

August 12, 1994
ILR 94-B

Representative David Ure
House of Representatives
State Capitol Building
Salt Lake City, Utah 84114

Subject: Thrift Liquidations

Dear Representative Ure:

At your request, we have conducted a review of the thrift liquidation/recovery operation and the settlement distribution for the failed thrifts. The purpose of this report is to present a historical perspective of the pertinent events preceding and during the thrift liquidations, and to compile information about liquidation recoveries, settlement awards, and distributions from multiple sources into one comprehensive summary. Much of our information has come from interviews with individuals from different organizations, often with opposing viewpoints. We have tried to verify the facts whenever possible but some of the information given us comes from the memories of the individuals involved and is not well documented. Our review has focused primarily on the liquidation of four failed thrifts conducted by Grant Thornton (GT), the appointed liquidator/receiver. The fifth failed thrift, Commerce Financial, was liquidated by the owner, Larry Miller. We did not look closely at this liquidation and unless it is named specifically, most of our comments in this report pertain to the liquidation conducted by Grant Thornton. It is our opinion that a full, in-depth audit of the liquidation process is not necessary at this time. It appears that the liquidation was done professionally and levels of general and specific oversight were provided throughout the process. The liquidation and distribution activities are essentially complete. About 85% of deposits on record as of July 31, 1986, have been returned to the depositors. Grant Thornton has withheld about \$5.7 million of the recovered assets in order to protect itself from liability of future lawsuits, and also because there are some unresolved questions about taxes and the state's responsibility in case of future lawsuits. This remaining amount less expenses and possible taxes will be released for distribution to the depositors and the state as soon as the questions about taxes and the state's responsibility are resolved, and as soon as Grant Thornton is released from its position as liquidator/receiver, and there is no longer any liability arising from potential lawsuits. We have been informed that this final

distribution may occur by the end of September 1994. Any further recoveries after this distribution will have to come from judgements in, or settlements of lawsuits against liable third parties.

General oversight and review of the liquidation process was provided by the State Third District Court, the Department of Financial Institutions (DFI), and the Attorney General (AG). In addition, Depositors of Insured Thrifts (DOIT), the organization that represents the depositors, received quarterly and annual statements on the liquidation and distribution of assets. They reviewed the reports and kept the depositors informed of the progress made with the liquidation and class action recovery efforts. There were numerous other controls in place to insure that Grant Thornton conducted the operations in a professional and expedient manner.

The complete liquidation of the failed thrifts actually evolved from an earlier partial liquidation of the thrifts and the liquidation of the Industrial Loan Guaranty Corporation (ILGC). The full liquidation process took place over a period of 5-6 years. It is logical to consider these earlier liquidations as different stages of one complete liquidation process. Although the liquidations started at different times and with different organizations, their time frames overlapped and the complete and total liquidation of the thrifts evolved from these earlier processes. The first stage of liquidation involved the ILGC. This organization was created by state legislation in 1975 so that depositors in industrial loan corporations (thrifts) could have their deposits guaranteed similar to depositors in other financial institutions. The ILGC guaranteed payment of the depositors' accounts up to \$15,000 under defined conditions. The second stage of liquidation was a limited operation involving selected assets of the failing thrifts. The third stage of liquidation was a general and complete liquidation of all assets of the failed thrifts. All stages of the liquidation process are now basically complete, but there are still some recovered assets that have not yet been distributed. In addition, there is the third-party lawsuit that has not yet been resolved. To make things more understandable, we will present some history and background information.

Background Information

Several of the thrift institutions were in poor financial condition as early as 1982. The DFI commissioner was aware of the thrifts situation but allowed them to continue operations hoping that they would be able to correct their problems. In the summer of 1986, the commissioner called the regional office of the Federal Deposit Insurance Corporation (FDIC) and asked for exams of all thrifts in the state. There were seven thrifts that were having serious financial problems. The commissioner wanted to find out if any thrifts would be eligible for FDIC insurance. The objective was to get FDIC insurance for the thrifts by having a large investor, preferably an organization that was more stable and already FDIC insured, absorb the thrifts into their operations. No large investors were found. However one thrift, St George Thrift and Loan did become FDIC insured and was no longer in financial jeopardy. A second thrift, Horizon Thrift and Loan, was taken over by a more stable credit union organization. The five remaining thrifts were refused FDIC insurance. This factor along with the insolvency of the ILGC brought about their eventual closure. The operations of the remaining five thrifts were taken over by DFI and withdrawals were limited to \$300 per account per month for four months. The DFI then began to consider several plans of liquidation or reorganization for these five failed thrifts.

The liquidation of the thrifts and the ILGC was conducted over a period of 5-6 years. Several different organizations were involved as liquidators. The initial stages of liquidation began in July 1986, when the Commissioner of Financial Institutions took control of the Industrial Loan Guaranty Corporation and commenced the liquidation of its assets. The liquidation process evolved and progressed to the next level in November 1986, when legislation of the 4th special session appropriated funding to purchase and liquidate selected assets of the five failing thrifts. This was done in an effort to improve the liquidity, and to eliminate less desirable properties in order to attract a buyer for the thrifts. While these first two stages of liquidation were still in process, it became apparent that the failure of the thrifts was inevitable. In February 1987, a panel of experts selected by the governor recommended total liquidation of the failed thrifts. This recommendation was later made public in March 1987. This final stage of the liquidation process began in July 1987, after liquidators/receivers were selected and appointed by the DFI commissioner and Judge Moffatt to conduct a total and complete liquidation of the failed thrifts. Grant Thornton was selected as liquidator of four failed thrifts (Interlake, Western Heritage, Copper State, Charter), while the fifth failed thrift Commerce, was liquidated by its owner, Larry Miller. Between July 1986 and December 1992 all of assets of the five failed thrifts were liquidated and most of the recoveries were distributed. In addition, the depositor class action suit had produced significant settlements, and the depositors had received back about 85% of their deposits.

