. Nothing in Judge Ginsburg's August 2, 2001 order, or any order of Judge Duffy, or this judge (or any judge over the life of this case), limits board members or court administrators in their ability to serve as board members. Nothing in any court order, by-law, regulation, or state or federal law precluded the court administrators/board members from runner for election in August 2002, 2003, 2004, or 2005. There was no or scant evidence offered – though many rhetorical flourishes by the Attorney General in his trial testimony -- to back up the State's claims of board mismanagement, of improper executive pay raises, failure to address "serious and abundant service quality problems," or to take timely action to select a chief executive officer.

The only tangible evidence offered about the board's actions was that Medica has flourished under this board's leadership. In stark contrast to the six-volume report of alleged criminality, corruption, waste, and abuse for the period leading up the 2001, there was no evidence of any wrongdoing in the four years following, except for a claim that an executive should not have claimed reimbursement for a $64.00 dinner. This executive reimbursed the company, three years prior to the trial. And the evidence showed that, in the words of board chair John Buck, the acid test of success was the marketplace – Medica has grown by over a third, from 800,000 to 1.3 members in the years since 2001, has won national awards for its leadership and success, and according to the testimony at trial, has become a national model for nonprofit health care organizations.

None of this was apparent in the summer of 2002 when the board was up for election. What was known was that the board had only been place for a year to address dramatic problems. The Attorney General acknowledged that turnover is a bad thing for

nonprofit organizations, who need the institutional memory and culture to avoid past mistakes and set the right direction. The uncontroverted evidence is that Medica made efforts to try to find consumer members to run for the board in 2002. In January 2002, Medica's governance committee approved an election process and timelines, and sought to develop a list of potential board candidates. The documents and testimony show that the matter was the topic of constant discussion in the first few months of 2002.[39]

In the hundreds of pages of documents offered in evidence, not one contains any reference to actions, motives, or plans that could be construed as an effort to "hijack" the organization, or to engage in self-dealing. Moreover, contrary to the State's claim that the new board members were supposed to clean up Medica, resign, and let others run, there is no evidence of any limit in the term of any board member. None were told there was a limit, and many made personal sacrifices to join the board, such as former Justice Tomljanovich, who as a retired Supreme Court justice was still a sitting judge, and gave up her judicial position to sit on Medica's board.[40]

The promise of adding consumer board members was realized.[41] Over time, Medica increased its board from eight in 2001, to 14 in 2005. Medica made continual

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[39] Board chair Ted Dieckel testified to his efforts to recruit new board members, and the matter was the constant focus of effort by the board and the General Counsel's office of Medica.

[40] The idea that the board members appointed in August 2001 would not run for re-election is not supported by what people were told or by documents written at the time. For example, a Medica "question and answer document" dated August 2, 2001 answered the question "How long with they serve" as follows: "That will be determined once the by-laws and Articles of Agreement are written. Typically, nonprofit board members serve 2-3 years." Exhibit 262. According to the evidence, this answer is not a limitation, but a reference to a typical board term. It certainly is not consistent with the State's claim that the special administrator/board members were to come in, clean up Medica, and make a hasty exit.

[41] As the parties recognize, by Minnesota law, 40% of the board of health maintenance organizations must be consumer members. Medica concluded that the standard could be met by adding new board members to meet the 40% test, or including existing board members in the group policy so that they would qualify as consumer members qualified for election. Exhibit 265.

efforts from 2002 onward to seek out, outside potential consumer director candidates who would be qualified to help lead a billion dollar organization.[42] In June 2003, Medica members elected three new consumer directors – Richard Bliss, Burton Cohen, and Stephen Wiczek. Robin Engelson was elected as a new consumer director in June 2005.

All of Medica's board directors have been duly elected, without challenge to the fairness of the election, in every election since the 2002 election challenged by the State.[43] At Medica's 2003 annual meeting, Dr. Sam Leon, Dr. Ben Bache-Wiig, and board chair John Buck were again elected to serve as non-consumer directors for three-year terms expiring in 2006. In June 2004, Daryl Durum, John Flittie, and Dr. Peter Kelly re-elected as non-consumer directors of Medica, with three-year terms expiring in 2007. In June 2005, along with the election of Robin Engelson as a new consumer director, Esther Tomljanovich, and Kris Sanda were re-elected to three year terms expiring in 2008. Austin Sullivan, previously elected as a consumer director, was re-elected as a non-consumer director for a three-year term expiring in 2008. At the same time, Medica's CEO and president, David Tilford was elected to the Medica board for a two-year term.

