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TITLE NEWS

Official Publication

THE AMERICAN TITLE ASSOCIATION

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THE AMERICAN TITLE ASSOCIATION

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Proceedings of the Forty-first Annual Convention

(in part)

of the

AMERICAN TITLE ASSOCIATION

Kansas City, Missouri, October 13-16, 1947

Abstracters Section

A PANEL DISCUSSION

TITLE INSURANCE AND THE ABSTRACTER

MEMBERS OF THE PANEL:

James S. Johns, President, Oregon Title Insurance Company, Pendleton, Oregon.

A. B. Wetherington, Secretary, Title & Trust Company of Florida, Jacksonville, Florida.

E. J. Eisenman, President, Kansas City Title Insurance Company, Kansas City, Missouri.

Frank I. Kennedy, President, Abstract & Title Guaranty Company, Detroit, Michigan.

Moderator: A. W. Suelzer, President, Kuhne & Company, Inc., Fort Wayne, Indiana.

CHAIRMAN GLASSON: I will not go into too much detail about the idea we have in presenting this panel to you, because I think it is quite obvious to you. Suffice it for me to say these gentlemen have kindly consented to come here and give us an hour or more of their time to explain to us some of the things with reference to title insurance, which, I know, you will want to know. After all, as abstracters we are the basis of the title business and it is up to us to know as much about every phase of our business as we possibly can.

The Moderator of this panel will be our good friend, Al Suelzer, President Kuhne & Company, Inc., Fort Wayne, Ind., one of those good work horses, who, whenever you give him a job, does it graciously and well.

INTRODUCTION

MR. SUELZER: There is evidence of an increasing interest in title insurance on the part of the forward looking abstracters in this Section. Some time is being devoted to it at almost every State Meeting. There is also evidence of a growing demand for title insurance among mortgage lenders and others who formerly used abstracts.

Therefore, your Section Chairman and those who collaborated with him in the preparation of the Program planned the unusual,—a panel for the discussion of title inurance in the Abstracters' Section.

Purpose

The purpose of this panel is to inform and instruct the Abstracter, to help him in connection with his future plans for his business, and in that latter respect to give him practical and constructive data on which he can base a conclusion as to whether he should in some way consider title insurance in his future or whether he may safely ignore it and continue as now.

The 'Abstract and Attorney System' has done a good job safeguarding titles for well over a hundred years and is still doing a good job safeguarding titles in by far the greater number of Counties in the nation. Where the System has not been replaced in whole or in part by title insurance it has not been changed since its beginnings. It is now sometimes questioned whether the System is out of step with the greatly accelerated tempo of our economic times. That question is highlighted by the fact that during the war years there was an outcry against it because abstracters quite generally were behind in their production.

All members of this panel at one time issued only abstracts. Even today,—although organized for title insurance,—they still make abstracts,—just as you and I do,—for those who want them. They know both sides of the question and are, therefore, well qualified to discuss them for your benefit.

This is a broad subject. We cannot do more than scratch the surface in the time allotted. The plan is to let each member of the panel develop as briefly as possible one phase of the subject. After that you may direct questions to any member. And we hope you will ask many questions.

Here to Learn

One more notation to avoid any possible misunderstanding. In analyzing and discussing the underlying issues we must point out what appear to be inherent weaknesses in the Abstract and Attorney System. We must also let Title Insurance present its claim to have substantially eliminated most of these weaknesses. But please understand that it is not our purpose to tear down the one and support the other. This panel is not here to plug for title insurance. We shall try to give you the facts and let you draw your own conclusions.

That brings up the first question, and that is what can be said against the abstract and attorney system, which brings us first to a consideration of the abstract. There I will ask Mr. Edward J. Eisenman, President of the Kansas City Title Insurance Company, to give us his opinion as to what is wrong with the abstract. Let us bear in mind that Mr. Eisenman still makes abstracts.

EDWARD J. EISENMAN

MR. EISENMAN (President, Kansas City Title Insurance Co., Kansas City, Mo.): Mr. Moderator, ladies and gentlemen: I do not know why Mr. Suelzer assigned this particular phase of the question to me, but I presume it is because I started out in the abstract business a little over forty-three years ago, and for a period of about twelve years we never knew anything about title insurance in Kansas City.

It is true there was one company which undertook to organize, did organize, and actually wrote a little title insurance prior to 1915, when the Kansas City Title Insurance Company was organized. Prior to that time there had been some certificates as to record title or guarantees as to record title issued by not only our company but the other four abstract companies which were then in business in Kansas City.

Of course that Guarantee Certificate made by an abstract company was nothing more nor less than the opinion of their examining attorneys guaranteed by the company to be correct insofar as the record title was concerned. It did not furnish the protections purchaser and lender of money on real estate wanted to get.

Growth

In the past thirty-two years we have had a very great development of title insurance in Kansas City; during which time, especially for the last twenty-five or twenty-six of it, my time has been almost wholly devoted to the business of title inurance. As Al says, our company has and still does make many abstracts. It was several years, in fact, many years after 1915 before the volume of title insurance business exceeded that of the abstract department. It passed it and it has remained ahead of it continuously for many years. But there still exists the fact that the use of those methods of handling titles which are objectionable from the fact that they are cumbersome, they are delaying, they are duplications—that is really the main objection to the abstract and attorney system. There is so much duplication and work done over again each time a transfer or mortgage is made.

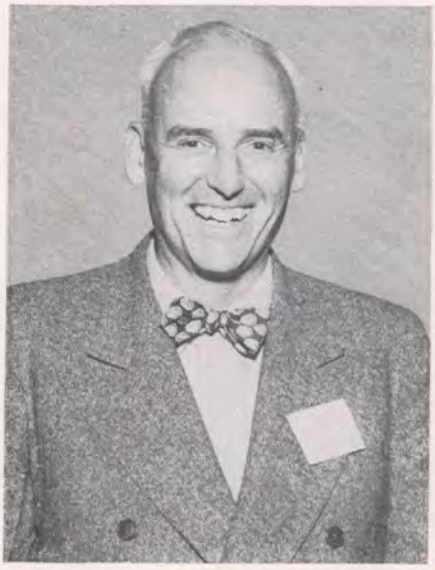
It is for that reason, I guess, that Al assigned me the ubject of trying to point out what can be said against the abstract and attorney system. I have had plenty of experience with both. In the first place the abstract reflects the individual abstracter's idea of what portions of the recorded instrument should be shown for the examination of the attorney who will follow him in examining the title. Naturally, that copy made by the abstracter is a copy of a copy itself. The record is a copy of the original. The transcribing is subject to error on the part of the recorder and his comparer, the abstracter, his typist, and the compiler who compares and finishes the job.

It takes much more time to make an abstract than it does to list those instruments and have them examined by a title examiner.

As I said before, the use of the abstract and attorney system necessitates a duplication of work every time a transfer is made. The second attorney will never depend upon the opinion of the first; he is going to be responsible for his own opinion so he goes back and re-examines everything the other fellow has done, using time and costing money that can be saved.

Short Term Abstracts

There has grown up in some isolated localities—fortunately from my own standpoint not here — a practice of having what are called "short term abstracts" made. In many cases the abstracts begin with the platting of a certain addition, which consists of an eighty, one hundred forty, or one hundred sixty acres, which has a common title down to its subdividing. In some localities the attorneys will, by agreement among themselves, take for granted, (after it has been examined, of course,) the fact that that title is good down to the plat, that there isn't any objection to it, no incumbrances, no restrictions, nothing to cause any trouble; consequently they will be satisfied with short term abstracts. The result is that the purchaser who gets such a short term abstract from his seller at a later date goes to make a loan from a representative of a foreign or out of the state, or, at least, out of the locality, insurance company or the lender, and he is required to furnish the front end of that abstract then at his expense, necessitating another delay and another expense. Those matters are all eliminated by the use of title insurance.



J. S. JOHNS

If the making of abstracts or rather the cost of making abstracts, is generally inequitable, then it comes to a comparison with title insurance. An abstract costs so much per page or per entry, or whatever the basis of charge is, and ofttimes—I know it is true here and many other localities, and I suspect it is true everywhere— the cost of making the abstract is worth as much as the property is worth. Nine times out of ten the abstracter feels sorry for the fellow with the cheap piece of property, which is worth about two hundred fifty dollars, and he makes the abstract for seventy-five dollars so the fellow makes a few cents out of the sale price. That means the purchaser for the cheap property has to pay the attorney's fees for examination,—another expense,—whereby the title insurance is determined by the value of the property and not by the size of the abstract that has to be compiled or the size of the abstract that has to be examined.

Limitation of Service

Another thing I have always deplored in abstracter's business—(we have tried to handle it here, and we have very largely succeeded in our local practice)—and that is the various devices, and I might even say subterfuges, with respect to the language used in certificates whereby abstracters attempt to eliminate certain matters to which they do not certify, dodging liability on matters to which they should certify. It has always been my conception of an abstracter's business, and, as I say, we have practically done it here in Kansas City, that when an abstracter undertakes to hand a seller an abstract to be delivered over to a purchaser for examination to determine the condition of the title his certificate ought to cover all the county records; he should accept nothing. If he does not have any Federal judgment records in his county, his service to the community ought to be to procure that certificate and charge his customer for it, not on request but as a general practice, so the man who does not know will get the same service as the one who does know.

