

INSURANCE

Dave Heineman

Governor

Bruce R. Ramge

Director

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A Message from the Director....



Bruce R. Ramge

Collection of Insurance Consultant's Fees by Insurers

The Department has received inquiries asking whether an insurer can collect fees on behalf of an insurance consultant from a new insured if the insurance business is placed by an insurance consultant. The insurer would hold the fees for eventual disbursement to the insurance consultant. The answer to this question is no.

An insurance consultant is obligated under Neb.Rev.Stat. §44-2629 to serve the interests of his/her client with objectivity and complete loyalty. The fee for the insurance consultant's services is between the insurance consultant and the client, and the fee must be specifically noted in the consultant contract or agreement.

It is unlawful for any insurance consultant, or any agency or sales organization with which the consultant is connected, to receive any part of any commission or compensation paid by an insurer in connection with the sale or writing of any insurance which is within the subject matter of any consulting service performed prior to the sale of insurance and for which such consultant has contracted to receive a fee. It must be noted that under Neb.Rev.Stat. §44-2631, a renewal of insurance shall not be considered a sale of insurance.

If an insurer collects fees on behalf of the consultant, it would be construed as compensation paid by the insurer.

Information on how to obtain a consultant's license may be obtained from the Department of Insurance website located at www.doi.ne.gov/license/apps/Individual%20Consultant.pdf.

FRAUD DIVISION

11th Annual Insurance Fraud Conference

The Insurance Fraud Prevention Division of the Nebraska Department of Insurance will host its 11th Annual Insurance Fraud Conference on June 7, 2011, at Eugene T. Mahoney State Park located at Interstate I-80, Exit 426, near Ashland, Nebraska. The target audience for this conference is insurance company special investigation units, and claims and underwriting personnel. Limited seating is available. A conference brochure/registration form can be obtained from Connie Drake at connie.drake@nebraska.gov. The agenda is as follows:

	Topic	Speaker
7:30 - 8:15 a.m.	Registration - Continental Breakfast	
8:15 - 8:30 a.m.	Welcome	Bruce Ramge, Director of Insurance Charles Starr, Fraud Division Chief
8:30 - 9:00 a.m.	Opening Remarks	Deborah Gilg, United States Attorney District of Nebraska
9:00 - 10:30 a.m.	Corporate Accounting Ethics	Aaron Beam, Founder/Former CFO HealthSouth
10:30 - 10:45 a.m.	Break	
10:45 - 12:00 p.m.	Personality of the White Collar Criminal	Gary Plank Plank Forensics
12:00 - 1:00 p.m. and 1:00 - 2:00 p.m.	Lunch - <i>Two Group Split</i>	
12:00 - 1:00 p.m. and 1:00 - 2:00 p.m.	Internet Crimes	Rayleen Pirnie, Director Compliance & Fraud Department EPCOR
2:00 - 4:00 p.m.	Pharmaceutical Crimes	Ritch Wagner, Director Law Enforcement Liaison & Education Purdue Pharma LP

Educational Opportunity Provided to Law Enforcement Agencies

On June 8, 2011, the Insurance Fraud Prevention Division will sponsor a conference directed toward law enforcement personnel throughout Nebraska. The law enforcement conference follows the 11th Annual Insurance Fraud Conference for the insurance industry. This annual conference provides an excellent opportunity for law enforcement agencies to network and discuss current issues affecting the law enforcement community. The conference is limited to 50 individuals, so early registration is recommended. A conference brochure/registration form can be obtained from Connie Drake at connie.drake@nebraska.gov.

LIFE & HEALTH DIVISION

Mandatory Policy Provisions for Sickness and Accident Policies

LB 72, which was signed into law on February 22, created mandatory policy provisions for sickness and accident policies.

On February 22, 2011, Governor Heineman signed into law LB 72. Neb.Rev.Stat. §44-710.03(13), which was created as a result of the passage of the bill, states the following:

A provision as follows: CONFORMITY WITH STATE AND FEDERAL LAW: Any provision of this policy which, on its effective date, is in conflict with the law of federal government or the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such law.

LB 72 will become effective 90 days after the conclusion of the current Legislative session.