If Medica's 2002 board election was unusual, so were the times. Witness after (credible) witness testified to why its was important to keep the board in place. These reasons make sense, comport with sound judgment, Medica's articles of incorporation and by-laws, and the requirements of state and federal law. In early 2002 is that Medica's new chief executive officer, Jane Rollinson, resigned amid issues over her performance. Medica's board chair, Ted Deikel, resigned around the same time, in order to help out an

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[42] *See,e.g,* exhibit 290.

[43] The Court is cognizant that the State challenges all re-elections of the original board members on the premise that they should have never run for election in the first place. *See* State of Minnesota's Written Closing Argument, August 12, 2005, p. 47 ("The subsequent 2005 elections, in which the Administrators were re-installed to their permanent directorships, are

ailing Fingerhut, and to try to save its 11,000 jobs.

With less than a year of institutional memory and leadership in place at the board level,[44] an election in which either the entire board resigned, or even just the 40% consumer portion of the board, would have left the board "rudderless." Despite an intensive search, Medica found no one of suitable qualifications and interest to run for the board prior to the scheduled summer 2002 board election. The institutional challenges facing the organization in 2002 have been described elsewhere, and need no repeating. Moreover, Medica was under intense pressure from the State of Minnesota to conclude the election. The Minnesota Department of Health, which regulates health care non-profits, placed Medica under pressure to get the organizational changes, including consumer board member elections, in place.[45] The uncertainty at the top, in a time of executive turnover and recent crisis, was dangerous for the organization.

Medica did not conduct the June 2002 election in a cavalier fashion. The trial record shows that Medica carefully, even meticulously, researched the legality of running the incumbent board members for re-election. No less than three attorneys at the General Counsel level of Medica and Allina worked intensively, and for a period, full-time on the question. Their research showed that there was nothing wrong or improper, under Minnesota law or Medica's by-laws, in the board standing for election or appointment.

Given this lawsuit by the Attorney General, this Court was struck by the unrebutted evidence that Medica's General Counsel met with then-Deputy Attorney General Alan Gilbert prior to the election to secure his blessing. He told Medica's counsel that he had

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similarly void as constituting the same self dealing as the earlier elections [citations omitted]."

[44] One of the Attorney General's trial testimony criticisms of the Allina board was that the amount of turnover undermined accountability and access to institutional memory of how past mistakes were made and problems solved.

[45] Exhibit 267.

no objection to the consumer election, but was unwilling to put his position in writing.[46]

Medica's board also met with Jim Miller, an emissary of the Attorney General, to assist Medica with its obligations, in March 2002. There is no evidence that Mr. Miller ever voiced a concern about the 2002 consumer board election, or the process of the election.[47] Finally, Medica plainly told the Minnesota Department of Health in late August 2001, responding to an earlier inquiry, that Medica had appointed a new Board of Directors, and satisfying the 40% consumer requirement, that "*These persons will obtain coverage through Medica so they are enrollees.*"[48]

Then, and now, after a full trial record, there is nothing to show that Medica did anything improper in running its consumer board members for election, or that it hid the result. If anything, Medica openly discussed its intentions and actions with the Attorney General and the Minnesota Department of Health, which monitors the consumer board requirement, and neither took any action in 2001 to object, to seek court intervention, or to voice their displeasure. All this came later.

It is true that Medica issued an insurance policy to three board members who were not previously Medica "consumers." This was done, consistent with past practice, to allow them to meet state law and Medica by-law requirements. There was no "self-dealing." None of the board members used the "free" policy that first year, and in the second year, and thereafter, each of the consumer board members paid for their own policy. There is no cause of action alleged in this case for a violation of underwriting laws, of any state or federal law, or any by-law of Medica, in the way that the consumer election occurred.[49]

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[46] Mr. Gilbert did not testify in rebuttal. To the Court's knowledge, the position of "deputy Attorney General" is directly below the Attorney General.

[47] *See* exhibit 291.

[48] *See* exhibit 270.

[49] There is no credible evidence that the "consumer board members" have either "hijacked" the

As the evidence shows, nonprofit organizations have great latitude in how they select board members. There is no requirement that they be elected or appointed. Historically, a slate of candidates is recruited that will provide the complex range of medical, legal, business, and other knowledge that is needed to run a complex organization. This is consistent with Medica's practice, and as Professor Evelyn Brody – a leading national expert on the topic – testified, consistent with "best practices" for nonprofit organizations.