Speed With Safety

Mr. Suelzer mentioned one matter here that during the war years the fact was really demonstrated to pretty nearly everyone's satisfaction, that the making of abstracts was a little too slow for quick operation, and particularly is that true in large assembly jobs. We had a number of them here locally. Of course there we used our own records, made no abstracts, completed the examinations in short order and got these government jobs done in record time; the seller got his money, the government got possession, the war plant was built, and the war was won.

The Abstract Is Needed

In order to write insurance on properties outside of this Kansas City area, where we have our plant locally, it is one hundred per cent essential and necessary that we have the services of the local abstracter and his plant, the local abstracter upon whom we must rely for the title evidence upon which those certificates are issued after the title evidence has been examined by the attorneys even in our own office or

approved attorneys in the locality, which is our usual custom on matters removed from Kansas City. We have in many of those cases in the war title work had to eliminate the abstract per se for the simple reason that they could not be made within the time allowed. That does not mean that the abstracter was eliminated. He was more in the picture than ever, because he, instead of compiling the abstract for us, had to make the change chain of title certify that the chain showed a correct list of all the instruments his plant showed affected the title of that property on file in the county. Instead of typing those, comparing, certifying, which took a lot of time before they could get in the examiner's hands, the examiner merely took that, went to the courthouse and pulled the records. The job was done faster, the abstracter got just as much money, and he was saved a lot of extra work.

No Uniformity

There isn't uniformity in abstracts. Our greatest complaints have been made by customers to whom we have furnished title insurance policies. It is brought about thru abstracts from in certain localities, which force us to make certain exceptions in the title policy, because the abstract does not contain material which would permit us to waive objections. Since we have gone into the national title insurance business we have had that brought very forcefully home to us. We get abstracts sent into our home office from many places now. It is so apparent that there is no uniformity that it really makes it confusing in the matter of examinations.

The result after consideration of the whole picture is that it would appear other methods can and will be adopted, which will make for more speed and less expense—and still make more money for the abstracter.

I thank you.

MODERATOR SUELZER: We are still trying to find the faults with the abstract and attorney system. Mr. Eisenman has briefly considered the things which could be said against the abstract. We shall now find out about the attorney in the abstract and attorney system. In what way does he not qualify as fully as he might, and on that subject Frank I. Kennedy, President of the Abstract and Title Guaranty Company of Detroit, Michigan, will speak to us. Mr. Kennedy.

FRANK I. KENNEDY

MR. KENNEDY: It is a little difficult to talk regarding the limitations of the attorney in the abstract and attorney system, because most of the title insurance people or most of the title insurance companies, at least, are run by attorneys. I am an attorney myself. We use attorneys in the title insurance business, naturally. So what I have to say is not a disparagement of the attorney; it is a criticism or discussion of the limitations which are imposed upon the attorney under the abstract and attorney system.

Knowledge of the Law

All attorneys, of course, hold themselves out as being learned in the law; they purport to be learned in the law: but not all attorneys are equally learned in all phases of the law. The law is a very broad field. The man who may specialize in patent law may not know very much about real estate, corporation law, and so on. People are apt to take an abstract, of course, to be examined by their own attorney or the man recommended to them regardless of what his specialty may be or his peculiarities of practice may be.

When the attorney gives the opinion, even though he is a man learned in the law, he is human, after all, and to err is human, and he just may go wrong in his opinion. Real estate law is a very difficult field; it is a technical field. While many titles are very easily read, you get many titles which include various phases of corporate law, organizations, and reorganizations in bankruptcy and divorce court procedure, and many other matters, on all of which the attorney must be competent to pass, and many of which contain voluminous files or pleadings or records, and, if the attorney happens to skim over some of these things, he may make a mistake. Usually, of course, he does not, but he can.

Opinions Differ

Future examiners, whether he has made a mistake or not, may take a different view of some things. What appears rather unimportant to one man, something to which he can take no serious exception and which he will waive, may appear very much more important to the next man who follows him. Sometimes the difference in age and experience may account for such things.

Most of all, the opinion of the attorney is based and it is restricted to the record title which is presented to him by the abstracter, and, therefore, the attorney's opinion, although it be a most learned opinion and a most correct opinion, cannot insure or cover against many matters which the abstract does not purport to cover,—matters of fraud, misrepresentation, mistake in parties.

The other day we had in our office records coming from two counties regarding two ladies, each of whom bore the name "Lydia M. Mack." It appeared at first that the Lydia M. Mack who did not own the land in question was the owner. We were fortunate enough to discover it and straighten it out.

Duress, Coercion, Restraint

Matters of duress or coersion, restraint, wills that are discovered at a later date, unknown or undisclosed errors, false affidavits, forgeries; there are probably more losses incurred by matters which are not disclosed in an abstract than by matters which are disclosed in an abstract.

There are no uniform rules for approval of title. I have seen local Bar Association rules or guides for examination of title. I have also found that in the past some of the finest lawyers whom I have met have come from rural areas, but I also find that they may have passed matters on an abstract that we couldn't examine and pass safely in our city because the rural lawyer perhaps knows more about families and pedigree and local situations than we know. When we get that abstract removed a few hundred miles from its home city it just isn't sufficient for our attorneys to pass something, although the local attorneys may pass it. One examiner is liberal and the next is technical.

Approval of title by one examiner does not mean that the next man who examines it, who may be equally outstanding in the practice of law, will not turn it down. Of course there is the tendency of a few to raise objections so the clients will believe that they have earned their fee. There is the tendency of some to raise an objection which they feel in their own minds perhaps could well be waived as unimportant or cured by some statute or repose, but they hesitate to waive that objection because of their fear of what the next lawyer may do who examines that title.

As an illustration of that I may tell you about a very learned professor in my own state, (and he is a learned man,) who sponsored a certain limitation statute because he told of his experience in examining an abstract brought to him by one of his own servant girls, in connection with which he raised five pages of trivia, minutia, in his opinion because he was afraid to waive them for fear some one else wouldn't be that liberal. Of course I do not agree with the gentleman. I feel that if he felt those matters were not material he should have waived them, but he didn't, and that is the difficulty into which you run. I don't know whether the girl finally got some title insurance on the deal or not.

Technicalities

Technical examinations may delay deals and add expense because of the corrections necessary to be made. The same title, of course, bearing out what I have said, is examined over and over again. If it changes five times a year, it is examined from the government down to date five times that year, perhaps by five different attorneys, any one of whom may seize upon something that the other four have passed over. In addition to which, of course, the law does not give you very adequate protection against any of these matters. The law probably compels a client to assume the risk of his examiner's lack of knowledge or skill. By the time he comes to complain of the examiner's failure to protect him properly the examiner may be dead, he might be financially impecunious or unable to respond.

It might take a lawsuit to establish his liability. When you have gotten your judgment you may not be able to collect on your execution.

The Human Element

The attorney's method of dealing in a more or less leisurely way, when he can do it, is almost perverbial with us all, and most of us would like to put off until tomorrow what we do not have to do today. So probably you can say you do not generally get the same expeditious service upon the examination of an abstract by an attorney that you do get when you buy a title insurance policy. The job is suspended while the examiner is ill or while he is in court, while he is away on a vacation, while some other more important matter is in the office, and you run the risk of having your deal delayed a long time. During that time something may happen to the seller or something may happen to the purchaser and the deal may have to be abandoned or put off indefinitely.

Someone may say, "Don't attorneys examine for the title companies," and I will say, "Yes, they do." We have a lot of attorneys. So far as the delay goes, we do not suffer because one of them is away.

MODERATOR SUELZER: After all of that disparagement and fault finding, I think we should find out just how good a case title insurance can make for itself as not having all these defects, and under this title, "Title Insurance Claims to Eliminate Substantially all These Weaknesses in the Abstract and Attorney System," we are really going to put Mr. Wetherington up against it to prove that. Mr. A. B. Wetherington is Secretary of the Title & Trust Company of Florida, at Jacksonville, Florida.

A. B. WETHERINGTON

Mr. Chairman, Ladies and Gentlemen of the Abstracters' Section of The American Title Association:

It is indeed a privilege and pleasure to appear before this section of The American Title Association.

Although the company that I represent is at the present time primarily a title insurance company, we were originally solely an abstract company —that is, making and selling abstracts of title exclusively. We first begun writing title insurance in the year 1922. Still continuing to make and sell abstracts; the dollar volume in our home office showed abstracts to exceed title insurance each year until 1931. In this particular year our dollar volume for title insurance equalled the dollar volume for abstracts and, since 1931, every year has shown the dollar volume for title insurance to increase over abstracts, and at the present time our gross income from the sale of evidence of title is 99 per cent title insurance and 1 per cent abstracts.

No Elimination of Abstract

I want to say right now that title insurance has not and can not eliminate abstracting. The chain of title must be compiled for title insurance in the same chronological order, as must of necessity be done in an abstract. The same factual data is assembled where title insurance is to form the evidence of title as in the case of an abstract. We do eliminate typing the chain of title and there are many, many items that would necessarily have to be typed in an abstract which are eliminated in the title insurance chain, particularly mortgages that have been outlawed, expired leases, and judgements which by the statute of limitations are no longer liens, basic titles which we have heretofore examined and approved, and many other things which we know by prior examination to be no longer necessary to be considered in passing on the sufficiency or validity of the title.