ILGC Closure and Liquidation

The DFI commissioner had known for some time that there were not enough funds in the ILGC to guarantee the deposits of the member institutions. However, the organization was allowed to continue operations because of the possibility that some thrifts might overcome their problems, become financially stable, and thus improve the financial condition of the ILGC. This did not happen however, and the ILGC was eventually closed by the commissioner in July 1986. The DFI took control of their assets and initiated liquidation procedures of the ILGC. Attorneys were hired by DFI to help with the liquidation and make collections from several failing organizations. One major claim was against Murray First Thrift and Loan (MFTL) and its owners. The ILGC ultimately failed because it was insolvent. However, the failure of MFTL and the withdrawal of the Lockhart Company and several other organizations hastened its closure. The Lockhart Company had recently been examined and was qualified for coverage with an FDIC approved institution. Lockhart left the ILGC and their assets were absorbed by another banking institution. Several other thrift institutions had already left the ILGC for various other reasons. Lockhart and MFTL were major contributors to the ILGC fund. The loss of Lockhart's fees from the ILGC, combined with the funds paid to First Security Bank as an incentive to take over the operations of MFTL, caused a financial drain on the ILGC. Knowing that the ILGC was seriously underfunded, the commissioner had no choice but to close the corporation and liquidate the assets. This stage of the liquidation was basically completed by the end of 1990, when the claim against MFTL was collected. As the assets from the ILGC were liquidated and claims were collected, they were held in an account by the DFI until Grant Thornton was ready to make the distributions. Any remaining unsettled claims of the ILGC have been consolidated with the depositors' class action suit.

Partial Liquidation of Thrifts

The partial liquidation of selected assets of the five failing thrifts was the next stage of the liquidation process. This liquidation started about the same time as the ILGC liquidation and overlapped the general liquidation. Several options for resolution of the thrift problem were presented to the Legislature in the fall of 1986. The plan that was selected called for the DFI commissioner to consolidate the five failing thrifts into one superthrift that was financially stable. The purpose of this plan was to prevent the thrifts from failing by selling them to a larger and more stable, FDIC approved institution. In order to make the thrifts more attractive to a buyer, the Legislature agreed to provide funding to purchase a number of less valuable assets and liquidate them. In November 1986, the Legislature appropriated \$5 million to DFI in order to conduct a partial liquidation of the thrifts. The intention was to infuse capital and make the thrifts more lean by purchasing some of the less marketable assets. The state would then sell or auction the assets for whatever they could get. About \$2.8 million of this appropriation was used to purchase 78 properties from the thrifts. In addition, about \$2 million of the appropriation was used to make loans to several of the failing thrifts and \$165,000 was returned to the general fund. Several agencies participated in this phase of the liquidation process. The Division of Facilities Construction and Management (DFCM) conducted the liquidation of the real estate for this phase as authorized and according to the legislation (**Utah Code 63-1-44.5**). The Division of Finance (DF) along with the DFI made the arrangements for loans and financial assistance to the failing thrifts.

Total Liquidation of Thrifts

A "blue ribbon" panel of experts was appointed by the Governor in January 1987, to determine what should be done with the failing thrifts. The panel consisted of one depositor from each of the failing thrifts plus five other notables such as the State Auditor and the CEO from a local bank. The panel recommended that the thrifts be completely liquidated. The panel also wanted to select the liquidator. However, it is required by law that the DFI commissioner select the liquidator. The commissioner reviewed about 17 proposals to serve as liquidator for the thrifts between April-June 1987. The panel also reviewed all of the proposals and they came to a unanimous conclusion with the commissioner on their selection. The accounting firm of Grant Thornton (GT) was selected by the commissioner from among the proposals and was appointed as receiver/liquidator for Copper State, Interlake, Western Heritage, and Charter Thrift in June 1987. One reason Grant Thornton's proposal was selected was that it guaranteed the total compensation paid for services rendered as liquidator/receiver of the four thrifts would not exceed 3% of the monies disbursed. We examined the liquidation proposal and discussed the liquidation fees with the liquidation director at GT. In addition, we compared the liquidation fees paid with distributions made of liquidation proceeds (excluding proceeds from Commerce, ILGC, and depositor withdrawals). Based on our examination, Grant Thornton's liquidation fees are currently at 3.1% of disbursed amounts. When the final distribution of the \$5.7 million is completed, the liquidator fees will be at 2.8% of disbursed amounts. No limit was stipulated to costs and expenses in other areas of the liquidation. We did not examine GT's detail of billing records, nor did we make any judgement on the appropriateness of costs associated with GT's role as liquidator/receiver vs. role as accountant to the four thrifts.

The fifth failed thrift, Commerce Financial was owned by Larry Miller. He presented his own proposal for liquidation of this thrift. This plan guaranteed a return of at least 70% of the

deposit balances as of July 31, 1986 less any withdrawals, distributions, or entitled offsets made after that date. Except for distribution of cash on hand in the amount of \$1.9 million in May 1987, no further cash payments would be required until five years after the effective date of acceptance. The depositors of Commerce voted and the majority agreed to accept Miller's plan for liquidation. In addition, his plan was approved and recommended by the commissioner. Larry Miller was appointed receiver/liquidator of Commerce Financial by Judge Moffatt of the Third Judicial District Court of Utah in July 1987.