LB 72 will become effective 90 days after the conclusion of the current Legislative session. After that date, all sickness and accident policies delivered or issued for delivery to any person in Nebraska shall contain the above provision in the same wording or, the insurer may, at its option, substitute different wording approved by the Director of Insurance which is not less favorable in any respect to the insured or beneficiary.

Any questions concerning LB 72 may be directed to Martin Swanson at martin.swanson@nebraska.gov.

Premium Review Grant Follow-up

In March 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 were signed into law. The two laws are collectively referred to as the Affordable Care Act (“ACA”). The ACA provides grant funding to assist states in planning, development, and implementation of parts of the ACA.

Section 2794 of ACA requires full evaluation of the premium rate increases proposed by health insurance carriers. To support this legislative mandate, the U.S. Department of Health and Human Services awarded \$46 million to forty-five states and the District of Columbia to enhance current state processes for reviewing health insurance premium increases. The

Nebraska Department of Insurance, on behalf of the State of Nebraska, was awarded \$1 million in Cycle I grant funds on August 16, 2010, to improve the review of proposed health insurance premium increases, take action against insurers seeking unreasonable rate increases, and ensure that consumers receive value for their premium dollars.

In response to this, the Department of Insurance has procured services from an independent actuarial consulting firm. Initially, most comprehensive major medical rate filings will be reviewed by the consulting actuary. A notice will be sent via SERFF on all filings that are being reviewed by the consulting actuary. There will not be any time delays caused by the assistance from the consulting actuary.

Please continue to watch the Department's website at www.doi.ne.gov for additional information and updates. Any questions may be directed to the Life and Health Administrator at 402-471-4742.

The appropriate language to use in contrast to the most common ambiguous language, "signs or symptoms of" is "diagnosed or treated for."

Any application submitted with ambiguous language will receive an objection requesting removal of the language.

Applications Containing Ambiguous Language

The Department has taken the stance that any ambiguous language presented on applications will be required to be removed.

The most common ambiguous language presented on an application is "signs or symptoms of." Because this causes self-diagnosis on the behalf of the applicant, "signs or symptoms of" is not permissive language. The appropriate language to use in contrast to "signs or symptoms of" is "diagnosed or treated for."

Another common submission that we see is "participation in hazardous sports." This language is ambiguous in the fact that it is subjective from person to person. Hazardous sports must be identified and broken down specifically on the application. Additionally, timeframes of "ever" regarding diseases or disorders are discouraged on applications. We advise that a timeframe for a specific disease or disorder be limited to ten years.

Any application submitted with the aforementioned language will receive an objection requesting removal of the language. If you have any questions about proposed language, please feel free to contact the Life and Health Division Administrator at 402-471-4742.

PROPERTY & CASUALTY DIVISION

File and Use

In Nebraska, Neb.Rev.Stat. §44-7506 allows for certain types of property and casualty rate and form filings to be classified as “file and use.” Occasionally, we hear that companies are reluctant to implement their filed rates or forms until they receive notification that the filing has been “closed” under the SERFF system. This is to clarify that is not necessary—in Nebraska, “file and use” means what it says. The structure of our file and use law is designed to promote a more competitive marketplace. Any disapproval or request for an extended review period must be made by the Department of Insurance analyst within 30 days of the filing. After such time, the Department of Insurance would be required to schedule an administrative hearing. Such an action would be very rare.

Although our file and use law requires insurers to document the justifications for proposed rates or rate changes, it is not necessary for the Department to indicate approval prior to use. The specified reasons for disapproval or a rating structure are as follows:

- (a) The filing proposes a rating system that would produce inadequate premiums. A premium level is inadequate if it would endanger the solvency of the insurer. A premium level that would not be expected to generate a profit on a direct basis and that would be likely to have the effect of diminishing competition is also inadequate. A premium level that does not endanger the solvency of the insurer and is not likely to have the effect of diminishing competition is not inadequate;
- (b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;
- (c) The filing proposes to discriminate between risks based on optional commission differences for agents;
- (d) The filing proposes to discriminate between risks based on race, creed, national origin, or religion of the insured;
- (e) The filing would violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; or
- (f) The filing discriminates between risks based on subjective factors, except that an experience rating plan may use loss reserves without being considered as subjective.