In a number of abstract plants it is true that the system of the plant will not permit examinations being made

A. B. WETHERINGTON

from the take-offs. Some abstract companies make merely a skeleton take-off; others bind their take-offs in books; and in this type of plant there will be considerably more time necessary to compile and arrange the chain of title so that it may be examined.

Short Cuts

There are many short-cuts that can be made with perfect safety in this type of abstract plant. One abstracter that I know has his take-offs in bound books (his reason, "that he was afraid the loose-leaf slips or take-offs would get lost," although he maintained tract book postings). He made arrangements with his examining attorneys to list all the instruments on a sheet certified to by the abstracter, and then assemble the bound books, the examiner to make his examination from such books, thereby eliminating the expense of typing the items.

In another locality the abstracter compiles what is known as a chain search. It is not as complete as an abstract, but has sufficient data for the examining attorney to pass on the title. Even in these localities considerable time is saved by eliminating the necessity of typing the complete abstract take-off. For example, in foreclosure proceedings or other suits affecting the title, the file or jacket is obtained from the court house and the examination of that particular litigation is made from the original file. My experience in our state has been that the average number of items to be abstracted in most judicial proceedings will average ten items and very often some of the items will consist of several pages. Another time-saving element is by examining the original probate files in connection with probate estates.

I will venture to say that no matter what form of take-off or posting you have been and are now using that you could save a very considerable time and expense by a careful study of how you could arrange the abstract chain sufficient for it to be examined and the examiner render a safe, sound opinion on the title. It may take a little time to educate your examiners on short cuts, and I mean *safe* short cuts. However, I am told that some people said an automobile could not run without a horse to pull it, but it has developed that it needed horsepower to push it.

Saving Space

Another very important point in the use of abstracts is the tremendous file space required in order to keep the copies. I know some abstract companies today that, rather than keep a copy of the abstract which requires such a huge amount of storage space, are micro-filming the original abstract before delivery and retaining the film for their protection in the future.

Just as title insurance does not eliminate the practice of abstracting or the abstracter, neither does it eliminate the examining attorney. Title insurance companies operate and issue their policies only when the title has been examined and approved by an experienced title attorney. Sometimes these attorneys are in the title insurance company's office. In some states, and particularly our own state, the examination is made by approved attorneys or by our own general counsel, and in either case the attorney is compensated by a certain percentage of the fee charged by the title insurance company. Naturally, only such attorneys as have made a practice of land title examination are approved.

Attorney Preference

From the attorney's standpoint in most localities, the attorneys prefer to examine a chain of title compiled for title insurance purposes rather than a chain of title compiled in abstract form. And in addition title insurance affords the attorney protection that he does not have when he renders an opinion based on an abstract to a purchaser or a mortgagee of a parcel of real prop-

erty. I have maintained for many years that any time an attorney renders an opinion on an abstract to a client he risks his professional reputation and his personal fortune on his opinion of that title, which I maintain is too much risk and responsibility for the compensation received.

On the contrary a title insurance company only expects him to render it, his honest and careful opinion on the sufficiency of the title, and if later his opinion is wrong the title insurance company pays the loss and does not expect the attorney to contribute anything other than possibly his professional assistance, and then only by mutual agreement; and certainly never to pay the amount of the claim, unless it of course be from his own negligence in overlooking a lien or something of like character that was pointed out to him in the chain of title on which he ren-

Higher Ratio of Fee to Risk

Title insurance also is one answer to the age-old complaint of abstracters: of the same per item and certificate charge on a $100.00 parcel of land as on a million-dollar parcel. Abstracts have always been and very probably will ever be charged for on a time and work element—on a figure compiled by the number of hours each person employed in compiling the abstract, maintaining the plant, typing the assembled data, keeping the books, making the collections, etc., including a reasonable profit, without a great deal of regard to making the charge sufficient to set aside an amount to take care of a claim 5 or 10 years hence. On the other hand, title insurance rates are figured on a certain basic cost figure for the work involved, plus a premium for the risk assumed, based on the value of the property insured.

As I said earlier in my remarks, title insurance is not and does not purport to be a substitute for abstracts and the business of abstracting, but does supplement and augment the abstract.

Trend

The trend is very definitely to title insurance as the finished evidence of title. It appeals to:

"Realtors" for fast-closing transactions, avoiding fanciful objections of a buyer when he would like to back out of a deal.

Clearing technical objections raised by an attorney who is most afraid of what the next attorney examining the title might think about a certain question.

"Mortgagees." It eliminates the storing of abstracts in their loan portfolios, and the subsequent lending, shipping, receipting, etc. (I am informed by one insurance company that filing space has been reduced for them by over 95 per cent.)

"Sellers." Reduces sales resistance—the words "guarantee" and "insurance" mean a lot to the American people.

"Purchasers." Security in the knowledge that they are protected on their investment by insurance not only on the amount of their investment but in any expense that may be necessary to protect it.

"Abstracters." By being able to turn out a larger volume of evidence of title; by not selling that portion of their abstract plant, for every title examiner from then on to pick flaws in. Remember, in title insurance you do not show why, you only protect against loss or damage.

MODERATOR SUELZER: We have next on this subject "What Should the Abstracter Do About Title Insurance" by Jim Johns, President of the Oregon Title Insurance Company, of Pendleton, and Chairman of the Board of the Idaho Insurance Company.

JAMES S. JOHNS

MR. JOHNS: Ladies and gentlemen, those of you who were in the abstract business twenty-five years ago know that my company was the Hartman Abstract Company, or you may have forgotten it, but for sentimental reasons we are still keeping it.

You have heard five scholarly speeches. We were each to take five minutes; I see we have taken an hour.

I may have been the last to convert to title insurance, but Mr. Suelzer says that we are all making abstracts. We had a fifty per cent increase in the number of abstracts we extended in 1946 over 1945; we extended two abstracts in 1945 and three in 1946. We haven't extended any in 1947. We haven't made a new abstract for ten or fifteen years.

Whether you like it or not you are going to have to learn about title insurance.

You had better study title insurance. You had better get from title insurance companies, several of them if you want to, their policy forms, the terms of their contracts, their rates, everything that you can find out about title insurance.

About twenty-five or thirty years ago I was disturbed because we weren't making any new abstracts. We were getting a few dollars for extensions. I went to an American Title Association meeting and talked to Fred Chilcott, now deceased. Fred is the man who put California on a title insurance basis. I had a foolscap sheet of paper with a number of questions on it, and I started to ask this great man what to do about title insurance. He read it over carefully. On it were such as this: "Should we take an agency contract with an established company?", "Should we start our own company?", "Should several abstracters go in together and one of us look after the business?", "What would the attorneys think?". He says, "None of those things make any difference; get in the title insurance business as soon as you can get home, on any basis. Make mistakes, but go ahead and get into the business. Use your best judgment but start; don't wait for the demand to force you to go into the business, but create the demand."

California

Chilcott and Donzel Stoney, of San Francisco, would go into a county in northern California and they would enter into a contract with the competing abstracters, one company with one abstracter and another company with the other. After they had educated the abstracter to making title insurance, and, by the way, making money, they would go into that office and they would stay a week. If people came in to have an abstract extended and it was the company Chilcott was in, he would say, "We are not extending abstracts any more." And if it was in the company that Stoney was in, he would say, "We are not extending abstracts any more." The sales talk would be on its way.

Other speakers have pointed out that you can give better service, you can give quicker service, faster service. You can give a great deal better product with title insurance than you can with abstracting. We are on this basis—any order that we have at eight o'clock this morning we get a preliminary report out this afternoon unless it is a tremendously long, new examination.

Just Do It

How are you going to go into the business? What are you going to do? Get into the business any way you want to, but get into it. After we got into the business I wondered how we were going to sell title insurance. They said theoretically it speeds up closing. I sold a realtor, a real estate dealer, on the use of title insurance. That is the first policy I sold. I also had him put the deal in escrow, and it was the first escrow I ever handled. I had him bring the man in who was buying the property, and he left the money with me to pay for it. I told him to go out and get the seller and have him come in and we would have the deal ready to close. By the time he had the man in we had the title examined and closed the deal that afternoon. The first thing we did was to pay that real estate dealer his two hundred dollar commission. We paid it to him at two o'clock that afternoon. We closed the rest of the deal that afternoon, too. Do you suppose that fellow would ever use abstracts again?

The Real Estate Man

Another thing it does, the real estate dealer knows that we don't pay his commission, but he gets our check for it through us and he kind of half thinks that we made the sale for him. Anyway, we helped close it quickly. So deal with your realtors.

You can sell your mortgage companies on the use of title insurance. They want to get their business closed quickly and they want complete protection, which they get from title insurance.

I was in Boise the other day. I stopped there on my way here. The Pacific Northwest manager, who is manager of one of the largest title companies, asked me if I would as a

favor write a half million dollar policy in a county in northern Idaho in which we are not yet writing title insurance. I told him yes, as a favor to him, I would do it.

The banks now make many loans. Sell your service to the banks. Line up your savings and loan associations.