In July 1987, a class action suit (Plumb et.al. v. State) was filed against the state and the five failed thrifts. The suit was filed by representatives of the depositors of the five failed thrifts. The depositors' organization is called DOIT, which stands for Depositors Of Insured Thrifts. Their representatives are attorneys Malcolm Misuraca, George Haley, and Robert Stolebarger. Early in 1988, the DOIT attorneys (Misuraca, Haley & Stolebarger) and Grant Thornton who had joined in the lawsuit, called attention to the state's alleged liability for the thrift failure and their responsibility toward depositors. They lobbied the Legislature heavily for the state to reach a settlement with the depositors. An interim task force was appointed to study the problem and determine if the state had any responsibility in the thrift failure. The task force completed its assignment and advised the state to settle with the depositors. The state and its insurers, Cal Union, agreed to settle the suit in the fall of 1988.

The terms of the settlement agreement were put into legislation (**Utah Code 7-21-4(8)(a)**) during the 4th special session, October 1988. The total amount of the settlement agreement was \$44 million. The Legislature agreed to pay \$10 million in cash as settlement of all claims against the state. The state's insurers agreed to pay an additional \$19 million to the depositors for the settlement award. In addition, the state agreed to appropriate \$15 million as a "loan" against the remaining assets of the 5 failed thrifts and the ILGC. This \$15 million appropriation was awarded on the condition that 50% of the liquidation proceeds from the ILGC and the five failed thrifts go to the state until the full \$15 million was recovered. Another condition of the settlement was that the state would be entitled to part of the awards from third-party lawsuits in which it was a co-plaintiff. The state will receive 50% of the first \$5 million recovered from third-party claims, after which the state is entitled to one third of any recoveries from claims until the \$10 million is recovered.

Asset Liquidation/Distribution Is Essentially Complete

All stages of the asset liquidation are now complete. From the Plumb et.al. v. State settlement and the liquidations, the depositors have received about \$88.2 million or 85% of their deposits as of July 31, 1986. In addition, the state has recovered about \$14.8 million or 49% of its total appropriations of \$30 million (\$5 million in 1986 and \$25 million in 1988). The costs and superior claims of the liquidation of the five failed thrifts, settlements, and distributions, amount to over \$25 million. This amount includes general liquidation costs, accounting costs, and superior claims that had to be paid before the assets could be distributed to depositors. It also represents the fees paid to Grant Thornton, as liquidator of the four thrifts, administrative costs to Larry Miller (liquidator of Commerce), other liquidation costs, distribution and legal fees to Arthur Andersen (distribution agent for the state settlement), legal fees to the depositors' representatives, and other legal fees and court costs associated with the liquidation. Larry Miller

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was able to meet his obligation to return 70% of the deposits using liquidation recoveries. These liquidation proceeds were distributed by Grant Thornton in 1992, at the end of the 5-year liquidation plan for Commerce. Approximately \$5.7 million of the liquidation recoveries from the four thrifts was retained by Grant Thornton and will be distributed to the depositors and state as soon as GT is released from its position and is no longer liable for any possible lawsuits.

Depositors Have Recovered Most Of Their Principal

The total deposits on record for the five thrifts as of July 31, 1986 was \$103,346,861. From this date on, no interest was accrued nor credited to depositor accounts, although claims still exist for interest. According to Grant Thornton's most recent annual statement dated June 30, 1993, the total deposits recovered and distributed from liquidations, and settlement awards was \$88,164,145. This amounts to about 85% of the principal amount of deposits as of July 31, 1986. The liquidations, recoveries, and distributions took place between July 1986 and December 1992. The last distribution was made in December 1992. The following table (Figure I) summarizes the total amount of settlement awards and assets recovered and distributed during the liquidation/recovery and settlement process as of June 30, 1993.

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Figure I

Between July 1986 when the thrifts were closed, and July 1987 when the liquidators were appointed, the depositors recovered about \$16.7 million of their deposits, as shown in Figure I. According to the liquidation director at Grant Thornton, about \$2.2 million at Commerce was recovered through depositor withdrawals. Another \$14.5 million was recovered from the other four thrifts through cash withdrawals and distributions of cash on hand made by the thrifts. For example, GT's liquidation director told us that in May 1987 Charter made distributions to depositors of about \$2.2 million, Copper State made distributions of about \$3.4 million, and Western Heritage made distributions of \$1.9 million. In addition, from August 1986 until November 1986 the depositors were allowed to withdraw up to \$300 per month per account. These withdrawals along with the thrift distributions accounted for all of the depositor recoveries until the liquidators were appointed in July 1987.