The 2002 Medica consumer board election, and that which followed in 2005, provided an opportunity for write-in votes, and provided Medica members with the background of each board member. The quality of the board selected by Attorney General Hatch, and the knowledge, experience, and wisdom of the board, was obvious from the testimony of the board members. All were elected and re-elected.

Despite the colorful objection of one of the one million members that the 2002 election represented "electile dysfunction," there was no evidence that could justify the extraordinary request of the State that six sitting members of the board now be removed by order of this Court. This Court found no evidence -- three years after the 2002 election – that would warrant this Court removing six distinguished board members, and ordering a new election.

In summary, in June 2002, Kris Sanda, Brian Short, Austin Sullivan and Esther Tomljanovich were elected as consumer directors; Drs. Ben Bache-Wiig, Samuel Leon,

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company, or fallen short in their obligation to represent consumer interests. The record contains abundant, unrefuted testimony about the extensive outreach efforts of the consumer board members. For example, Kris Sanda, a former Commissioner of Consumer Affairs, made clear that she does not hesitate to follow through on consumer questions and complaints, and often personally follows through and insists on answers or corrective action. Ms. Sanda and, former Justice Tomljanovich, and General Mills Senior Vice President for Corporate Relations Austin Sullivan testified to their extensive outreach efforts, both with Medica members directly and in

and Peter Kelly, and John Buck, Daryl Durum, John Flittie, and Michael Walsh, were elected as non-consumer directors of Medica. These elections were held pursuant to Medica's Restated Articles of Incorporation and By-laws. Minnesota law specifies that "[t]he qualifications and method of election or appointment of directors may be imposed by or in the manner provided in the articles or by laws . . . ." Minn. Stat. § 317A.205. The 2002 Medica board election complied with Medica's By-laws, Articles of Incorporation, and Minnesota law.

This Court finds that the 2002 election was proper and legal.

The "substantial pay raises" for board members

The State alleges that Medica violated Judge Ginsburg's order when Medica's board "gave themselves significant raises," increasing their own pay to "approximately $50,000 per year." In contrast, the State alleges that members of Allina's board of directors "volunteered their time to rectify the abuses at that company." Prior to trial, the State abandoned the claim (in count five of its amended complaint) that these "substantial raises to its court appointees violated the Memorandum of Understanding between Medica and the State." The State maintains that the pay raises violated the August 2001 court order. In its closing argument, the State appears to have abandoned the claim entirely.

As previously noted, there is nothing in Judge Ginsburg's August 2001 order which addresses board compensation, and the State has never brought a motion to negate the pay raises before Judge Ginsburg or any subsequent judge of this Court. The evidence at trial failed to support the State's claims that board compensation in 2002, or thereafter, violated any court order or was in any way illegal. To the contrary, the evidence at trial

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community events.

established, without contradiction, that it is customary and proper for a complex nonprofit board such as Medica to compensate its board members. Medica is a billion dollar organization, with 1.3 million members, and running the organization requires specialized expertise, particularly at the board level, which is the only means of providing oversight to the management of the company.

According to the trial record, all nonprofit health care organizations of comparable size and complexity compensate their board members. There is nothing in Medica's by-laws, the August 2001 court order, or any law which makes such compensation illegal or improper. In fact, the evidence suggests that board member compensation is a good idea, allowing a complex billion dollar organization like Medica to attract and keep top, independent leadership talent. Nor is there any evidence that Medica's directors increased their own pay in an improper manner. Board member pay was set based after market studies conducted by one of the nation's leading and most reputable compensation experts, based both upon the demands of the board position, and the market pay set by comparable organizations.

This professional assessment, conducted by the Towers Perrin firm, recommended that Medica pay board members a flat rate of $25,000 a year, with an additional $3,000 per year for persons chairing one of the board committees of Medica, and $1,000 per meeting for each board meeting. Board members, on the average, put six to seven of preparation hours into each meeting, and meetings typically last at least three hours. Chairing a board committee is a time-consuming venture, according to the evidence at trial. When all is said and done, there is nothing exorbitant or improper about board compensation at Medica, and it is comparable to compensation paid other boards of like size and complexity. In fact, for each of the years since 2002, Medica board

compensation is slightly below the median for organizations of comparable size and complexity.

The evidence shows that Medica reviewed board compensation at least bi-yearly through a professional consulting firm, that its compensation is slightly below the median for not-for-profit health plans," and comparable to market rates, and based upon the duties of directors, competitive data, and "best practices" for compensation for non-profit board directors.