The thinking attorneys in the community will come to it. The thinking attorneys do not like to stick their necks out on a half million dollars worth of property for the small examination fee they will get.

Advertising

Use judicious advertising. Oregon on July 5 got the doggonedest community property law you ever saw. We ran big ads in seven papers, I think, calling attention to the community property law and urging them to consult their attorneys about it before they signed any deed, signed or accepted any deed or mortgage, or any other piece of property or any other remunerative title affecting property. The lawyers liked it.

With title insurance, suppose there is a flaw in the title that is twenty years old and you have to have a suit to quiet it, although you know there will be no defense. Let the people close their deal and you hold the money in escrow. We hold twice the amount of the estimated costs and attorneys' fees. The attorney can bring the suit at his convenience, and bye and bye, or when he is finished, we pay him.

It takes money. It takes money to do what we did. It takes money to put over title insurance. Don't go at it in a namby-pamby manner if you are going into it; go into it enthusiastically and do it. You will find that you have to have some reserves.

Some of you, I am sure, read that article in the Saturday Evening Post about the Red Baron of Arizona, which depended on a great many forgeries of title. Nobody has been in the title insurance business for a long time but what he has had a forgery. Read it if you want to see what can happen to a title.

You have to build up reserves if you are in the title insurance business. If you are in the abstract business and aren't building up reserves, you are taking money under false pretenses, because you have additional liability every day on your abstracts. You will say, "but I am very fortunate, I have never had a loss." Yes, if it is just a matter of luck, you are kind of taking advantage of your clients.

MODERATOR SUELZER: We have two small phases to develop on the way to go into this thing; then we will have questions that will reduce all of this down to some of your very practical problems.

I would like to ask Mr. Kennedy, just briefly, to explain to us what types of policies there are, how long they last, how much they cost, and just what the machinery is of turning out title insurance.

MR. KENNEDY: This isn't very learned, as Jim said, ladies and gentlemen, but it is a little dry and dusty, I am afraid, after that very interesting talk of Jim Johns. His talks, of course, are always interesting.

Types of Policy

There are two principal kinds of policies. One is the owner's policy, which sets up the condition of the title and insures that under it the owner has a good title. In my community we guarantee a marketable title, which is better than just a good title, because it is the kind of a title that you can make an unwilling purchaser accept; that it is free of such possibilities or probability of litigation or loss that you can compel this unwilling purchaser to take it.

Mortgagee Form

There are mortgage policies which insure the status and the validity of the lien and mortgage. The mortgagee policy is very much in demand at this time, and, generally speaking, so long as money is being lent there is a good flow of business on the mortgagee policy.

EDWARD J. EISENMAN

Owner's Form

The owner's policy lasts forever. It insures the owner, his heirs, and personal representatives that the owner or owners have title. It sets up the conditions under which title is held, shows how it is vested, and shows what matters there are which are liens or clouds upon that title. That policy is sold for a single premium and it lasts forever. There is no statute of limitations which outlaws the running of the policy.

The mortgagee policy, of course, ceases to exist when the mortgage is paid off. The mortgagee has gotten his money and his interest in the land is terminated by his discharge. If the mortgage has to be foreclosed because of nonperformance, nonpayment, by the mortgagor, then the mortgagee policy becomes an owner's policy, speaking as of the date in which it was written. If the mortgagee wants to be brought up to date or if he sells that land, the new purchaser will want that policy written as of the date of the new transaction.

Generally speaking, the owner's policy, which, as I say, is sold for a single fee, although it runs for life, the owner's policy is a little more expensive than the mortgagee policy, because it is contemplated that some mortgagors will pay their debts and the mortgagee's policy will then cease to exist. That situation does vary, of course, with the rates prevalent in different communities, and they are quite different in various communities. There are valid reasons why they should be different in different communities.

Procedure

In its simplest form the routine for obtaining a title policy is very much like this, although you will find some differences in the company of every one of these people seated up here, no doubt: An order is taken by the insurance company on an appropriate blank which calls for certain information. On our blank we do ask the applicant to tell us if he knows of any objections or defects of title which are not of record. If he happens to know that there is a fraud case coming up next week based upon some deed or that some deed is claimed to be a forgery, we like for him to tell us about it. From the tract books we learn if the company ever issued a policy before on this title. That is where we differ from the abstract system. Then the new instruments which have been recorded since the date of that last policy are noted on this minute sheet. The tax and special assessment search is made on a tax blank. The file of the last policy is pulled to be used by the examiner for reference because he starts his examination where the last examination left off. The new instruments which were recorded since the last policy are pulled, and the file on the last policy, the new instruments which are recorded since and the tax search, any supplemental matters such as new lawsuits, probate proceedings, are presented to the examiner. The examiner then starts his examination, as I said, where the last examination left off, when the last policy was issued, continues his examination down to date, and that is the reason why Mr. Johns can issue you a binder in the afternoon if you bring him an order in the morning.

I say a binder. In my town we call them commitments. It means the same thing. It is simply this: If you are going to buy a piece of land and you want to be insured that you are the owner, or if you are the banker and want to be insured that you are the mortgagee, you can't buy a policy that is going to insure you of that until the fact has occurred, so you get the binder or the commitment which recites the title insurance company's findings regarding the title as of the time it examined them and its requirements for additional instruments or acts to be

done as a condition precedent to its policy. The binder may say, in substance, that title is in Johns. If it is to insure a mortgage running to Eisenman, it will require, for instance, a deed from Johns to Al Wetherington, and so on. When those requirements have been complied with and the necessary papers recorded, the title company, if there has been no other change in title, will then, following out its commitment, issue the policy that insures Mr. Eisenman that he is the mortgagee under a valid first mortgage, describing the mortgage. That, in substance, is the procedure.

Sometimes the requirements are a little difficult to comply with, if you need deeds from some party who can't be located and soon, but that is one of the things you run up against in any kind of title evidence. Those cases are the exception rather than the rule.

MODERATOR SUELZER: At this stage the program contemplated an explanation of title insurance on an agency basis; but, as you have suspected, we are already way behind the clock. Mr. Eisenman was going to develop that subject, and he is twenty minutes late on another program. You will recall I sent out a plea for questions, and I received a great many questions and a great many excellent questions. I will pick out one of these questions and let Mr. Eisenman answer it before he hurries upstairs. This is a rather difficult question, and he hasn't seen it until this minute.

The question is, "To what fee, if any, is the abstracter entitled as the issuing agent of a title insurance policy, having in mind the preparation of all the forms required by the title insurance company?"

In other words, the abstracter issuing title insurance on an agency basis, what is a fair fee for him, not for the abstract work he does, but for the work he does in connection with the title insurance policy?

Title Insurance Agency

MR. EISENMAN: Mr. Moderator, I think Al must have had that question in hand at the time when he prepared a little list of matters respecting almost exclusively the matter of agency title insurance companies or title insurance agents for companies. Consequently, in the discussion of this little group of questions here, that question he just asked will be answered.

I am not wholly familiar with the practices and methods of operation of all of the title insurance companies which do business on an agency basis. I am, of course, very familiar with our own, and, of course, somewhat with a few of the other companies' methods.

Our own method is this: The abstracter who becomes an issuing agent for our company becomes virtually the Kansas City Title Insurance Company in the area covered by his contract. Ordinarily those contracts are made for the county in which the abstracter owns the plant and he is able to furnish the title evidence for examinations. In some instances those contracts are extended to other counties for that same abstracter for the reason that representation cannot be obtained in the other counties. Either there is no competent abstracter there, or competent title plant that you want to depend upon. If it is the last case, we seldom write in counties where competent title evidence can't be obtained from a local title plant or abstracter or a record for determining what the records show.

We never attempt to make anything more than a suggestion on the matter of his fees. The local abstracter makes his own charges for the work he does to prepare the title evidence, or to close the deal, or to do anything else other than the pure title insurance risk rate premium, which doesn't include any examination of title.

Additional Earnings

The abstracter in those cases where he is himself an attorney and approved as such, of course, has the additional advantage of making the examination and retaining or collecting from the applicant the attorney's fee for that examination. In all cases the approved attorneys, whether it be the abstracter himself or another attorney not connected with the abstract company but approved for the purpose of examining titles, make their own fee. The only suggestion we have in regard to them is that the abstracter in making his charges for his abstract work for his closing services and any other services that he renders on his own other than the writing of a policy which he does for us, and the attorney in setting his fees (both of them), have to keep in mind that if they try to gouge the public they are just not going to do any business. And neither they nor we are going to profit, because they have to perform the first services for the applicant before we ever come into the picture. We never do come into the picture for any portion of the charges made to the applicant unless and until the policy is issued and our company's assets are put behind the risk. Then, and only then, do they pay us the premium on the policy.

National Rates

I think most of you are familiar with the title insurance rates which are commonly referred to as the national title rates. They have been more or less widely publicized and used for a long period, to my knowledge. They are purely risk rate premium. They do not include any examination cost, record searching, abstracting or other preparation for examination of title or closing or anything other than the risk rate. They are very low. In order that you may have them recalled to you, the owner's title insurance policy is $3.50 a thousand up to three hundred fifty thousand dollars; mortgagee policy rates are $2.50 per thousand dollars up to fifty thousand dollars total, with a minimum of $7.50. There are some differences in some contracts, but the over-all picture in connection with our method of doing business is that of that $3.50, $2.50, and the minimum charges that were just quoted to you for the work of preparing the policy at the wind-up.