As shown in Figure I, liquidation recoveries came from the liquidation of the five failed thrifts and the liquidation of the ILGC. The total amount of gross recoveries from the liquidation the four thrifts was \$47.6 million. Another \$14.4 million (this amount was calculated from available data and may not be exact) was recovered from the liquidation of Commerce Thrift. The amount recovered from the liquidation of the ILGC's assets, which were typically cash and marketable securities, was about \$4.6 million. These combined amounts total \$66.6 million in recoveries for the five failed thrifts and the ILGC. The depositors' share of these recovered amounts was about \$33.8 million (\$24.4 million from the four thrifts and \$7.4 million from Commerce and \$2 million from ILGC). The state received about \$3.2 million from the four thrifts, \$5.6 million from Commerce, and \$2 million from the ILGC for a combined total of \$10.8 million from the liquidations. The administrative costs, accounting, liquidation, and legal fees, and superior claims associated with the liquidations of the five thrifts and the ILGC amounted to about \$16.1 million (\$1.5 million superior claims and \$14.6 million costs). In addition, GT retained about \$5.7 million of the assets recovered from the four thrifts as a buffer against further claims and lawsuits. Of this remaining \$5.7 million, there will be some expenses and possible taxes taken out. Whatever amount remains after expenses and taxes will be distributed in equal shares to the depositors and the state as soon the court releases GT from its position as liquidator/receiver.

The other large portion recovered, about \$47.6 million, was from the settlements of lawsuits and claims. The largest settlement award for the depositors was from the claims against the state (Plumb et. al. v. State). When this settlement was reached, the total amount that was agreed upon was \$44 million. There were two families with seven small accounts totaling \$56,784 in deposits that chose not to participate in the class action claim. Their share of the class action settlement would have been \$13,626. Since they settled outside, this amount was subtracted from the \$44 million settlement. Claims were filed separately against the state for five of these accounts and ultimately settled. The remaining two accounts were paid 70% of their remaining account balance by Larry Miller, liquidator of Commerce Financial, as specified in the liquidation plan. This left the remaining settlement balance of \$43,986,374 to be distributed to the depositors and their representatives. As shown in Figure I, the net amount returned to depositors from this state settlement award was about \$36.5 million. The remaining \$7.5 million of this award was used to pay legal fees, distribution fees, and other costs of the settlement. In addition to the state settlement, there were two other settlements of claims from which the state and depositors each received equal portions. These claims were brought by the joint plaintiffs which included the depositors, the state, and the state's insurer (Cal Union). One claim was against the law firm of Watkiss & Campbell which represented the ILGC. The Watkiss & Campbell suit was settled in 1991 for \$3.5 million. Of this total award, the

depositors received about \$1 million and the state received about \$1.1 million. The legal fees, distribution fees and other costs associated with this settlement amounted to about \$1.4 million. Another settlement was reached with Loren Moench, an owner of Copper State Thrift. There were several parallel claims against Moench. One claim was the depositors class action which was settled for a total of \$125,000. The depositors' and the state's share of this award was \$46,875 each. The legal fees and other costs of this settlement amounted to \$31,250. A limited number of Copper State depositors had a parallel claim against Moench. Their claim was also settled for \$125,000. However, this settlement was not part of the class action award and was not divided between the state and the class of depositors. Therefore, it has not been considered in the summary of amounts recovered.

In total, the amounts recovered and distributed to depositors has been about \$88.2 million. This amounts to about 85% of their deposits as of July 31, 1986. It does not include any accrued interest after this date. About \$16.8 million of the deposits were recovered through withdrawals or distributions prior to the liquidators/receivers appointment. Depositors recovered another \$33.9 million of their deposits from liquidation proceeds of the four thrifts, Commerce, and the ILGC (\$24.4 million from four thrifts, \$7.5 million from Commerce, \$2.0 million from ILGC). Finally, the depositors received a total of \$37.5 million from 3 separate settlement awards.

Costs And Superior Claims Were Significant

The costs of the liquidations and settlements were significant. Although these costs were necessary in order to make the recoveries, they caused a reduction the total amount returned to the depositors. The significance of the total costs is shown in Figure II by comparing the costs and totals of each separate part of the recovery process. Detailed summaries of the costs of each separate recovery operation, are shown in Figures III, IV, and V.

Description	Cash Inflow	Costs & Claims	Percent of Inflow
State Settlement	\$43,986,374	\$7,530,493	17.12%
Third Party Claims	3,625,000	1,388,936	38.32
Pre-Liquidator	16,754,777	-	
Grant Thornton - Liquidation	47,609,946	12,736,223	26.75
Grant Thornton - Superior Claims	-	1,561,685	3.28
Larry Miller - Liquidation*	14,380,751	1,377,430	9.58
ILGC - Liquidation*	4,579,652	498,470	10.88
Total Costs and Claims	\$130,936,500	\$25,093,237	19.16%

** Cost totals include an unknown amount of superior claims.*

The total costs and superior claims for the settlements of lawsuits, liquidations of five thrifts and the ILGC, and the distributions, amount to over \$25 million (about 19% of recovered amounts) as shown in Figure II. Recoveries (or inflows of cash) came from either liquidation proceeds or settlements of lawsuits. The total amount of cash inflow from the state settlement was \$44 million (less \$13,626 for opt outs) of which \$7.5 million or 17.1% went for expenses.

The total recovery for third party claims was \$3.6 million of which 38.3% or nearly \$1.4 million was used for expenses. The total recoveries for the Miller liquidation were approximately \$14.4 million of which 9.6% or about \$1.4 million was used for administrative expenses and superior claims. The total recovery for the ILGC was about \$4.6 million of which \$500 thousand or 10.9% was used for expenses. Grant Thornton recovered approximately \$47.6 million in the liquidation of the 4 thrifts. Expenses for this part of the liquidation amounted to about \$12.7 million or 26.8% of the recoveries. Finally, the superior claims for GT's part of the liquidation amounted to \$1.6 million or 3.3% of the total recoveries. Superior claims are those that by statute have a greater position of priority than depositors. They include those claims that have to be paid prior to liquidating the properties, such as mortgage payments, property management fees, taxes, etc..