Prior approval could be reinstated for some lines of insurance in the event the Director determines that a competitive market does not exist.

Alan Wickman, Casualty Actuary, Retires

On April 1, the Department bid a fond farewell to Alan Wickman, its casualty actuary for many years. Alan is now enjoying his grandchildren and is involved in any number of things that have nothing to do with insurance.

Alan started with the Department in 1974 as a property/casualty rate & form analyst and was designated as the Department's casualty actuary a few years before earning his ACAS designation in 1982. His primary focus at the Department shifted from market cycle to market cycle, depending on whatever seemed to need the most attention. He described himself as "jack-of-all trades, master of none," although the Department leaned on him quite a bit when the questions related to workers' compensation or the Excess Fund, a fund that provides excess medical professional liability insurance. At times, he seemed to be an auxiliary member of the Department's legal division. Al was also active for the Department for the past 25+ years in many NAIC-related matters and chaired, or was the de facto chair, of several task forces and a number of working groups. His expertise will be missed—we hope that he enjoys many years of happy retirement.

Questions or communication previously sent to Alan Wickman may be directed to the attention of Bev Anderson, Administrator, Property/Casualty Division, at bev.anderson@nebraska.gov.

PRODUCER LICENSING DIVISION

Annual Renewal Billing Statements

The Department has mailed the annual renewal billing statements that reflect the producers' appointments renewed on behalf of a company for the 2011-2012-license year. Names may not be added or deleted from the billing statement.

Appointments and appointment terminations may be processed online through the National Insurance Producer Registry (NIPR) at www.nipr.com, or by submitting the NAIC Uniform Appointment/Termination form located at www.doi.ne.gov/license/p_appoin.pdf on the Department's website.

Cancellation of producers' appointment forms received in the Department after April 15, 2011 were automatically renewed and have been processed with a cancellation effective date of May 1, 2011. Both the renewal statement and the cancellation fees listed on your May or June monthly invoice must be paid. Remit the total amount due by the date indicated and include a copy of the first page of the invoice with your check. Appointment renewals are not available for processing online.

Questions concerning the annual renewal statement may be directed to the Producer Licensing Division at 402-471-4913.

Continuing Education Requirements

In order to follow NAIC uniform guidelines for continuing education requirements, a change has been implemented in regards to the continuing education requirements for producers holding one or more major lines of authority. Effective **January 2, 2012**, all licensed producers who hold one or more of the following major lines of authority, will be required to complete a total of 24 hours of continuing education in a two-year renewal period:

- Life and Annuities
- Sickness, Accident, & Health
- Variable
- Property
- Casualty
- Personal Lines

The following is a complete list of continuing education requirements by line of authority:

Life	21 hours
Health	21 hours
Combined Life and Health	21 hours
Property	21 hours
Casualty	21 hours
Combined Property and Casualty	21 hours
Personal Lines	21 hours
Title	6 hours
Crop	3 hours
Variable	21 hours

Ethics Requirement

In addition to the hours required above, licensees are required to complete three hours of approved continuing education activities on insurance industry ethics.

Insurance consultants and brokers shall be required to complete 21 hours of continuing education activities and three hours of approved continuing education activities on insurance industry ethics in each two-year period. No licensee shall be required to complete more than 24 cumulative hours in any two-year period.

Questions may be directed to Jason McCartney at jason.mccartney@nebraska.gov.

CONSUMER AFFAIRS DIVISION

Fraudulent Health Coverage—Producers Should Be Aware

A typical scam attempts to recruit local insurance producers to sell their bogus programs.

Some time ago, the Department issued a consumer alert, “Protect Yourself Against Illegal Health Plans” because Nebraskans are increasingly searching the internet and advertisements looking to reduce health coverage costs. There are many reputable plans offered. However, some consumers may be given false information about fraudulent health plans sold by unauthorized insurers, or “scams”.

Some plans may initially be underwritten by a licensed insurer that later discontinues underwriting it while the scam continues offering a plan without valid insurance.