On the writing of the commitment, the agent is privileged to make a charge for his service in writing that commitment in which we do not participate. Of that $3.50 and $2.50 rate in the over-all picture, on the average participation, sixty per cent of that over-all rate goes to the company and forty per cent to the agent. That is the picture I have been trying to develop in recent years.

I am giving you these remarks with respect to our own company because I know I am on safe ground there. I am not going to get into trouble by assuming what some other company does and trying to tell about it. It has been eight years since we started to do this national title insurance business in 1939. In the first few years, naturally, it was not a very large operation; it was worked at intensively; it grew up in various ways, under different conditions. In different localities, different contracts and arrangements were made, but after the thing got going and got along to where it amounted to something, I got the idea that we should develop a general and a uniform over-all plan of operation.

Retention of Percent

We have been working to that end in the states in which we have made contracts recently. I mean new contracts. We have tried to follow a uniform plan. Those of you who come from Missouri and from Kansas are familiar with the contracts and the arrangements that we make. In those cases the agent, for his services in writing the policy and sending the company its remittance (collecting and sending it, of course) and making his monthly report, is entitled to retain approximately forty per cent of that premium. That is roughly the picture with respect to agent's participation.

You can see that practically answers the question, "What is the agent participation in the preparation of all the forms required by the title insurance company, when you take into consideration the paper work that he does?"

There is another thing—naturally, there must be a good deal of paper work done. When you open an agency or establish an agency in the hands of a new agent, who, of necessity, is unfamiliar with title insurance practices and what he ought to do, he must learn how to do it. He learns by having these matters all called to his attention, by having these forms that he must answer questions on and fill out. But our practice has been and still is that once an agent develops into a good title man we cut that paper work down to the absolute minimum, with safety. I will say right now that we have one or two agents whose paper work is a little and sometimes less than what we have in our home office, with men we

have right in the office and under our own nose.

MODERATOR SUELZER: I want you to answer: "In an agency arrangement, to what extent is the abstracter actually held liable by the insurance company for his errors in abstracting or furnishing information to the title examiner?"

MR. EISENMAN: Our agency contracts with an insuring agent (in all of our cases there were so few exceptions you could hardly count them, and that is only in cases where they do not have an abstracter) are all made with abstracters, and it is stated specifically that the abstracter is liable to the title insurance company in the same capacity he is in the making of his abstract. In other words, we depend upon him absolutely for the correctness of the information he furnishes. If his plant does not disclose a mortgage or other lien or matter affecting the title, or having found it he incorrectly abstracts it or furnishes the incorrect information for the record from the examiner, he is in the same position with liability to us that he is with respect to any abstract customers that he makes an abstract for. That is our contract.

MODERATOR SUELZER: I have another question here. I have a great many questions, and I am sorry we won't have time to present all of them. Here is one I think comes up very often. I will ask whichever one of you gentlemen wants to volunteer: "Fear is expressed by real estate buyers that if they accept title insurance without an abstract when they buy they may be forced by a subsequent unwilling buyer when they sell to furnish an abstract instead of a title policy. What is the answer to that?"

Forms for Contracts of Sale

MR. KENNEDY: I will say in my community the real estate board which has a standard form of preliminary agreement for sale of real estate has a provision in there which permits the seller to furnish either an abstract or a policy of title insurance, but over and above that title insurance has reached the point where there are very few who will hold out for an abstract. I must confess that there have been occasions where somebody has put a seller to that expense. But if they use the standard real estate form of preliminary agreement, it contains a provision which permits the seller to furnish either an abstract of title or a policy of title insurance. We have had very little difficulty, I would say, in our community.

MR. JOHNS: I would like to add that in the counties in which we operate now in Idaho we are furnishing all those forms free to realtors, and instead of the seller having the option as to whether abstract or title insurance will be furnished, the form says, "at your option"—that is, at the real estate dealer's option—and we have never had a real estate dealer who wanted to have an abstract. That form has eliminated a great deal of argument and talk.

Difference in Income

MODERATOR SUELZER: Here is another question. "Assuming that during the year 1947 we were writing title insurance instead of making abstracts" —the question is a little difficult, but let us assume that he has the same number of title policies that he would ordinarily have abstracts—"would there be any difference in our gross income?" Can you answer that? In other words, would a man make more money writing title insurance policies than he would abstracts, assuming the same number of jobs?

MR. JOHNS: In our own plant at home the difference would be twenty-four dollars or within a few cents of twenty-four dollars per order difference.

MODERATOR SUELZER: Net?

MR. JOHNS: Yes.

No Plant Changes Necessary

MODERATOR SUELZER: "We maintain tract indices and alphabetical lists of states' judgments, et cetera,

FRANK I. KENNEDY

and our take-off is filed by book and page. Are any changes in this system necessary or advocated so that we will be properly equipped to write title insurance?"

MR. WETHERINGTON: I thought I covered that in my opening remark. I do not see that there would be a particle of difference in making—I mean there would not be any change necessary—your take-off is for abstracting and should be as complete, very likely is as complete, as necessary for title insurance. If it is taken off and posted by book and page, I wouldn't see any necessity of change at all.

Where No Abstract Exists

MODERATOR SUELZER: "Where no abstract is in existence or at least none available for examination, what is a proper formula for determining the additional charge for the office abstract or memoranda prepared for the examination of the attorney?"

Do you want to try that, Frank?

MR. KENNEDY: No, I don't think so, because in our town we don't charge for that, anyway, as a general thing. On most of our titles we now have had readings on, and we don't charge for that service. I think one of these national men or perhaps Jim could give better information.

MR. JOHNS: Our basis of charge is entirely different from Ed Eisenman's. The charge for title insurance in Oregon, Washington, Idaho, California, Nevada, is exactly the same. I have carried an Idaho rate schedule for the last couple of months, and it applies in Oregon. We make no service charge any place on the Pacific Coast for any chaining of title no matter how long it is.

MODERATOR SUELZER: The Chicago rate system (and you gentlemen who are in title insurance will correct me if I misrepresent it), approximates what the cost of an abstract would be and charges that as sort of a search charge preliminary to the title insurance charge. Similarly, if they get an order for another policy where the title is already insured, they interpose what they call a continuation charge; that is calculated similarly as you would calculate a continuation charge on an abstract. But I don't believe that is generally the way it is done.

MR. WETHERINGTON: No, sir.

How to Enter Field

MODERATOR SUELZER: Here is another question, and I am afraid this is the last one, or maybe you are glad. "How can an abstracter whose normal business is compiling abstracts but who has a title insurance agency set up make any money out of title insurance?"

Perhaps I should explain that a little further. This man writes, for example, "One of our customers has an abstract which we prepared for him a year or two ago covering four given lots, he has decided to sell two of the lots and brings the abstract to us to determine what the cost of one would be for the two lots he is selling. We figure it up and tell him it will be one hundred dollars or one hundred fifty dollars, as the case may be. He says he will definitely not pay that amount and that his contract provides he has the option of furnishing an abstract or a title insurance policy."

"Seeing a perfectly good order walking out of the door we reluctantly tell him that we represent a title insurance company, and if he is sure that is what he wants, we would like to figure with him on it. He states that naturally he would prefer to give up the business, providing all things are equal. We figure the cost of the extension of the abstract, the cost of title insurance policy, and add something for ourselves. He advises that our price is too high, and he personally took the

abstract to a title insurance company and they quoted him a price considerably less than ours. Naturally the company he took the abstract to did not include anything for the abstracter. We cannot meet the price quoted by the company he figured with, as we would be getting absolutely nothing for our work in taking the application and securing the policy for it. Naturally we lost the job and have lost making an abstract which ordinarily would produce considerable revenue for us."

We should have had Ed Eisenman answer that. Do any of you gentlemen want to comment on that?

MR. JOHNS: That question did not come from the Pacific Coast.

A complete answer to that, Mr. Moderator, would take quite a long discussion, for which we do not have time at this meeting. But I think that question goes to the crux of the situation, and that the title insurance companies have to change their methods if they are not conforming pretty closely to the methods that were worked out by these pioneers in California and by which the entire State of California was put on a title insurance basis. The same thing has worked in Washington, the same thing has worked in Oregon. It is practically unheard of for one to ask for an abstract in either Washington or Oregon. The same thing is being worked in Idaho. I would like very much to go into that question with whoever asked it.

MR. KENNEDY: I would like to make the additional observation, if I understood the statement correctly, the abstracter was charging too much money, anyway, when he asked a hundred dollars for this single abstract when he had certified an abstract on those two lots two years before. Secondly, you can't have everything that fits into the pattern. This may be one of the hard cases. It is very hard to exist half free and half slave, and it is very hard to compete title insurance against abstracts in the same office. If he were writing all abstracts or all title policies, he wouldn't have those hard cases arise.

MR. SUELZER: This is my section; this is where I belong. I am an abstracter, and about, I suppose at least, ninety-nine per cent of my business is making abstracts, just exactly as you make them, and I have a very sympathetic interest in these questions I received. It would be unfortunate if there wasn't a further session during which those additional questions can be answered.