The State has not proven that in conforming to these professional recommendations, the compensation afforded to an active, professional board managing a $1 billion organization, serving 1.3 million members, and over 800 employees, is unethical, improper, or illegal. Under Minnesota law, a board is entitled make is own determination of compensation. Minn. Stat. § 317A.211. It did so. The Attorney General's claims of illegality are without merit.

Medica's "retroactive bonus plan"

In March of 2002, Medica announced a retroactive bonus plan for its executives, called the "Management Incentive Plan," which would award millions of dollars in bonuses retroactively to a small group of Medica executives. The plan was allegedly retroactive "because it offered rich sums of money to executives if they met certain goals, many of which had already been achieved when the plan was adopted." The State alleges that this plan violated the Memorandum of Understanding (a claim abandoned immediately prior to trial). The State further alleges that the retroactive bonus plan was contrary to Medica's commitment to return "excess sums of money" to its members, and instead, awarded the money to its corporate executives. Medica alleges that this plan violated Judge Ginsburg's August 2001 order.

The only evidence in the trial relating to the March 2002 executive bonus plan came in connection with events almost a year later. On January 28, 2003 (a year after the unlawful plan was allegedly announced, according to the State's complaint), Attorney General Hatch, Solicitor General Lori Swanson, and Medica CEO and board chair John Buck had lunch at the Lexington restaurant in St. Paul. The purpose of the meeting was to catch up and discuss how Medica was doing. Mr. Hatch and Mr. Buck have different memories of their conversation, but they agree that Mr. Buck disclosed Medica's intention to introduce an executive bonus plan. Mr. Hatch was not pleased. Indeed, Mr. Buck thought he would have a heart attack on the spot. Later that afternoon, to reinforce his displeasure, the Attorney General left two vituperative voice mails for the chief executive officer of Medica. They were colorful and contained language not ordinarily heard in places of worship, or court opinions.[50]

The Attorney General's missive apparently hit its mark. There was no evidence at trial that the executive bonus plan was implemented. No management incentive or bonus plan was introduced as an exhibit at trial, and not one of the 16 witnesses devoted any significant testimony to the topic.[51] Such testimony came, for example, from board member Durum, who attested to the importance of marketplace compensation to attract and keep top executives. He testified, without contradiction, that Medica bases executive compensation on yearly professional compensation studies which are intended to ensure that Medica is competitive in the marketplace. Apropos the Attorney General's claim that Medica should have been excess cash reserves into premium rebates rather than executive compensation, Mr. Buck testified to a "premium

[50] *See* Exhibit 310.

[51] Moreover, it appears from the State's closing argument that the State has abandoned this claim.

holiday" for Medica members in late 2003 which resulted in $80 million being returned to Medica members. That is the sum and substance of the State's claim that the 2002 retroactive bonus plan improperly enriched its executives at the staff of board members.

Accordingly, the Court is compelled to find that the plan did not violate Judge Ginsburg's August 2001 order, any Medica by-law, or any state or federal law. Moreover, the claims appears to have been abandoned by the State in its closing argument.

"Other problems at Medica"

Last and as the trial turned out, least, the State contends that Medica failed to timely choose a full-time chief executive officer for over a year, leaving the company "rudderless," and "failed to address, much less rectify, and expensive and questionable contract with United Health Group." Finally, the State avers that Medica "failed to address serious and abundant service quality problems."

The last allegation underscores what seems to be the farthest from everybody's mind in entering into the August 2001 consent order: converting the court into a giant customer service complaint center for Medica's one million members. The Court sincerely doubts that Judge Ginsburg would have knowingly taken on the responsibility to oversee all customer complaints by Medica customers with nary a word in the August 2, 2001 order. This Court, which has overseen the case since March 2005, has never received a Medica customer complaint. There is no proof that the Court undertook that role, or empowered court administrators pursuant to that order to undertake the role. Certainly there was no proof at trial that the court administrators, as opposed to board members, believed that this was their job. There was no evidence offered at trial about

"service quality" problems which might be expected in a one billion dollar corporation with 1.3 million members, and on the claim, the State seems to have conceded, by default, that it had no case.

There was more evidence offered about the United Health Group contract, which essentially consisted of the Attorney General's questioning why Medica did not sue the Deloitte & Touche LLP accounting firm over alleged United Health Group overcharges and questionable bills prior to 2001.

It was untrue, the evidence showed, that Medica failed to address whether to sue or otherwise seek to rectify the questionable bills from United Health Corporation. The matter was exhaustively considered by Medica's finance committee, Medica's full board, three outside law firms retained by Medica, and Medica's own legal staff.