Settlement Expenses Amounted to Over \$7.5 million. Approximately 17% of the settlement recoveries went for expenses. A detailed account of the expenses for the class action settlement against the state is shown in Figure III.

Figure III		
Plumb et. al. v. State Settlement Expenses		
Description	Amount	Percent of Recoveries
Haley, Stolebarger, Misuraca (class counsel)	\$5,400,000	
Arthur Andersen (distr., legal & bank)	863,867	
DOIT (legal, lobbying, miscellaneous)	935,358	
Court Special Master	100,160	
CAL Union (advanced litigation)	10,356	
Miscellaneous Costs	220,752	
Total Settlement Expenses	\$7,530,493	17.12%
Note: State settlement recoveries		\$43,986,374

Class counsel (Haley, Stolebarger, Misuraca) received about \$5.5 million of this amount for their fees. The accounting firm of Arthur Andersen (AA) was the special master for the distribution of this settlement. Arthur Andersen's fee for the distribution was \$804,259. AA's attorneys charged \$50,382 for legal fees and bank charges amounted to \$9,226 bringing the total to \$863,867 for the distribution. The DOIT organization received \$935,358 for advance litigation, lobbying, and other miscellaneous costs associated with this settlement. The court special master received \$100,160 for services and Cal Union had advance litigation costs of \$10,356. Finally, there were other miscellaneous costs that totaled \$220,752.

Third Party Lawsuit Expenses Totaled \$1.4 million. The expenses for the other two settlements were also significant. The expenses for these two settlements totaled nearly \$1.4 million. Most of the expenses were for legal representation. For example, in the Watkiss & Campbell settlement, the depositors' attorneys (Haley, Stolebarger, Misuraca) received \$875,000 in fees. The liquidator, GT received \$25,000 for distribution fees. According to the liquidation director at GT, only \$4,000 of this amount was kept for fees while \$21,000 was returned to the thrifts to cover general distribution costs. The DOIT organization was reimbursed for costs of nearly \$294,900. Cal Union, the state insurer was also reimbursed for costs of over \$160,300. A

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substantial amount of the DOIT and Cal Union expenses attributed to the settlement are costs and expenses associated with preparation for hearings before the thrift screening panel which was formed in accordance with the depositor settlement with the state. In addition, there were special litigation costs of about \$2,500.

The total costs for this settlement were over \$1.3 million. These costs are shown in detail in the following Figure IV.

Figure IV		
Third Party Lawsuit Expenses		
Description	Amount	Percent of Recoveries
Watkiss & Campbell Settlement		
Haley, Stolebarger, Misuraca (class counsel)	\$875,000	
Grant Thornton (liquidator)	25,000	
DOIT Inc. (litigation costs)	294,875	
Cal Union (advanced litigation/expenses)	160,323	
Craig Adamson (special litigation)	2,488	
Sub-total	<u>1,357,686</u>	38.79%
Moench Settlement		
Ross Anderson (special litigation)	<u>31,250</u>	25.00
Total Third Party Expenses	<u><u>\$1,388,936</u></u>	38.32%
<i>Watkiss & Campbell settlement recoveries</i>	<i>\$3,500,000</i>	
<i>Moench settlement recoveries</i>	<i>\$125,000</i>	
Total Third Party settlement recoveries	\$3,625,000	

Legal fees for the Moench settlement totaled \$31,250. No other costs were broken out specifically for this settlement. The total expenses for the two settlements amounted to \$1,388,936 or 38% of the amounts recovered.

Liquidation Costs Were Nearly \$16.2 million. The total costs and superior claims for the liquidations of the five failed thrifts and the ILGC amount to about \$16.2 million or 24.3% of the amounts recovered. These costs are detailed in the following Figure V.

**Figure V
Detailed Liquidation Costs**

Description	Liquidation Recoveries	Costs	Percent of Recoveries
Grant Thornton - Expenses			
Salaries, Taxes, Benefits		\$1,981,614	
Occupancy, DP, Phone		868,146	
Real Estate Carrying Costs & Expenses		1,534,206	
Liquidator Fees		1,713,943	
Accounting Fees		2,190,525	
Legal Fees		3,467,277	
Other Miscellaneous		980,512	
Sub-total	\$47,609,946	<u>12,736,223</u>	26.75%
Grant Thornton - Superior Claims			
Sales & Use Tax		381,096	
Mortgage Payments		1,180,589	
Sub-total	-	<u>1,561,685</u>	3.28
Larry Miller - Expenses*			
Salaries & Insurance		270,849	
Occupancy, DP, Phone, Supplies, Misc.		94,808	
Real Estate Costs (incl. mortgage pmts)		394,559	
Accounting & Record Keeping		103,507	
Legal Fees		513,707	
Sub-total	14,380,751	<u>1,377,430</u>	9.58
ILGC*	4,579,652	498,470	10.88
Total	<u>\$66,570,349</u>	<u>\$16,173,808</u>	24.30%

