

MAR 09 2015

FILED

**STATE OF MINNESOTA
IN SUPREME COURT**

In the Matter of the Certificate of Authority
of The Auto Club Group, a Michigan
corporation licensed to do business in the
State of Minnesota, NAIC Nos. 11983, 21202

Safelite Group, Inc. and
Safelite Solutions LLC,

Petitioners,

v.

Minnesota Department of Commerce,

Respondent.

DATE OF FILING OF COURT OF
APPEALS DECISION: February 10, 2015

APPELLATE COURT CASE NUMBER:
A15-0114

PETITION FOR REVIEW AND PETITIONERS' ADDENDUM

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**Auto Club Group and Auto Club
Group Property Casualty Insurance
Company**
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Petitioners Safelite Group, Inc. and Safelite Solutions LLC respectfully request that the Court review and summarily reverse the February 10, 2015, order of the court of appeals that dismissed the writ of certiorari, and remand the matter for review on the merits.

I. STATEMENT OF LEGAL ISSUE.

Is a Cease and Desist Order issued by the Commissioner of Commerce that strips a party of all contract rights in a valid, legal and enforceable contract, and is issued without providing any due process to that party, immune from judicial review?

II. STATEMENT OF CRITERIA TO SUPPORT THE PETITION.

This case presents an important question on which this Court should rule. Contracts are important property rights that cannot be taken without due process. Here, the Commissioner of Commerce ordered an insurance company to terminate its valid, legal, contract with Petitioners, and ordered it to never again do business with Petitioners. The Cease and Desist Order, as it pertains to Petitioners, exceeds the Commissioner's statutory authority and violates Petitioners' due process rights. The court of appeals erroneously ruled that it lacked jurisdiction to review the Commissioner's unauthorized action, effectively immunizing the action from judicial review, and leaving no checks on the Commissioner's ability to issue similar orders in the future that affect the rights of Petitioners and other third-party administrators that do business in Minnesota. The criteria in Rule 117, subd. 2(a), 2(c) and 2(d)(2) and (3) justify review by this Court.

III. STATEMENT OF THE CASE AND FACTS.

Safelite is a multi-faceted vehicle glass and claims management organization based in Columbus, Ohio. The company has been in business since 1947 and has grown from a single store to a national leader in the auto glass industry. Safelite has been operating in Minnesota for more than 40 years and has 125 employees in Minnesota. The company includes four major business operations: vehicle glass repair and replacement services; manufacturing aftermarket windshields; wholesale vehicle glass-related products; and claims management services for the

nation's leading fleet and insurance companies. The claims management services provided by Petitioner Safelite Solutions LLC are at issue in this case.

One of the insurers with which Safelite contracts to provide auto glass claims management services is Auto Club Group Property-Casualty Insurance Company (“Auto Club”). Safelite’s contract with Auto Club is a valid and enforceable agreement between two commercial entities. The Department has never claimed that there is anything illegal about the contract; it is undisputed that the contract is wholly consistent with Minnesota law.

In 2014, the Department conducted an investigation of Auto Club, which included serving one or more administrative subpoenas on Auto Club to produce records of automobile glass and automobile accident claims files. According to the Cease and Desist Order at issue, the Department reviewed 125 claims files as part of its investigation. Based on the investigation, the Commissioner issued the Cease and Desist Order on January 8, 2015. Auto Club agreed to waive any challenge to the Order.¹ The portion of the order being challenged states:

IT IS FURTHER ORDERED, pursuant to Minn. Stat. § 45.027, subd. 5(a) (2014), that [Auto Club] shall cease and desist from using Safelite Solutions, or any other subsidiary of Safelite Group, Inc., as their administrator of automobile glass claims in Minnesota on or before February 1, 2015.

(Add. 8.) The Order contains provisions imposing other requirements on Auto Club that are not challenged on appeal. The challenge is to the Commissioner’s authority, under the procedure followed here, to order Auto Club to terminate a legal and valid contract with Safelite, and to forever cease and desist from doing business with Petitioners.

¹ In the court of appeals, the Department inaptly characterized the Cease and Desist Order as a “settlement,” under which Auto Club “freely agreed . . . to not use Safelite as its administrator of auto glass claims in Minnesota.” *See* Informal Memo. at 5. In fact, Auto Club was *ordered* to cease its ongoing contract and business relationship with Safelite; Auto Club simply waived its right under the statute to contest the order. *See* Cease and Desist Order at 7. Moreover, it is not a “settlement” with respect to Petitioners, who are not parties to the Cease and Desist Order.

Petitioners were provided with no notice and no opportunity to be heard prior to the issuance of the Cease and Desist Order. Petitioners are not parties to the Order, yet the Order substantially affects their business in Minnesota by requiring Auto Club, one of Safelite Solutions' important insurance company clients, to terminate its contract and never again enter into another contract with any Safelite entity.²

Petitioners commenced this appeal by writ of certiorari to challenge the Commissioner's legal authority to issue the Cease and Desist Order, under the procedure followed here, requiring Auto Club to terminate a valid and enforceable contact with Safelite, and the lack of a factual basis for the Cease and Desist Order. The court of appeals dismissed the writ of certiorari.

