

1 2. Shawmut National Corporation owns 100% of the stock
2 of Shawmut Service Corporation. Shawmut Service Corporation owns
3 100% of the stock of Shawmut Corporation. Shawmut Service
4 Corporation owns 100% of the stock of Shawmut.

5 3. Shawmut National Corporation, Shawmut Service
6 Corporation, Shawmut Corporation and Shawmut are all affiliated
7 companies and are all part of the same insurance holding company
8 system. A.R.S. §§20-481(1), 20-481(4).

9 4. On March 30, 1994, Shawmut filed its Annual
10 Statement with the Director as required by A.R.S. §20-223(A).

11 5. Shawmut had the obligation when it filed its 1993
12 Annual Statement on March 30, 1994, to also file an original,
13 notarized "Certificate of Disclosure" for calendar year 1993 (the
14 Certificate of Disclosure"). A.R.S. §20-233(A).

15 6. Shawmut did not file the Certificate of Disclosure
16 before March 31, 1994.

17 7. In a letter dated July 19, 1994, the Department
18 notified Shawmut that Shawmut had not timely filed the Certificate
19 of Disclosure.

20 8. On February 22, 1995, the Department sent a second
21 notice to Shawmut concerning Shawmut's having failed to timely
22 file the Certificate of Disclosure.

23 9. On March 9, 1995, Shawmut filed an original,
24 notarized Certificate of Disclosure for 1993.

25 10. On March 10, 1995, the Department sent Shawmut a
26 letter advising Shawmut that a civil penalty of \$2,340 would be
27 assessed against Shawmut because Shawmut had failed to timely file
28 the Certificate of Disclosure.

1 11. On March 22, 1995, Shawmut filed a demand for
2 hearing pursuant to A.R.S. §20-161 to challenge both the
3 conclusion that Shawmut had failed to timely file the Certificate
4 of Disclosure and the assessment of a \$2,340 penalty.

5 12. On April 19, 1995, the Director issued a Notice of
6 Hearing (the "Notice").

7 13. In addition to the allegations concerning the
8 Certificate of Disclosure for calendar year 1993, the Notice
9 issued by the Director alleges that Shawmut failed to timely file
10 both the "Management Discussion and Analysis" form for calendar
11 year 1993 (the "MD&A") and the "Annual Registration Statement" for
12 calendar year 1993 (the "Form B"). However, the Department seeks
13 no sanctions for Shawmut's late filing of the MD&A and the Form B.

14 14. Shawmut contends that it timely filed the
15 Certificate of Disclosure, MD&A, and the Form B when it filed its
16 Annual Statement on March 30, 1994. In support of this position,
17 Shawmut called three witnesses to offer evidence to support the
18 contention that the three documents (the Certificate of
19 Disclosure, MD&A and the Form B) had been timely filed with the
20 Department.

21 15. Judith Hanson worked for Shawmut continuously for
22 more than eight years until February 28, 1994. Later, she
23 returned to work for Shawmut in late 1994. In every year since
24 Shawmut became authorized to transact insurance in Arizona except
25 for the filing at issue in this proceeding, Ms. Hanson personally
26 handled the processing of Shawmut's filing of annual statements,
27 certificates of disclosure, MD&As, and Form Bs with the
28 Department. After Ms. Hanson left her employment with Shawmut on

1 February 28, 1994, John McPherson, the president of Shawmut,
2 assumed the responsibility to process Shawmut's prescribed filings
3 for calendar year 1993.

4 16. On February 28, 1994, the final duties Ms. Hanson
5 performed in connection with her employment with Shawmut included
6 sending several documents to Joseph Kandrac, Shawmut's actuary, to
7 review before Shawmut filed the documents with the Department.
8 These documents included the Annual Statement, the Certificate of
9 Disclosure, MD&A, the Form B, and an inventory checklist for the
10 documents. Ms. Hanson prepared the inventory checklist to
11 accompany the materials sent to Mr. Kandrac and ultimately to be
12 sent to the Department with the filing of documents, including the
13 annual statement. The inventory checklist prepared by Ms. Hanson
14 contained four blanks for the recording of data to be extracted
15 from Shawmut's 1993 Annual Statement. In addition, Ms. Hanson
16 also prepared an envelope to be used by Shawmut to ship the
17 prescribed filings to the Department after Mr. Kandrac had
18 reviewed and returned the documents to Shawmut.

19 17. Ms. Hanson had no role in any steps taken by
20 Shawmut after February 28, 1994 to effect the delivery to the
21 Department by the prescribed due date of the Annual Statement, the
22 Certificate of Disclosure, the MD&A, the Form B, or the inventory
23 checklist for these documents. Thus, she has no knowledge of the
24 contents of the envelope received by the Department on March 30,
25 1994 from Shawmut when the Department received Shawmut's Annual
26 Statement for calendar year 1993.