** Cost totals include an unknown amount of superior claims.*

The liquidation costs for Grant Thornton totaled \$12.7 million (26.8% of amounts recovered). About \$3.5 million of these liquidation costs were paid to attorneys for general counsel, collections, and special litigation. General counsel for Grant Thornton was the firm of VanCott, Bagley, Cornwall & McCarthy. Their fees for legal work on the liquidation were over \$935,400. Collection litigation was done by several different firms, Richer, Swan & Overholt, Biesinger & Neff, and VanCott, Bagley, Cornwall & McCarthy. Collection litigation amounted to over \$1.8 million. Special litigation was done primarily by the firm of Allen, Nelson, Hardy & Evans and the cost was about \$700,000. Grant Thornton's liquidator fees amounted to \$1.7 million and accounting fees amounted to about \$2.2 million. The remaining \$5.3 million was used for miscellaneous expenses associated with this part of the liquidation. For example, as shown in Figure V there were occupancy, DP, and phone expenses. There were also real estate carrying costs and other related expenses. Salaries and benefits for the auxiliary staff employed to help with the liquidation, amounted to about \$1.9 million. In addition to the liquidation costs, there were superior claims that amounted to about \$1.5 million or 3.3% of the recoveries for this part of the liquidation.

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Summaries from quarterly reports to the liquidation court, show the total administrative costs and superior claims for the liquidation of Commerce Thrift amounted to \$1,377,430 or about 9.6% of the recoveries for this liquidation. We were unable to determine what portion of this amount would be considered superior claims.

According to the thrifts supervisor at DFI, expenses for the liquidation of the ILGC totaled \$498,470 or 10.9% of the recoveries for this liquidation. These expenses were paid to the law firm of Richards, Brandt, Miller & Nelson which assisted DFI with the liquidation. We were unable to determine the detail of these expenses.

As of June 1993, the total costs and superior claims for the liquidations, settlements, and distributions were about \$25 million. In addition to the expenses, Grant Thornton has yet to distribute about \$5.7 million of the liquidation recoveries from the four thrifts. Although the liquidations and distributions were largely complete by the end of December 1992, expenses such as accounting, legal work, and other liquidation costs continue to be incurred. For example, in FY 1994 the total gross operating expenses for the liquidation of the four thrifts were \$208,646 which averages about \$17,387 per month. As long as this \$5.7 million of recovered assets is withheld from distribution, costs and expenses will continue to accumulate. Interest income on the \$5.7 million will also continue to be earned, however the end result is that less money will remain to be returned to the state and depositors.

State Has Recovered Half Of Its Appropriations

In special legislative sessions of 1986 and 1988, the state made a total of \$30 million in appropriations to help liquidate and settle the five failed thrifts. The appropriations were made with three distinct purposes: 1) \$5 million was initially appropriated to help strengthen the financial stability of the thrifts, 2) \$10 million was appropriated to settle all claims against the state for liability in the thrift failure, 3) \$15 million was also appropriated as part of the settlement but with the condition that the state would receive 50% of any proceeds from the liquidation of the thrifts' assets. The recovery of state appropriations has come in three separate phases of the liquidation and class action process. One phase of the liquidation process was the preliminary liquidation of selected assets conducted by DFCM. Another source of recovered funds for the state was the liquidations of the ILGC and the five failed thrifts. The final source of recoveries for the state is from the resolution of third party lawsuits. Further recoveries are dependent on the progress and outcome of outstanding claims. These outstanding claims have been consolidated into one claim that is currently on appeal with the Utah Supreme Court seeking reversal of the district court's dismissal of all claims.

According to summaries provided by the state Division of Finance and Grant Thornton, the state had recovered about \$14.8 million (49%) of its appropriations by October 1993. As indicated by Figure VI over \$2.8 million of the appropriation made in November 1986 were recovered through liquidations conducted by DFCM. Of the \$25 million in appropriations made in October 1988, \$10.8 million has been recovered from liquidations of the five failed thrifts and the ILGC. Another \$1.1 million has been recovered by settlements of third party suits and additional recoveries from these unsettled claims may be forthcoming.

Figure VI
Summary of State Recoveries

State Appropriations	Amount	Recovered	Percentage
November - 1986	<u>\$5,000,000</u>	<u>\$2,860,274</u>	57.21%
October - 1988	10,000,000	1,171,480	11.71
October - 1988	<u>15,000,000</u>	<u>10,794,085</u>	71.96
Sub-total	<u>25,000,000</u>	<u>11,965,565</u>	47.86
Total	<u>30,000,000</u>	<u>14,825,839</u>	49.42%

Note: Additional \$750,000 will be recovered by January 1995 from Zions Bank. State will recover 50% of \$5,713,553 (less expenses and possible taxes) when Grant Thornton is released.

The state should recover an additional appropriations within a year or two. A loan was made to Zions Bank of \$750,000 when it took over Foothill Thrift. The loan should be repaid by January 1995. In addition, as of June 30, 1993 Grant Thornton had cash on hand in the amount of \$5,713,553. The state should recover half of this amount after expenses and possible taxes are taken out. These funds will be distributed as soon as GT is released from the position and has no potential liability for lawsuits.

DFCM Recovered \$2.8 Million For State. In 1986 the Legislature appropriated \$5 million to help liquidate the failing thrifts. This was done in an effort to strengthen the financial stability of the thrifts and prevent institutional failure. Figure VII details how the appropriation was distributed and how much has been recovered.