CHAIRMAN GLASSON: We have a date at eight o'clock tonight to answer them. I have just closed those arrangements.

Gentlemen, thank you very much. You have been very kind. We appreciate not only your help this afternoon but your very kind offer to come down tonight.

EVENING SESSION

CHAIRMAN GLASSON: Ladies and gentlemen, this is the first time in my experience when any convention of any kind, whether it be Shriners or anyone else, wanted to have an extra territorial session. I am really very gratified that you so chose to have this session, because I think it indicates an interest and agreement with what we have considered to be our effort as a program. The fact that we have hit on a subject as interesting as that to you is really a matter of great gratification to your officers, I assure you.

It happened that Mr. Suelzer, who was the Moderator of the panel this afternoon, had to leave because he is tied up in another convention meeting, so I, although I was invited as a guest, offered to take care of his responsibilities this evening. It will be your questions which will determine the length of this program, the information you get from it, and the enjoyment you get out of it. Therefore, from here on it is your job. If you want to put questions, please be frank with them, because these kind gentlemen from the title insurance field who have come down here to answer them for you want you to be frank. Then we will have a good time at it. They will spare no punches in answering your questions, if they ask you not to spare any in asking them.

We have a couple of questions which have been submitted to us, and here they are. The first one is, "Upon the sale of an average home of ten thousand dollars exactly what charges does the agent for the title insurance company, formerly the abstracter, make to the buyer and then to the seller, and how much for services as escrow agent and what part of this do they get to keep?" That is a rather large order.

Charges

It constitutes not one question, as I said, but four. You heard yesterday in the program about this little Negro boy who never got the percentage. I want to tell you, when my young daughter got into high school and started in to take algebra, I was the guy who was going to help her. I helped her for just three weeks, and then she was way beyond anything I ever got to. So we will have to break this down into about four questions, I believe.

We have the sale of a ten thousand dollar property, the title insurance company, the agent for the title insurance company, who was formerly the abstracter wants to know how much money he will get out of the issuing of a title policy in that transaction.

Which one of you amiable gentlemen want to answer that problem? Of course we recognize it must be from your own school of charges. I am asking for volunteers. If I don't get them, I will draft. I used to be a Selective Service official.

MR. JOHNS: I will answer the first. I am not afraid to answer questions. On the sale of an average house, I suppose that means a three thousand dollar house that is being sold for ten thousand dollars, a house which is sold for ten thousand dollars, has the title ever been insured before?

CHAIRMAN GLASSON: No.

MR. JOHNS: It is an original policy. All right, any place on the Pacific Coast, what charge do you make to the buyer, nothing; to the seller, for the title insurance it is seventy dollars; services as escrow agent twenty dollars.

That is on the back of our printed schedule, escrow fees are ten dollars plus one dollar a thousand.

We charge the seller seventy dollars for the title insurance, twenty dollars for the escrow fee, what part of this do they get to keep? The abstracter with whom we have a contract gets to keep all of the escrow fee and eighty per cent of the seventy dollars. We get twenty per cent of the seventy dollars. We get fourteen dollars and he gets all the rest of it.

MR. KENNEDY: I would like to take issue in a very mild and friendly way.

CHAIRMAN GLASSON: I was going to call on you, Frank.

I was going to say, after we have gotten rid of this proposition on the California Coast where we know that Midwest dollars are worth California or Washington dimes, then we ought to hear from Detroit where, after all, they make automobiles and we don't know what the ratio is. Nobody has been able to find out.

Now, Frank, you may answer the question.

Relative Charges

MR. KENNEDY: Thanks. I wasn't going to answer the main question, because out-state we have rather discouraged this re-issue business. There are some counties in which we can't re-issue with any profit, both the abstracter and ourselves. I do not think this escrow rate is really out of line when you consider that on that ten thousand dollar deal the real estate dealer, if he uses the rates which are prevalent in our community, takes a commission of five hundred dollars. He listed the property, and he may have advertised it a few times, and he showed it to some prospects, but what is his investment in time or effort compared to the investment of an abstracter who maintains a plant in a building that costs him more rent than the real estate dealer's office? And keeps it up over a period of years? And makes the tax search and does all the work that he has to do, and even on the escrow part of the transaction he has to furnish the closing space and the secretarial service and the paper and the time and the effort that is put into it—it is insignificant compared to what that real estate man gets on that same transaction. If he sells that property

over again three months from now, he gets another five hundred dollars on that transaction.

If you are lucky he won't object to your getting the same fee when he comes back to you for the next escrow. Many of them who come to our office think they should get a discount.

I really do not think, in proportion to what they charge, we charge enough that they appreciate the service that we give them.

CHAIRMAN GLASSON: Frank, you made a statement as you started your little answer here to the effect that you had found you could not make re-issue policies on the same basis that you issue original policies. Would you clarify that or what did you mean by that?

MR. KENNEDY: What I mean to say is that in our own home territory where we have our office a re-issue policy is very cheap. It is half the rate of the original issue. In Detroit that would be twenty-eight dollars; the original policy would be fifty-six dollars. I hang my head in shame when I say them. It would be twenty-eight dollars on the normal case.

Out in the state we cannot always afford to write a policy on the half rate, because it does not allow enough money for the abstracter and the examining attorney and ourselves, any one of us, to get enough to make the transaction worth-while.

We in our office are now studying rates with the idea of a general revision of our practice in rates with the correspondent abstracters in our territory. But because of the fact that twenty-eight dollars spread three ways would not give us enough. We just do not, in the outlying counties, recognize any re-issue, but we want to get it on a basis where we can.

MR. BLOCK: What is that "split three ways" business?

MR. KENNEDY: You have to have an examining attorney in the picture.

MR. KENNEDY: It would be the abstracter's earning plus the cost of the examination plus the residuum that would be left for the title insuring company which writes the risk.

CHAIRMAN GLASSON: That is in respect to a re-issue policy?

MR. KENNEDY: That is right. In some counties we have a re-issue rate and in other counties we do not. We do not like that. We would all like to get it on a uniform basis, but we have not gotten into that field nearly so far as Jim Johns and Al Wetherington.

CHAIRMAN GLASSON: Al wants to answer that question.

MR. WETHERINGTON: No. I want to talk on the general question, because our company is one of the few that do not have re-issue rates.

CHAIRMAN GLASSON: All right.

No Reissue Rates

MR. WETHERINGTON: Our company a number of years ago eliminated re-issue rates. It costs you just as much for a title policy in our company if we insured it last week as if we had never been on the risk. That might sound hard, but I maintained for many years that a property could stand certain expense and no more. It does not make any difference to the man who has a two thousand dollar house or property to sell, because he has to pay a figure beyond anything that he can show as a reasonable profit on his investment, and the mere fact that because his neighbor had somewhere in the picture bought a property with title insurance; in other words, we believe it boils down to the pure dollars in that particular transaction. The realtor does not sell the property any cheaper because he sold it week before last. If we would have attorneys examining, they will not examine any cheaper, regardless of the fact that they might have examined that title just a few months ago. We have found that it works very satisfactorily, and we are not having any trouble at all with it.

A. W. SUELZER

MR. KENNEDY: You consider that by keeping your initial issue down low enough?

MR. WETHERINGTON: That is right. It is based purely on an actuarial table. It is figured out on a reasonable profit, setting up adequate reserves. We do some at a loss, I will admit, but it is still on the basic principle that a piece of property selling for five thousand dollars can stand so much expense, and that is all it can stand. If it is excessive, the deal is not going to be made.

MR. JOHN BELL (Eugene, Oregon, and Boise, Idaho): What is your original thousand dollars?

MR. WETHERINGTON: Forty dollars.

MR. BELL: You start out at forty?

MR. WETHERINGTON: That is right. That is the abstract cost.

MR. FRANK STEVENS (Angleton, Texas): What does that seventy dollar fee cover?

MR. JOHNS: In Oregon?

MR. STEVENS: Yes, sir, in Oregon.

MR. JOHNS: The seventy dollar fee covers the examination of the title, the writing of the preliminary report, if one is needed, the writing of the policy, and delivery of the policy. That is an over-all fee.

MR. STEVENS: It covers attorney's examination charge?

MR. JOHNS: Yes.

MR. STEVENS: Also covers the preparation of the papers?

MR. JOHNS: Oh, no. You mean preparation of deeds?

MR. STEVENS: Yes.

MR. JOHNS: Oh, my, no.

MR. STEVENS: What I am getting at is how much do they have to pay on top of the seventy dollars?

In Texas

MR. STEVENS: In Texas our rate on a ten thousand dollar policy would be eighty-two dollars, I believe. That would cover the examination but not the preparation of papers, and I guess it is very similar to what yours covers.

MR. JOHNS: That seems to be very similar, sir.

Might I here explain about these two men and the difference in their charges?

CHAIRMAN GLASSON: Surely.

MR. JOHNS: On the Pacific Coast our re-issue rate used to be fifty dollars; just as it is in Detroit we found that often we were operating at a loss on re-issues, so we convinced our insurance commissioner that we should have a three-fourths re-issue rate. I think our friend from Florida has the right idea. We are hoping on the Pacific Coast to get away from the re-issue rate entirely. Frank Kennedy is going to come to this seventy-five per cent, and then Frank and all of us on the Pacific Coast are going to come to just the single rate.