27 18. After Ms. Hanson sent the materials on February 28,
28 1994 to Mr. Kandrac, Mr. McPherson received the Annual Statement

1 for calendar year 1993 from Mr. Kandrac to be filed with the
2 Department.

3 19. Mr. McPherson completed the steps necessary to
4 transmit Shawmut's 1993 Annual Statement to the Department. Mr.
5 McPherson specifically recalls placing the Annual Statement in the
6 envelope prepared by Ms. Hanson to deliver the materials to the
7 Department. However, Mr. McPherson had no independent
8 recollection of the specific documents he placed in the delivery
9 envelope other than the Annual Statement. Mr. McPherson had no
10 independent recollection of placing either the Certificate of
11 Disclosure, the MD&A, or the Form B in the envelope. Further, Mr.
12 McPherson could not be certain whether he saw the inventory
13 checklist prepared by Ms. Hanson.

14 20. In 1994, the Department received filings from
15 approximately 2,500 insurers consisting of annual statements, MD&A
16 forms, certificates of disclosure, and, if applicable, Form Bs.
17 To handle the influx of these filings, the Department used a
18 document receipt and inventory verification process to identify
19 the filings received from each insurer. This process consisted of
20 the following measures:

21 a. The retention of temporary personnel from an
22 employee leasing agency that had pre-screened the personnel to
23 ensure their ability to perform clerical functions.

24 b. The training of the temporary personnel to receive
25 and take inventory of the filings received from insurers.

26 c. The batching of materials received from insurers.

27 d. Checking the inventory sheet filed by each insurer
28 with the filings; or in the alternative, preparing an inventory

1 sheet to catalog the materials received by the Department from
2 each insurer.

3 e. Conducting additional checks of the materials to
4 determine if each filing had been appropriately inventoried.

5 f. Ensuring the availability of Department employees
6 to answer any questions the temporary personnel may have
7 concerning the materials received from insurers.

8 21. The steps followed during the document receipt and
9 inventory process followed by the Department in 1994 consisted of
10 the following steps relevant to this matter:

11 a. The envelopes containing the filings were placed in
12 one room along with all the temporary personnel. When the
13 temporary personnel performed the Department's document receipt
14 and inventory process, at least one Department employee or
15 supervisor was present to oversee the flow of paperwork, to answer
16 any questions, to safeguard the documents, and to ensure
17 compliance with the Department's receipt and inventory process.

18 b. The envelope containing the filing would be slit
19 open to determine whether the filing had been generated by a
20 property and casualty insurer (yellow book) or a life and
21 disability insurer (blue book).

22 c. The envelopes would be separated into two
23 categories based upon the lines of business that best
24 characterized each insurer.

25 d. The contents of each envelope would be examined to
26 determine if an inventory checklist had been submitted. The
27 Department used the inventory checklist to identify the records
28

1 filed by an insurer and to record data extracted from the
2 insurer's Annual Statement regarding the insurer's solvency.

3 e. If an inventory checklist for the filing had not
4 been included, the temporary worker would create a checklist to
5 inventory the filing and to record data extracted from the
6 insurer's Annual Statement regarding the insurer's solvency.

7 f. If an inventory checklist for the filing had been
8 included, the temporary worker would compare the envelope's
9 inventory to the items listed on the included inventory checklist.

10 g. After the first inventory of the contents of the
11 filing received from an insurer, an employee of the Department
12 would evaluate the initial review and record the results of this
13 second review on the inventory checklist. If questions remained
14 about the contents of the filing, a third review also would occur,
15 with the results of this third review recorded on the inventory
16 checklist.

17 22. The temporary worker, AR, who first opened the
18 envelope and inventoried the contents of Shawmut's March 30, 1994
19 filing found that Shawmut had not submitted an inventory checklist
20 with its Annual Statement. Thus, AR created an inventory
21 checklist for Shawmut. AR then entered data from Shawmut's Annual
22 Statement on the checklist. AR also recorded that Shawmut's
23 filing included the Annual Statement, the jurat page and the
24 actuarial opinion, but did not include the Arizona state page, the
25 Certificate of Disclosure, the MD&A or the Form B.

26 23. Cary Cook, a Department employee who participated
27 in the inventory process, confirmed AR's findings with respect to
28 the items included in Shawmut's filing.

1 24. Barbara Lewis, the supervisor responsible for the
2 Department's receipt and inventory verification process, reviewed
3 Shawmut's filing and concluded that Shawmut had filed the annual
4 statement, the jurat page, the actuarial opinion, and the Arizona
5 state page, but had not included the Certificate of Disclosure,
6 the MD&A or the Form B.