Figure VII			
State Recoveries From Preliminary Liquidation Legislative Appropriation of \$5 Million November 1986			
Recipient of Funds	Received	Recovered as of October 1993	Percentage
Charter	\$473,532	\$331,633	70.0%
Commerce	831,944	730,724	87.8
Copper State	932,654	566,995	60.8
Foothill	750,000	0*	0
Horizon	107,000	107,000	100.0
Interlake	1,175,000	684,394	58.3
Western	564,854	274,512	48.6
Unused	165,016	165,016	100.0
Total	\$5,000,000	\$2,860,274	57.2%
<i>* Additional \$750,000 will be recovered by January 1995 from Zions Bank.</i>			

Of the initial \$5 million appropriated in 1986, approximately 57% or \$2,860,274 had been recovered as of October 1993. Part of this appropriation was used to make loans to several of the thrifts so that they could pay off some of their debt. The remainder of the appropriation was used to purchase and liquidate some of the marketable real estate from the thrifts. About \$2.9 million of the initial appropriation was used to purchase real estate which was eventually liquidated by DFCM. The total amount recovered from real estate liquidations conducted by DFCM was about \$1.7 million. An additional \$2 million of the initial funding was used to purchase loans from and make loans to the failing thrifts. Of this amount, about \$1.1 million has been recovered. In addition, there is an outstanding loan of \$750,000 that is expected to be repaid by January 1995.

State Received \$10.8 Million From ILGC And Thrift Liquidations. Another source of recovered funds was the general liquidation of the ILGC and the five failed thrifts. The state has recovered approximately \$10.8 million from these liquidations. In October 1988, the state agreed to appropriate \$15 million as part of the settlement for the thrift crisis and as a "loan" against the remaining assets of the 5 failed thrifts and the ILGC. This \$15 million appropriation was awarded on the condition that 50% of all future liquidation proceeds would go to the state until the full \$15 million was recovered. Figure VIII is a summary of the state's share of the recoveries made from the ILGC liquidation and liquidations of the five failed thrifts.

Figure VIII		
State Recoveries From Liquidations		
Description	Amount Appropriated	Recovered as of October 1993
Appropriation October - 1988	\$15,000,000	-
Liquidation proceeds - ILGC	-	\$2,040,591
Liquidation proceeds - Grant Thornton	-	3,201,834
Liquidation proceeds - Commerce	-	5,551,660
Totals	\$15,000,000	\$10,794,085
<i>Note: State recovered 72% of appropriation from liquidations.</i>		

Figure VIII shows that the state has recovered about \$10.8 million (72%) of the \$15 million "loan". Grant Thornton has an additional \$5,713,553 of recoveries from asset liquidations that have not yet been distributed. The state's share of this amount is 50% of what remains after expenses and possible taxes. This amount will be released and distributed as soon as GT is released from its position as liquidator/receiver by the court.

State Recovered \$1.2 Million From Lawsuits. The final source of recovery for the state has come from third-party lawsuits against representatives of the failed thrifts. In October 1988 the Legislature appropriated \$10 million to settle their liability with the depositors and quiet all claims against the state in the thrift failure. The Legislature agreed to pay \$10 million in cash as settlement of all claims against the state. Another condition of the settlement was that the state would be entitled to 50% of any recoveries from third-party lawsuits in which it participates until the first \$5 million is recovered, after which the state is entitled to one third of any recoveries. A summary of the recovery from third party claims is outlined in Figure IX.

Figure IX		
State Recoveries From Third Party Lawsuits		
Description	Amount Appropriated	Recovered as of October 1993
Appropriation October - 1988	\$10,000,000	-
Collections - Watkiss & Campbell	-	\$1,124,605
Collections - Moench	-	46,875
Total	<u>\$10,000,000</u>	<u>\$1,171,480</u>

Note: State recovered 11.7% of appropriation from lawsuits.

As Figure IX shows, \$1,171,480 has been recovered by the state from third party lawsuits. The state's share of the recovery from the Watkiss & Campbell settlement was about \$1,125,000. The state's share of the award from the Moench settlement was about \$47,000. There are still numerous claims outstanding against four individual owners and directors of the thrifts and against the four accounting firms that audited the thrifts. These outstanding claims were consolidated into one all encompassing claim and dismissed by Judge Young who presided over settlements in the State Third District Court. However, the granting of the motion to dismiss is currently on appeal to the Utah Supreme Court. If the outstanding claim finally does go to trial, it will most likely take several more years to resolve. Additional recoveries may be possible when this occurs.

Varying Levels Of Oversight Were Provided

We found different levels of oversight and review throughout the liquidation/recovery process conducted by Grant Thornton. We were unable to evaluate the oversight of Larry Miller's liquidation of Commerce Thrift. However, we do know that the court provided some degree of oversight for all five thrift liquidations from the time the liquidators were appointed until the distributions were complete. DFI also provided oversight and review of the thrifts (excluding Commerce) during all phases of the liquidation. In addition, there were several other organizations such as the Attorney General's Office and DOIT which provided general oversight for the liquidations. In the liquidations conducted by Grant Thornton, specific oversight was also provided with the numerous control measures that occurred during different processes and phases of the liquidation.