At the end of the day, Medica considered that its chief executive officer had previously approved the bills, that there was evidence that United Health Corporation's work had been positive and proved a benefit to Medica, and that the case would have to be litigated in an unfavorable forum.[52] Two of the outside law firms recommended against bringing suit, and one of the firms recommended bringing suit. However, Medica recognized that a suit might bring with it counterclaims that would be expensive to defend, and create risk, and that the possibly unsuccessful lawsuit would be a major diversion of time and resources at a time when Medica could ill afford it. The board (which included one former Minnesota Supreme Court justice) carefully considered the issues of whether to bring suit, and deliberated at length, voted, and ultimately deadlocked as to whether to bring suit. Under Medica procedures, a deadlock defeated

[52] In litigation, like many things in life, there's no place like home. This Minnesota would have needed to bring its suit against the New York-based firm in New York – a factor considered by Medica as one of the reasons not to bring suit.

the motion to bring the suit, and there it died.

The Attorney General of the State of Minnesota disagrees with that decision, testified as much in court, and his disagreement is a basis of this lawsuit. Some might consider it ironic that the Attorney General is suing Medica because Medica failed to sue Deloitte & Touche LLP over the United Health Care contracts, without anything more than supposition to evaluate the claim. The Attorney General was not present in the meetings where Medica considered the litigation, and did not request any meetings to discuss the decision. Medica has articulated good and sound reasons for not suing Deloitte & Touche LLP. Medica's reasons comport with sound business judgment, and ethical rules for lawyers. They are, not, even remotely, a violation of Judge Ginsburg's order, or state or federal law.

The last claim made by the State is that Medica violated Judge Ginsburg's consent order by failing to timely choose a full-time executive officer for over a year. It is arguably inconsistent for the State to criticize Medica for avoiding delay in the 2002 board election, and at the same, condemn Medica for using caution and deliberate speed in delaying filling the chief executive officer position vacated by Jane Rollinson in February 2003, just over six months after she was selected for the job. The claim of "failed to timely choose a full-time chief executive officer" is in any case a novel cause of action, whether under the rubric of the August 2001 order, or any theory of law. What is timely?

The Attorney General's concern that nine months went by without selecting a permanent CEO is understandable, but the evidence shows that Medica retained a professional firm and was trying to make the right decision, and to avoid a recurrence of the relatively abrupt departure of its immediate past president. When CEO Jane

Rollinson separated from Medica in February 2002, Medica's board named new Board chair John Buck an interim CEO. Mr. Buck, a former board chair of Blue Cross Blue Shield (the largest health care insurer in the state), stepped into the role of acting CEO, while the Board recruited for a replacement, using a management consultant to assist in the search. Mr. Buck had just replaced Ted Deikel, the retired chair and CEO of Fingerhut -- a man with 35 years of business and community leadership skills. Having just experienced the disruption of the entire Medica board resigning in early 2001, along with the Allina/Medica president and CEO, it is understandable, and a matter of sound corporate judgment, not to rush the process of replacing the new chief executive officer who lasted barely six months in the job.

Moreover, as the reader cannot avoid knowing at this juncture, much was going on in 2002. The matter of the special consumer board election for the relatively new board took considerable time and energy. The divestiture and reorganization of Allina and Medica was a continuing work in progress, with considerable energy devoted toward creating the organizational structure of a one billion dollar company with almost 800 employees and over one million members. Medica undertook a major reduction in force of its work force in this time period, and it was still wrestling with the remnants of the federal and state investigations of Medica and Allina. John Buck, the chairman of the board, was doing the work of a chief executive officer without pay (at the same time that he was accused of "self dealing").[53]

The fact of the matter is that if the State thought Medica was taking too long to

[53] One of the sharpest conflicts in this case concerns John Buck's testimony that in January 2003, Mr. Hatch suggested that he become CEO for $400,000 a year, a claim that the Attorney General adamantly denied. As noted earlier, the Court need not resolve the dispute, because Mr. Buck was not interested in becoming the CEO, and the resolution of the dispute sheds no light on the State's claim that Medica should have filled the CEO job sooner.

fill the CEO position in 2003, and the August 2001 order gave it the authority to speed the process up, the State could have gone back to the Court. It did not. On May 14, 2003, following an extensive search and review process, Medica's board named David Tilford the new president of Medica. Mr. Buck served as interim CEO from March 2002 and May 2003, but received no pay for those duties. The State has not proven that Mr. Buck engaged in self dealing in working as CEO for over a year without pay.