7 25. Shawmut presented evidence through Gary Torticill
8 that agents of the Department have in contexts different from that
9 presented here, experienced the temporary inability to locate
10 document filed with the Department. Shawmut presented this
11 evidence in an effort to prove that, together with the testimony
12 of Ms. Hanson and Mr. McPherson, the likelihood exists that the
13 Department lost Shawmut's Certificate of Disclosure, MD&A and Form
14 B.

15 26. In the three instances cited by Shawmut, Department
16 personnel located records at issue. Further, none of the three
17 instances cited by Shawmut involved the integrity of the
18 Department's document receipt and inventory process, the process
19 at issue in this proceeding. Instead, the cited instances
20 involved questions raised after the completion of the document
21 receipt and inventory process. Each cited instance arose during
22 the Department's separate financial examination process. The
23 Department resolved the questions raised in these cases through
24 the evaluation of applicable law, or through the review of records
25 subsequently submitted by an insurer after the issuance of an
26 examination report that raised the question regarding the missing
27 documents.

28

1 27. The evidence presented by Shawmut did not raise
2 questions about the reliability of the Department's receipt and
3 inventory verification process. To the contrary, this evidence
4 demonstrated the extent to which the Department's procedures
5 contains safeguards against the loss of documents.

6 28. The record supports the conclusion that Shawmut did
7 not file the Certificate of Disclosure, the MD&A, or the Form B
8 when it filed its 1993 Annual Statement. The Department's receipt
9 and inventory verification process contains safeguards to prevent
10 the loss of records. The creation of an inventory checklist to
11 contemporaneously record the Department's receipt of an insurer's
12 annual statement filings signals the strength of this process.
13 The Department's records show that the prescribed filings had
14 never been received by the Department. In contrast, the testimony
15 of Ms. Hanson and Mr. McPherson contains insufficient indications
16 of reliability with respect to the verification of the specific
17 items mailed to the Department to demonstrate that the envelope
18 ultimately delivered to the Department on March 30, 1994 contained
19 the prescribed filings.

20 29. Shawmut's failure to file the Certificate of
21 Disclosure by the statutorily prescribed due date exposes it to a
22 penalty of \$25.00 for each day of delinquency.

23 30. Shawmut has no history of delinquent filing of
24 required documents other than those at issue in this proceeding.

25 31. In light of this history, the Department requests
26 an assessment of \$10.00 per day starting from July 19, 1994 -- the
27 date on which the Department first advised Shawmut that the
28 required Certificate of Disclosure had not been timely filed --

1 through March 9, 1995, the date on which the Department received
2 an original, notarized Certificate of Disclosure for 1993 from
3 Shawmut. The Department therefore requests an assessment of
4 \$2,340.00.

5 32. Shawmut contends that a \$10.00 per day penalty
6 results in a penalty amounting to nearly 1% of its assets.
7 Therefore, Shawmut contends the proposed penalty is excessive.

8 33. The record in this matter does not support
9 Shawmut's contention that the Department seeks an excessive
10 penalty. Further, the penalty falls within the range of
11 permissible sanctions under A.R.S. §20-233(B).

12 34. Shawmut challenges the procedures followed by the
13 Department with respect to the assessment of the civil penalty at
14 issue in this matter. Shawmut has received this hearing to
15 challenge the issues presented in this case. Therefore, Shawmut's
16 procedural challenge is rejected.

17 CONCLUSION OF LAW

18 Shawmut violated A.R.S. §20-233(A) by failing to file a
19 Certificate of Disclosure for calendar year 1993 on or before
20 March 31, 1994.

21 ORDER

22 Pursuant to A.R.S. §20-233(B), Shawmut shall pay a civil
23 penalty of \$2,340.00. This amount shall be paid to the Department

24 . . .
25 . . .
26 . . .
27 . . .
28 . . .

1 within 30 days of the date of this Order.

2 DATED this 28th day of June, 1995.

3
4 

5 CHRIS HERSTAM
6 Director of Insurance

7 

8 GREGORY L. HARRIS
9 Chief Administrative Law Judge

10 NOTIFICATION OF RIGHTS

11 The aggrieved party may request a rehearing with respect
12 to this Order by filing a written petition with the Administrative
13 Law Division within 30 days of the date of this Order, setting
14 forth the basis for such relief pursuant to A.A.C. R20-6-114(B).

15 The final decision of the Director may be appealed to
16 the Superior Court of Maricopa County for judicial review
17 pursuant to A.R.S. §20-166.

18 COPY of the foregoing mailed/delivered
19 this 28th day of June, 1995, to:

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