A typical scam tries to recruit local insurance producers to market the plan. Some plans may initially be underwritten by a licensed insurer that later discontinues underwriting it while the scams continue offering the plan without valid insurance. Scams may change the name of the plan or alleged underwriter to obstruct authorities. These scams seek to collect a large amount of premium as rapidly as possible. Some claims may even be paid initially, but the scam will soon delay claim payments and offer excuses for failing to pay. Unsuspecting consumers who thought they were covered for their medical needs are left with huge medical bills.

The Department reviews advertisements and information from the public to identify and take action against these scams. Investigations can result in administrative actions. However, the scams may not be found until citizens have bought the plans and are experiencing problems. Therefore it is critical that consumers and producers scrutinize and avoid the plans before purchase.

The Department reviews advertisements and information from the public to identify and take action against these scams, and investigations can result in administrative actions.

The Department encourages consumers and employers to ask licensed producers whether the health coverage they are purchasing is underwritten by licensed insurers. We also encourage them to obtain the names and addresses of the insurers, and to search out all information about the plan.

The following reminders are of particular importance to producers to protect themselves:

Be diligent to verify underwriters are licensed, and that licensed insurers continue to underwrite the plans.

Producers must be appointed directly with the underwriting insurer, regardless of who is marketing the plan.

Auto body specialists are required to collect sales tax from their customers on charges for various items including motor vehicle painting labor and paint.

Insurers and adjusters must ensure the appropriate sales tax is included when completing estimates of damages.

- Be diligent to verify underwriters are licensed, and that licensed insurers continue to underwrite the plans.
- Be aware that you must be appointed directly with the underwriting insurer, regardless of who is marketing the plan.
- Be reminded that Nebraska Insurance Code, Article 20, Section 44-2002(3)(b) provides that, “in the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of any insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.”

A copy of Article 20 can be found on the website at **uniweb.legislature.ne.gov/laws/laws-index/chap44-full.html**. Any questions concerning this article may be sent to **cindy.williamson@nebraska.gov**.

MARKET CONDUCT DIVISION

Collection of Sales Tax Required

Auto body specialists are required to collect sales tax from their customers on charges for various items including motor vehicle painting labor and paint. When completing estimates of damages, insurers and adjusters must ensure the appropriate sales tax is included.

For complete information regarding taxable charges, it may be helpful to review the Nebraska Sales and Use Tax Guide for Auto Body Specialists at the Department of Revenue website found at **www.revenue.ne.gov/info/7-239.pdf**.

If you have any questions, please contact Reva Vandevoorde at **reva.vandevoorde@nebraska.gov**.

LEGAL DIVISION

Legislative Update

LB 72—the NDOI “Department Bill”—has been signed by Governor Heineman and will become law in September. LB 72 deals with the following matters.

- The bill changed the penalties imposed for violation of the statute requiring that life insurers pay interest on life insurance policy proceeds from a Class III misdemeanor under section 44-394 to the penalties prescribed for a violation of the Unfair Claims Settlement Practices Act under section 44-1543 (Section 44-3,143) (Section 1 of the bill).
- The bill specifies that creation of separate accounts is subject to prior approval by the director of insurance, rather than prior notice to the director of insurance. (Section 44-402.01) (Section 2 of the bill).
- The bill requires policies of sickness and accident insurance to include a provision providing that in the event of a conflict between the insurance policy and state or federal law, the policy is amended to conform to the minimum standards of the state or federal law. The bill repeals the authority of a policy of sickness and accident insurance to, at the discretion of the insurer, include a provision providing that in the event of a conflict between the insurance policy and state law, the policy is amended to conform to the minimum standards of the state law at the discretion of the insurer. (Sections 44-710.03 and 44-710.04) (Sections 3 and 4 of the bill).
- The bill defines “netting agreement” as an agreement that provides for the netting of qualified financial contracts, and “qualified financial contract” as a commodity, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement so determined by the director. The bill specifies that a person is not prohibited by a stay under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act from exercising specified contracts under circumstances specified in the section. The bill specifies that the net or settlement amount, if any, owed by a non-defaulting party to an insurer against which an application or petition has been filed under the act shall be transferred to or on the order of the receiver for the insurer, and requires the receiver to use best efforts to notify parties to the contract. The bill prohibits the receiver from voiding such a transaction that commenced before a delinquency proceeding in the absence of intent to commit fraud. The bill specifies that all rights of a counterparty under the act would apply to netting agreements and qualified financial contracts entered into on behalf of the general account or separate accounts. (Section 44-4803 and 44-4862) (Sections 6 through 8 of the bill).