General Oversight Provided

The DFI regularly monitored the condition of the ILGC before it was liquidated. When it was realized that the ILGC was underfunded, the DFI took control of the organization and oversaw the operations until the liquidation was complete and the organization was closed. In addition, the DFI provided general management oversight of the thrifts and in some instances management on an interim basis until the liquidators were appointed. After the liquidators were appointed, the Commerce liquidation was managed completely by Larry Miller. However, DFI continued to review liquidation procedures of the other four thrifts on a regular basis. Additional measures of general review and oversight of the liquidation/ distribution process for

all five thrifts were provided by the courts, the Attorney General, and the state Division of Finance. For example, Judge Moffatt of the Third District Court received and approved monthly billing statements from the liquidators. The billings were detailed to show the professional fees and expenses attributed to accounting, legal, and liquidation aspects of the process. It was the judge's duty to review and approve of these billings before payment of accounting, liquidation, or legal fees could be made. In addition, the liquidators sent quarterly reports to the judge summarizing all significant liquidation transactions that occurred during the quarter. The Attorney General and DFI also received and reviewed monthly billing statements from Grant Thornton which showed detailed legal, accounting, and liquidation fees. They also received the quarterly reports of the liquidation proceedings for their review. These statements and reports were reviewed regularly to maintain consistency and avoid problems with the liquidation process.

Various Controls Were In Place

We did not investigate the control measures used for the liquidation of Commerce Thrift. However, we found numerous controls in place during all phases of the liquidations conducted by Grant Thornton and DFCM. One control measure used was the acceptance of bid proposals for the listing and selling of real property. At the start of the liquidation process, DFCM reviewed a number of proposals from professional realtors and selected Mansell and Associates to list and sell the properties. Another control measure used by DFCM was to require that all offers be presented to the property manager, and assistant director of administration and finance at DFCM for approval before any sale was final.

Other measures of oversight were provided for each step of the liquidation process. For example, during GT's liquidation of the four thrifts, the majority of staff assigned to work on the liquidation were key employees from the thrifts who were retained by GT to prepare summary information and briefs on each of the properties liquidated. The key employees also prepared summary information and briefs on each loan so the liquidation director would have current information on each item to be liquidated. When GT was appointed liquidator, they found the bookkeeping and accounting systems of the four institutions were not in a useable format for liquidation purposes. GT took inventories of each thrift and modified the bookkeeping so it would be in a useable format in order to begin liquidation. GT hired a controller to review accounting and bookkeeping during the liquidation process. The operations managers reviewed offers on properties as they were liquidated. They also reviewed the paperwork on loans as they were refinanced, collected, sold or written off.

Although the liquidation director and his supervisor at GT made the final decision, there were several controls and inputs built into the liquidation decisions. Attorneys were at times involved to represent the sellers and purchasers of assets. Attorneys also reviewed legal documents as necessary for asset liquidations and loan renegotiations in order to protect the thrifts' interest. By doing so, they provided an additional measure of control and security for the liquidators. A representative from the AG's office was occasionally consulted during the liquidation process to review documents and protect the states interest.

The liquidation directors at Grant Thornton frequently consulted with realtors and appraisers to evaluate properties before they were sold. In addition, GT hired consultants and specialists to

Representative David Ure
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conduct the liquidation of other assets such as heavy equipment, office equipment, furniture, and supplies. For example, one thrift owned titles to heavy equipment and specialized vehicles. Grant Thornton hired an expert to evaluate these types of vehicles. Some assets such as desks, chairs, and furniture were liquidated through auctions conducted by professional auctioneers. A number of real properties were also auctioned. Generally, auctions were used when other conventional methods of sale were not successful. In every phase of the liquidation, professionals were consulted and employed so the liquidations would be fair and reasonable prices would be recovered.

We hope this letter has addressed your concerns and questions about the thrift liquidations. A response letter from the DOIT organization is attached. Other concerned organizations have reviewed this report and have chosen not to write a response, although they essentially agree with the contents. If you have any other questions or feel the need for further audit work, please feel free to contact us.

Sincerely,

Wayne L. Welsh
Auditor General

WLW:PAH/lm

Figure I**Summary of Cash Flows as of June 30, 1993
Amounts Noted in Thousands**

	Cash Inflows			Cash Outflows					
	Thrifs	State	Totals	Depositor's Share	State's Share	Superior Claims	Costs	Amounts on Hand	Total
Liquidation									
Pre-Liquidator	\$16,755	-	\$16,755	\$16,755	-	-	-	-	\$16,755
Grant Thornton	47,610	-	47,610	24,396	3,202	1,562	12,736	5,714 ³	47,610
Larry Miller	14,381	-	14,381	7,452	5,552	-	1,377 ²	-	14,381
ILGC	-	4,580	4,580	2,041	2,041	-	498	-	4,580
Sub-total	<u>78,746</u>	<u>4,580</u>	<u>83,326</u>	<u>50,644</u>	<u>10,795</u>	<u>1,562</u>	<u>14,611</u>	<u>5,714</u>	<u>83,326</u>
Settlement									
State	43,986 ¹	-	43,986	36,456	-	-	7,530	-	43,986
Watkiss & Campbell	1,750	1,750	3,500	1,017	1,125	-	1,358	-	3,500
Moench	63	62	125	47	47	-	31	-	125
Sub-total	<u>45,799</u>	<u>1,812</u>	<u>47,611</u>	<u>37,520</u>	<u>1,172</u>	<u>0</u>	<u>8,919</u>	<u>0</u>	<u>47,611</u>
Total	<u>\$124,545</u>	<u>\$6,392</u>	<u>\$130,937</u>	<u>\$88,164</u>	<u>\$11,967</u>	<u>\$1,562</u>	<u>\$23,530</u>	<u>\$5,714</u>	<u>\$130,937</u>

¹ \$15 million of the settlement amount was a loan from the state to be paid back from collections of liquidation proceeds.

² According to counsel, liquidation costs for Larry Miller include an undetermined amount of superior claims.

³ Grant Thornton has retained \$5.7 million of total recoveries which will be distributed upon their release.