MR. U. D. CALKINS (Enid, Oklahoma): You men may not be able to answer this question, but I would like to bring it up, because it is the one question that is confronting us. This man who is selling this property for ten thousand dollars has to buy a title policy for his purchaser for seventy dollars. In our country the fellow selling that property has an abstract brought up to the time he bought the property. He can get it brought up to date for probably eight to twelve dollars; then it is up to the purchaser to have it examined. That is all the seller of the property is concerned about—to get his property sold.

How to Sell It

How are we going to sell him on a seventy dollar title insurance for the benefit of his purchaser when he can get his abstract brought up for probably ten? That brings it down to this thought, as it has occurred to me, that you cannot succeed in this title insurance business as you do on the Pacific Coast until it can be set up to the point where they cannot buy an abstract, where you have to have title insurance, where we are not making abstracts, and do it all over the state.

CHAIRMAN GLASSON: Al Wetherington seems to have an answer for you. He is raring to go, so we will let him answer.

MR. WETHERINGTON: I will put it this way: In our locality it has always been necessary for the seller to furnish evidence of title. The purchaser will not accept an abstract in most cases. Then you get to this premise, that that purchaser has to pay an attorney for his opinion, and oftentimes they get together, and the purchaser puts in the amount of money that he was going to pay for the ordinary examination of the abstract, and between them they agree as to the division of whatever the fee might be.

In our state we have every one of the practices; we have counties that have the agency proposition that demand abstracts before they will insure titles; we have other communities that have an over-all rate. It just boils down to what is the fee going to be for that transaction, whether the purchaser pays part of it, the seller pays part of it, or whether the seller pays it all.

MR. JOHNS: But our rates for abstracts are quite high, not too high. They are commensurate with the work and responsibility involved.

There is another thing about the use of abstracts. I do not think any title company will put aside a seventy-dollar title insurance order to get out an abstract, not for ten dollars, not on a ten thousand dollar property, because our valuation fee on an abstract to start with is ten dollars. It would probably be twenty-five or thirty dollars for the extension of that abstract even if there is no record to show on it.

Then there is another thing. We just simply cannot get out abstracts as easy as we can title insurance policies, and if he wants an abstract it is going to take him quite some time to get it, and resultant delay in closing the deal.

CHAIRMAN GLASSON: Here is a gentleman over here who has asked for the privilege of the floor, please.

More on Relative Earning

MR. RAY HARVEY (Carthage, Missouri): I am glad to hear what Mr. Johns said. Today one of the gentlemen on the platform said that a fee of a hundred dollars for making an abstract was somewhat unreasonable. Down in our section of the state we charge seventy-five cents per sheet, and sometimes the number of sheets requires a fee of more than a hundred dollars. But supposing the abstract does run to one hundred dollars and we are required to do that work. Mr. Johns a moment ago said that it would take three months or thereabout to get the work out, but that we could get our attorney, give him our chain, send him to the courthouse, have him look up all of these instruments and get the title out right away. I doubt that from what I have seen of the attorneys. If you had an attorney look up all of those instruments in the courthouse that it took to make that chain, the fee would be much more than one hundred dollars and it would not be done in three months.

I am wondering, when we have a cost of forty dollars in the case of one gentleman or seventy dollars in another, and it is necessary for the abstracter to bring up an abstract of one hundred dollars, how we are going to arrive at any profit for the abstracter, when we sell title insurance for seventy dollars, when we have a hundred dollar abstract plus all the rest of the cost.

I think Mr. Eisenman was exactly right when he said the only true way to arrive at this was the fact that we must do our abstract work, have our abstract examined, and then charge two dollars fifty cents or three dollars fifty cents a thousand, as the case might be, for title insurance. I think that is exactly right but I would like for the gentlemen here to tell us how we can sell people on the idea of spending that other two dollars fifty cents or three dollars fifty cents per thousand above the usual cost of abstracts.

That is the situation that we find. Our lawyers are very frank to say, why do we need title insurance, you depend upon us to tell you whether or not you own the property, you pay the abstracter to bring up the abstract, you pay us then to make the examination, why pay two dollars fifty cents or three dollars fifty cents per thousand extra for something you are not getting? That is our question.

CHAIRMAN GLASSON: I think these gentlemen will have a perfect answer for you, Mr. Harvey.

MR. HARVEY: All right, sir.

CHAIRMAN GLASSON: In the first place I think Mr. Johns should stand up and explain that as a matter of operational procedure he eliminates some of the cost of that one hundred dollar abstract, and then he can go on from there in his own words.

Mr. Johns Answers

MR. JOHNS: We eliminate all of that one hundred dollar cost. If it is a house, it is probably in a platted addition. You have been abstracting for twenty, thirty, forty years, and you know whether the title is good down to the date of the plat. You never go back of the plat again. You do not examine any record back of the plat at all. Maybe you wrote the deed out for the man who platted it; you know the mortgages on there; you know whether they are released properly; you know whether the title is good; you examined the taxes; you examined the judgment rolls, whatever you have in your county—(we call them "G. I."—general index), and you know whether that title is good or not—and you can make an examination accurately and quickly.

Instead of making a complete abstract of this stuff we just put down with a pencil on a sheet of paper that we have specially ruled for that, and we have an examiner who has done nothing but examine titles for the last twenty-five years.

Oh, my, no, you just cut out nine-tenths of the work in title insurance that you have in abstracting.

You think you are not going to get any profit. Is that the question?

MR. HARVEY: That is part of it.

Cutting Costs

MR. JOHNS: And we are cutting out the typist, to whom you have to pay a large salary, and the comparing; we are cutting out all of that stuff.

Then you have examined the title, and you have made what we call a preliminary report. Other places call it various things. Your stenographer has just written one short page, has written one short page rather than an entire abstract.

Here (indicating) is what we call a preliminary report. The lawyer or ourselves or whoever closes the deal, closes on this (indicating). You cut out, not only your own abstracting but you cut out the cost, all that cost of typing. Then you write a title insurance policy for seventy dollars, of which you get eighty per cent, you get fifty-six dollars of that, we get fourteen dollars, and we supply all the forms.

When that place is sold again for ten thousand dollars in Detroit, it would cost thirty-five dollars or whatever the half rate is; in Florida it would cost the same; with us it would cost three fourths or fifty-two dollars fifty cents. Look at what you get. Title insurance is not all gravy. You have to make a complete examination the first time, don't you see, when you get seventy dollars for it. The next man sells it and with Detroit you get half the price; with us you get three fourths: and Florida you get the same fee. With us there is fifty-two dollars fifty cents of which you get eighty per cent.

Let us see what you do. You have the title vested in the owner, you search taxes, you search your general index, and you get fifty-two dollars fifty cents for it, and you get on every succeeding deal your profit; you get your fee without a great deal of work.

Profit on Re-issues

I recall a mortgage policy we had on which we lost money. I was particularly interested in it because of that. The examination was terrible. But within six months that property sold for forty-eight thousand dollars. We didn't

have to search taxes; we searched only the name of the seller for six months, and for that we got two hundred forty-seven dollars. You would get eighty per cent of two hundred forty-seven dollars for a small amount of new work.

MR. HARVEY: How much do they pay their attorneys for examining these abstracts?

MR. WETHERINGTON: In our state we recommend setting up the underwriting premium, which is the national premium that he spoke about this afternoon, three and one half, two and one half, minimum seven fifty, as the case may be, and the remainder is equally divided between the examining attorney and the abstracter.

CHAIRMAN GLASSON: I think there is one point these gentlemen might bring out, if we can sell our clients on the fact they should have title insurance. I think it is known rather generally that title insurance will cover a multitude of things, which are of considerable moment in land titles, which the abstract and the attorney's opinion cannot cover.

Frank, would you like to say something on that? You mentioned it this afternoon, and perhaps you can just emphasize it.

MR. KENNEDY: Here is a word and also something about this abstract, because I think eventually we are going to have to get away from this hybrid system of making a complete abstract and then getting it out and having it examined. I will give you a sample of that.

To Make the Deal

At home we have not felt that we wanted to go in any county in competition with one of the local abstracters, so we have taken what service they are able to give us on the occasions we wanted to go in there. But we had up in one of the northern counties a big Defense Plant Corporation deal. They were going to sell the property to an organization which was going to open it up and employ people, and they had to get a mortgage of some three hundred thousand dollars to make the deal. The local abstracter told us that he could take care of us in eight or nine months, or if we represented a widower and orphan in the deal it might be a matter of five or six weeks.

Here were these people raring to go, and we felt we had a definite responsibility to help the deal. So we broke our rule; we just put an examiner in his car and sent him up there; he examined the records and he brought them back. We examined the whole thing in our own office and took all the premium in that case.

The abstracter wrote down and said "did he get a commission." We said, "We are sorry, but you didn't take care of us so you don't get any commission." That was an exception to the rule. But the idea of having to delay a deal until you make an abstract oft times is going to kill the deal. The deal I mention would have been killed if we hadn't sent a man up there specially to get what we wanted.

If you are going to try to catch up on your work and give your customers service and you make them at the same time wait while you turn out these one hundred page abstracts, (and to be honest you know that all your abstracts are not one hundred page abstracts), you are not going to give service and popularize title insurance.