Any questions concerning LB 72 may be directed to Eric Dunning, Counsel, at 402-471-2201 or by email at eric.dunning@nebraska.gov.

Case Summaries

Knights of Columbus Council v. KFS BD Inc., _N.W.2d_, December 10, 2010

From 1998 to 2000, Rebecca Engle was employed by Kirkpatrick Pettis, a Mutual of Omaha company and KFS BD's predecessor. In 2000, Kirkpatrick Pettis received numerous complaints regarding Engle but failed in its compliance and supervisory obligations. This failure led to its eventual collapse. Engle was discharged and started a new securities business. The same day Kirkpatrick Pettis closed telling customers, via mailed letters, that they were closing due to a reduction in sales force. At the time they mailed the letters, they knew that there were pending customer complaints regarding Engle's security violations. Under Kirkpatrick Pettis' authority, Engle sent letters to her existing customers expressing the same reasoning. Additionally, Kirkpatrick Pettis filed a Uniform Termination Notice for Securities Industry Registration Form with the National Association of Securities Dealers (NASD). They failed to disclose Engle's violations and pending complaints knowing that they were reportable events. The appellants continued to do business with Engle until discovering her violations some time later.

The appellants alleged claims of vicarious liability, breach of contract, fraudulent misrepresentation, negligent misrepresentation, and fraudulent concealment. The district court dismissed all of the claims for failure to state a claim. The Nebraska Supreme Court affirmed the district court's dismissal of the breach of contract claim because the statutes the defendants allegedly violated, by failing to report Engle's violation to the NASD, did not provide for a private remedy and the federal courts have exclusive jurisdiction. Additionally, they affirmed the district court's decision to dismiss the negligent misrepresentation claim. The claim failed because it was based on statements in a securities regulation filing that the appellants did not receive, and thus could not have relied on in continuing to do business with Engle.

The Court reversed and remanded the district court's dismissals of the fraudulent misrepresentation claim and fraudulent concealment claim because they were based solely on statements made in the letters Kirkpatrick Pettis sent to their customers. As a result, the customers could plausibly claim the letters gave them a false impression and concealed material facts regarding Engle's employment.

Zawaideh v. Nebraska Department of Health and Human Services, 280 Neb. 997, January 7, 2011.

Nebraska's Uniform Credentialing Act (UCA) regulates persons providing health and health-related services. When a complaint is made to the attorney general, here Assistant Attorney General, Terri Nutzman, determines the appropriate legal response. One option is an assurance of compliance with the credential holder. An assurance of compliance is a voluntary agreement that the credential holder will not engage in specific conduct proscribed in the agreement and is not considered disciplinary action under the law.

Nutzman received a complaint about Dr. Ziad L. Zawaideh and offered him an assurance of compliance, providing that he no longer practice obstetrical care. Zawaideh had given up obstetrical care, so he agreed. Zawaideh alleges that the assurance of compliance led to the termination of his professional board certification and other disciplinary-type consequences. He additionally alleges he would not have entered into the agreement had he known about the potential consequences. His complaint asserted that (1) the UCA is unconstitutional because it permits discipline without due process of law, (2) the UCA is unconstitutional as applied to this case, (3) the attorney general carried out his statutory authority in an arbitrary and capricious manner, and (4) the attorney general committed fraudulent misrepresentation by concealing that the assurance of compliance letters were having the effect of a disciplinary order on other physicians. The district court rejected every claim and Zawaideh appealed.