With respect to the catch-all category of all the "other problems at Medica" alleged by the State in its complaint, at the end of the day, there was no evidence offered by the State that these "problems" delay violated a court order, any law, or sound business judgment. As a Minnesota nonprofit organization and health maintenance organization, Medica is entitled to exercise powers granted to it by state law,[54] to be governed by its own board of directors,[55] and to maintain a board which obeys a fiduciary duty to the corporation. Minn. Stat. § 317A.361. The duty requires a director "to act in good faith, with honest in fact, with loyalty, in the best interests of the corporation, and with the care of an ordinary, prudent person under similar circumstances." *Shepherd of the Valley Lutheran Church of Hastings v. Hope Lutheran Church of Hastings,* 626 N.W.2d 436, 442 (Minn. Ct. App. 2004). Directors of non-profits are entitled to exercise sound "business judgment" and are not subject to "second-guessing" by courts or regulatory agencies when they do so. *Janssen v. Best &*

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[54] *See Minn. Stat. §* 62D.01 *et seq*; *Minn. Stat. §* 62D.03 subd 1. *See also Agassiz & Odessa Mut.Fire. Ins. Co. v. Magnusson,* 136 N.W.2d 861, 867 (Minn. 1965)(a corporation may exercise its express powers by statute, those in the articles of incorporation, and any powers that "may be incidental to or reasonably necessary in the performance of [its] express powers.); Minn. Stat. § 317A,161, subd. 28 (a corporation has other powers necessary or convenient to effect a lawful purpose for which the corporation is incorporated).

[55] *See Minn. Stat. §*317A.201 ("The business and affairs of a corporation must be managed by or under the direction of a board of directors . . . ."), and the board has the power to enter into contracts, establish compensation, and help lead the company. *See* Minn. Stat. § 317A.161 subd.

Flanagan, 662 N.W.2d 876, 882-883 (Minn 2003). *See also Ray v. Homewood Hosp.* 27 N.W.2d 409, 411 (Minn. 1947)("directors . . . are charged with the duty to act . . . according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty.")

In summary, there is no evidence which demonstrates that the board failed to act in good faith for the benefit of Medica and its members. The evidence demonstrates that Medica's board acted with honesty, loyalty, and in the best interests of Medica and its members, and it exercised, at a minimum, the care of an "ordinary, prudent person under similar circumstances."

Conclusion

This four-year battle for control of the Medica board is over. This expensive, time-consuming suit against Medica and its board was supported by overheated rhetoric and accusations of self-dealing, deception, and hijacking. Based on the evidence, these claims were most unfortunate. They obscured the fact that the Attorney General's intervention in 2001 was government at its best – protecting the public from corruption, waste, and abuse. It may even be fairly argued from the evidence that the Attorney General's vigilance, and that of its Solicitor General, helped keep Medica on track.

But however characterized in the shifting tides of the State's legal theories, this case is about whether Medica's board acted honorably, or illegally, in taking Medica from a national scandal in 2001, to the position of being named the number one non-profit health plan in the country.

At the end of the day, good people were unfairly accused. After a fair and

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7, 12, 14, 18 & 21); Minn. Stat. § 62D.05 subds. 2-4.

impartial trial, their good name is restored to them.

For the reasons stated above, the Court concludes:

1 The State has failed to prove, as matter of law and fact, that Medica violated the August 2, 2001 consent order. Medica has fulfilled the terms of the order, and the allegations made by the State are unproven and without merit.

2. The State has failed to prove any of the allegations in count one of its complaint, the others having been dismissed prior to trial.

Accordingly, it is ordered:

A. Judgment shall be entered in favor of Medica, and the State's case is dismissed with prejudice.

B. A declaratory judgment is entered that:

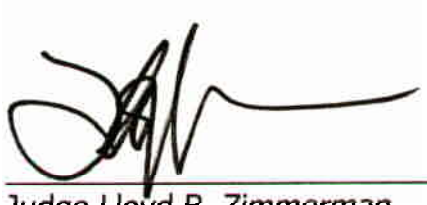
(i) The August 2, 2001, Order for Appointment of Co-Administrators has expired by its own terms;

(ii) The Special Administrator Appointment Orders have been or are deemed terminated;

(iii) Neither Medica nor its board shall be deemed to be under continuing court supervision, by rehabilitation, receivership, or any control by the Court, based upon the allegations in the State's lawsuit.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: August 17, 2005



Judge Lloyd B. Zimmerman