IV. ARGUMENT IN SUPPORT OF PETITION.

A. The Court of Appeals has Jurisdiction to Review the Commissioner's Cease and Desist Order by Writ of Certiorari.

Minn. Stat. § 480A.06, subd. 3 specifically confers jurisdiction on the court of appeals: "The Court of Appeals *shall have jurisdiction* to issue writs of certiorari to all agencies, public corporations and public officials[.]" (Emphasis added.) *See also*, Minn. Stat. § 606.01 (directing that writs of certiorari be issued by the court of appeals.) Minn. Stat. § 45.027, subd. 5a(d) states that "the *exclusive remedy* for determining whether the commissioner properly issued [a] cease and desist order" is the administrative proceeding described in the statute "*and subsequent appellate judicial review* of that administrative proceeding" in the court of appeals. *Id.* (emphasis added). As quoted above, the Cease and Desist Order states that the Department's authority is based on Minn. Stat. § 45.027, subd. 5a. Subdivision 5a(d) authorizes review in the court of appeals. The court of appeals has jurisdiction under these statutes, and plainly erred by dismissing the appeal for lack of jurisdiction.

² At a January 14, 2015 meeting with Safelite's counsel, the Department stated that it expected to issue similar cease and desist orders to other insurance companies that have contracts with Safelite.

B. A Writ of Certiorari is the Only Means for Petitioners to Obtain Judicial Review of the Cease and Desist Order.

Where no other means for review exist, a writ of certiorari provides the means for an aggrieved person to obtain judicial review of a decision by an agency. *In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) (“[w]here no right of discretionary review has been provided by statute or appellate rules for the quasi-judicial decision of an administrative agency or an administrative law judge, an aggrieved party has the common law right to petition for a writ of certiorari[.]” *See Nelson v. Schlener*, __ N.W.2d __ (Minn. Feb. 11, 2015) (stating that “certiorari review is available absent statutory authority for a different process”) (quotation omitted)). A party must have standing to pursue an appeal by writ of certiorari. *In the Matter of Sandy Pappas Senate Committee*, 488 N.W. 2d 795, 797 (Minn. 1992). Standing exists where the appealing party “suffers ‘injury in fact’ as a consequence of that action.” *Id.*

Here, Petitioners have standing because they have suffered an injury in fact as a result of the Cease and Desist Order – *i.e.*, the forced termination of a valid contract and the loss of Auto Club as a customer in Minnesota forever. The court of appeals’ order identifies no other means by which Petitioners can obtain judicial review of the portion of the Cease and Desist Order that adversely affects Petitioners. Under these circumstances, review by writ of certiorari must be available to Petitioners to challenge the Cease and Desist Order.

C. By Adopting an Unduly Restrictive Interpretation of a “Quasi-Judicial” Decision, the Court of Appeals’ Decision Leaves the Commissioner’s Authority Unchecked.

The main indicia of a quasi-judicial action are summarized in *Minn. Center for Environ. Advocacy v. Metro. Council*, 587 N.W.2d 838, 842 (Minn. 1999). Importantly, a quasi-judicial action by an administrative agency also *necessarily* includes the agency’s determination that it has the *authority* to take action. *See, e.g., Haymes*, 444 N.W.2d at 259 (holding that “the

threshold issue of statutory construction as to [a party's] legal entitlement to attorney fees . . . was an exercise of quasi-judicial powers" and therefore was reviewable by writ of certiorari).

Here, in issuing the Cease and Desist Order, the Commissioner necessarily concluded that the statute, Minn. Stat. § 45.027, subd. 5a, authorizes him to order licensed insurance companies in Minnesota to terminate valid, enforceable and entirely legal contracts with third party administrators who are not required to be licensed by the Department. In issuing the Order, the Commissioner necessarily concluded that the statute authorizes him to *blacklist* third party administrators, despite the fact that they are not required to be licensed, and authorizes the Commissioner to, essentially, de-bar certain legitimate companies from ever doing business in Minnesota. In fact, there is nothing in the text of the statute that grants such authority.

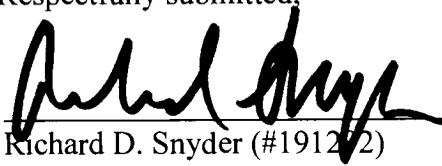
The Commissioner's Cease and Desist Order, to the extent that it affects Petitioners and harms their contract rights in Minnesota, is a quasi-judicial decision that must be subject to judicial review. If not, the Commissioner would be free to use cease and desist orders of this type to expand his authority to encompass third-party administrators and other parties who, by law, are not required to be licensed by the Department. The Cease and Desist Order exceeds the Commissioner statutory authority, and raises serious due process concerns. The court of appeals erred by dismissing the writ, thereby immunizing the Commissioner's action from judicial review in this case and in future cases.

V. CONCLUSION.

Petitioners respectfully request that the Court accept review, summarily reverse the court of appeals' February 10, 2015, order, and remand the matter for review on the merits in the court of appeals.

Dated: March 5, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard D. Snyder", is written over a horizontal line.

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March 5, 2015

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APPELLATE COURTS

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Safelite Group, Inc. and Safelite Solutions LLC v. Minnesota Department of Commerce
Appellate File Number: A15-0114

Dear Ms. O'Neill:

Enclosed for filing in the above-referenced matter please find the following documents:

1. Petition for Review and Petitioners' Addendum;
2. Affidavit of Service by United States Mail; and
3. Our check in the amount of \$550 for the filing fee.

By copy of this letter, we are serving copies on counsel for Respondent the Minnesota Department of Commerce and on Auto Club Group.

Sincerely,



Richard D. Snyder

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Email: rsnyder@fredlaw.com

RDS/mp/52812640.1—072389.0001
Enclosures

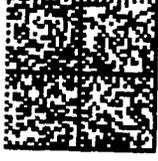
cc: Michael J. Tostengard, Assistant Attorney General (w/ enclosures)
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