The Nebraska Supreme Court determined that Zawaideh did not have any valid constitutional claims. First, because he failed to file and serve notice of a constitutional challenge of a statute pursuant to Neb. Ct. R. App. P. § 2-109(E) (Rev. 2008). Second, because Zawaideh was not denied notice or an opportunity to be heard when he affirmatively agreed to enter into the assurance of compliance. The fact that he is dissatisfied with his choice does not mean his due process rights were violated by the state. In short, the Court said the review procedure to which Zawaideh claimed he was owed was available to him, but he waived it by accepting the agreement. The Court reviewed Zawaideh's third claim of arbitrary and capricious action as being part of his constitutional claims, as arbitrary and capricious action is not, in itself, a claim for relief. The Court reversed and remanded Zawaideh's fraudulent concealment claim, determining that it was plausible that Nutzman knew that Zawaideh would face disciplinary-type consequences and that informing Zawaideh of that may have affected his decision to sign the agreement.

Jones Insurance Agency v. Kuhnel and The Home Agency, Nebraska Court of Appeals Memorandum Opinion, No. A-10-651, February 15, 2011

Kuhnel sold his incorporated insurance business to Jones in 1999. The terms of sale required Kuhnel work for Jones under a written contract running from June 1 to May 31. Included in the employment contract was a "Non-Piracy Agreement" provision. This provision prohibited Kuhnel from soliciting any business from Jones' customers for a period of two years following his termination with Jones Insurance Agency.

The written contract expired on May 31, 2001. Kuhnel continued to work at Jones Insurance Agency until the relationship ended on June 23, 2003. Within two years from June 23, Kuhnel solicited customers of Jones. Jones brought suit against Kuhnel claiming breach of contract and interference with a business relationship or expectancy. The contention was whether the two-year period specified in the contract began on May 31, 2001 or on June 23, 2003.

The Nebraska Court of Appeals looked to the contract term which specified that the contract ended on May 31, 2001, at which time the parties "may, but are not required to, enter into a new employment agreement." Jones argued that the non-piracy provision was implied in their

verbal agreement after May 31. The court disagreed, noting that “Jones may have believed that the non-piracy covenant continued into the new agreement,” however, “the language of the original [provision] clearly contradicts Jones’ belief.” The language of the employment contract was plain and not ambiguous. The non-piracy provision expired on May 31, 2001.

Regulation Updates

Company Bulletins

CB-125 - USE OF RETAINED ASSET ACCOUNTS

CB-125 was issued on March 18, 2011 to establish disclosure standards regarding the payment of life insurance benefits to a beneficiary by means of a “retained asset account.” CB-125 will become effective on September 18, 2011.

“Retained Asset Account” means any mechanism whereby the settlement of proceeds payable under a life insurance policy is accomplished by the insurer or an entity acting on behalf of the insurer depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer, pursuant to a supplementary contract not involving annuity benefits. A full copy of CB-125 can be found at www.doi.ne.gov/bulletin/cb125.pdf.

EXAMINATION DIVISION

Addendum to Annual Report Due by July 1, 2011

The Department of Insurance is working to achieve a higher quality of oversight to benefit the citizens of Nebraska. In order to achieve this goal, the Department must obtain more transparent information from Nebraska’s pre-need sellers. On February 22, 2011, a notice was issued to pre-need sellers in Nebraska outlining the information to be submitted.

The notice outlines the information being requested which will serve as an addendum to the 2010 Annual Report. The information is requested separately from the Annual Report for confidentiality purposes. The Annual Report is accessible to the public; the information being requested will be kept confidential pursuant to [Neb.Rev.Stat. §44-5906\(8\)\(a\)](#).

A full copy of the notice and the information being requested can be found on the Department’s website at www.doi.ne.gov/notices/notc2011/notice03.pdf.

Please provide this information by July 1, 2011. Electronic submissions may be made by email to Lyuba.Berzin@nebraska.gov or mailed to the Department on CD-ROM. If you have any questions or require assistance, please contact the Department at 402-471-2201.

Financial Examinations Completed During First Quarter, 2011

German Farmers Mutual Assessment Insurance Association of Hall County
German Mutual Insurance Company of Dodge County
Inland Insurance Company
Scandinavian Mutual Insurance Company
Universal Surety Company
Washington County Mutual Insurance Company
Woodmen of the World Life Insurance Society

Financial examination reports become public documents once they have been placed on official file by the Department. Copies may be obtained from the Department at the cost of \$.50 per page.