Michigan is a state that has both abstracts and title insurance. I think our work for the month of September ran about four times title insurance to the volume of abstracts, but there still was considerable abstract work.

We cannot even begin to give the service in abstracts either, that we give in title policies.

MR. JOHNS: You cannot.

MR. C. E. SOLMONSON
President, South Dakota Title Association. Sec'y., Campbell County Abstract Co., Mound City, Sounth Dakota.

MR. KENNEDY: You cannot let a low money-losing product compete with title insurance, and we give them more in the title insurance.

Losses, Including Litigating Costs

As evidence of that I had some figures out the other day. Since 1921 we have paid out close to three hundred thousand dollars in connection with claims, and they were not claims based for the most part on some error of ours either, except in the case of taxes. Very often you find that the record shows taxes paid, when you issue a policy, but the treasurer has made a correction when the next deal comes through, and you are stuck for some taxes. We have litigated some heavy lawsuits, and successfully, I will say. Our costs in that case were confined to the cost of litigation, and that is not hay either, but we give our clients protection against the thing that an abstract cannot do, the question of forgery, fraud amounting to forgery, forgery itself, the question of construction of doubtful instruments, old instruments, where they have some home-made trust provision or some home-made will, and a multitude of things that the attorney does not and cannot cover, because it is not within his province to cover it. That is why we have paid out this amount of money. It was not three hundred thousand; it was two hundred forty-seven or two hundred sixty-seven thousand odd dollars, or something, as I remember the figures, and that did not take into account charges for matters that may have been handled by us in the office.

Popularizing Title Insurance

We give them a great deal for it. We popularize it this way, the first people who demand it are the mortgagees. A local investor, it is true, if he is going to stick the thing in his own portfolio, may get by with an abstract. But if he is going to take his mortgages to the RFC or some big investor, he may have to furnish title insurance. You get the national investors who demand title insurance on their mortgages. They will take abstracts where they can't get the other, but they prefer title insurance. When you deal with certain Federal agencies like the RFC, they prefer title insurance. It makes a cleaner deal. You get at it first through the mortgage business. You get at it perhaps through the person who hasn't an abstract, and you do not want to make him one or he does not want you to make him one, and you maybe compromised on a figure for a policy. You do not make a killing on every deal. Once in a while we take a loss, too, but there are an awful lot of deals you make money on later on when they come to get that continuation.

I was talking to a gentleman from Los Angeles the other day about their rate for an original policy and for a continuation policy. It is an academic question there because now they do not have anything but continuations. So the same rate in effect applies. It is the continuation rate. They have been over all of that stuff at one time or another. You just have to figure on what that continuation rate is. You might just as well figure that you make a little investment at the start and do a little bit more work the first time you get a crack at it. There will be a sale, there will be a mortgage, there will be something else, and the second time you get it you have cut out all that preliminary work.

CHAIRMAN GLASSON: There is one thing which might be brought out in this discussion on Mr. Harvey's question, which has been touched rather lightly on by Mr. Johns and Mr. Kennedy, and that is the matter of the abstract itself, whether or not in title insuring the abstract can be eliminated entirely. I think that is the answer to the problem. The abstract itself, to me

at least, appears to be the bottleneck, to be the expensive proposition. If we can eliminate that by methods of procedure, we will then have cut down that one hundred dollar abstract that we were talking about to a matter of whatever your operating ratio bears to your gross income, which is usually around forty per cent. All right, that one hundred dollar abstract is costing you forty dollars rather than one hundred dollars. In other words, we have been talking about what we sell it for rather than what it is costing us with respect to the comparison between abstracting and title insurance.

Mr. Kennedy said they are thinking in the Detroit office that some day they are coming to that point, and I believe that that would be the answer, the complete answer, to Mr. Harvey's question.

MR. HARVEY: The lawyers in my county, which is one of the large counties of Missouri, contains the cities of Joplin and Carthage, said they would send all the abstracts to the other company.

MR. JOHNS: Why don't you and your competitor both write title insurance? We have had that situation many times.

CHAIRMAN GLASSON: We have another gentleman who has a question.

MR. JOHNS: We have a manual of practices which we give to our agents. I think a mortgage between the same mortgagor and mortgagee takes three fourths of the mortgage rate on the Pacific Coast. We have a manual of practices which covers technical things and the agent cannot go wrong on it.

My partner says it is not quite like that, that it has to be the same mortgagor and same mortgagee, and then they are entitled to half rate plus full rate for any increase.

Organizing a Company

MR. MELVIN JOSEPHSON (Boone, Iowa): At the moment I am not so interested as to what the profits in a title insurance company might be as how to organize one. I would like to ask Jim Johns if he can make this comparison. In Iowa we do not have any title insurance legislation. There are about six large cities in the state and the remainder of the state is comprised of counties with a population of perhaps twenty to fifty thousand, with cities and towns of from five to twenty thousand population. There is an average of about two abstract companies in each county. At the time you organized your title company in Pendleton, would you mind telling us what the population of Pendleton was and of the county, if you had a competitor in the abstract business, and how you went about forming your title company?

MR. JOHNS: I will be glad to tell you. There are not any secrets about it. Our town had eight thousand people in it. It now has about fifteen thousand, counting the inmates of an insane asylum. (Laughter.) We have about twenty-five thousand people in our county, and we have our full quota of lawyers, too.

We were a little more fortunate than the average abstracter, because we had been in the mortgage loan business and had made some satisfactory income and we had some money on hand. The mortgage loan business stopped suddenly, and we either had to get along with bread and butter without jam or get some money out of our abstract plant. As I explained this afternoon, I found out that the thing to do is to go at it. Therefore, we put up our deposit with the state treasurer and started to write title insurance, knowing absolutely nothing about it. Our competitor was an onery whelp, and I found out when I offered to let him write title insurance for us that he thought I had been an onery whelp. There are many details to it, but if there is anything more you want to know, I will surely be glad to tell you. There isn't any secret.

Does that answer you?

My thought about you folks, and it is only my thought—for heaven's sake do not take it as the law and gospel—is that you are sound asleep, and I do not see why some of you do not get together, chip in twenty-five or fifty thousand dollars apiece, and organize your own company. Let the other abstracters come in as they want to.

MR. JOSEPHSON: When you organized you brought your competitor in and organized a company within your county?

MR. JOHNS: No. We organized it, and then I let him write title insurance; and I found out he after all was a pretty nice fellow.

MR. WAYNE M. CAMPBELL (Garden City, Kansas): As I understand it, in the case of the Kansas City Title and Lawyers Title, and a few others that do have agencies don't they demand we send them an abstract with our local attorney's opinion? Of course we would all like to organize and buy out the building and loan and a few more things, but we can't do just like Mr. Johns did, so what are we going to have to be up against if we write title insurance for the companies that come in to our local agencies in this part of the country?

MR. WETHERINGTON: I cannot answer the question the gentleman referred to because I am not out in Kansas or Oklahoma. But we do operate with agencies throughout the State of Florida. Our home office is in Jacksonville. Those agencies are abstract companies—every one of them. We do not demand they send us in an abstract. We demand that they compile the chain of titles in whatever method the approved attorney wishes to use. We operate with approved attorneys throughout the state. We never issue a policy without an attorney's opinion and that chain search, whatever it may be, is retained by the agency. We do not even want it. We want him to have it in case we have a claim, but we do not require them to send it in.

Does that answer your question?

MR. CAMPBELL: He can charge the owner what he pleases for that? Does he charge the owner what he pleases for that, the seller?

MR. WETHERINGTON: They have a schedule of rates that contemplates that chain search and the opinion of title plus the underwriting premium. Is that what you mean?

MR. CAMPBELL: He does not have to charge the seller for that, your company pays him as the agent, is that it? The seller does not have to pay for that search?

MR. WETHERINGTON: It is the other way around. He merely pays us the two and one half or three and one half per thousand, two and one half for mortgages and three and one half for owner's policy.

MR. BOYD (Missouri): In Oregon and on the west coast did you start out under the Torrens system in about 1870?

MR. JOHNS: We have a Torrens law in Oregon. My recollection is that it was passed long after 1870, but I cannot tell you the date.

MR. BELL: 1910.

MR. BOYD: The thing of it is your records were automatically brought up to that time, weren't they?

MR. JOHNS: Oh, no.

MR. BOYD: In other words, you started out from about 1849 on?

MR. JOHNS: Yes.

MR. BOYD: What kind of a system do you have in your office? Do you have tract books? Most of us work on a tract system or card index system. Evidently you are way ahead of that stage.

MR. JOHNS: Oh, no. I think our indices are worse than yours. We have tract indices in all kinds of handwriting and in all states of disrepair.

MR. BOYD: If Joe Doakes went out here in 1940 and made a subdivision to such and such a section and laid it out in lots and blocks, you have an abstract prepared for that as soon as he lays it out?

No Abstracts Made

MR. JOHNS: Oh, no, sir; no, sir; we never prepare an abstract; never, never prepare an abstract. But we examine that chain of title down to the time he plats that property. Then when Joe sells the property we write on this sheet (indicating) the date, "Joe Doakes," owner, and in red pencil whatever there is against it—a mortgage or something. We write it in red pencil so we won't forget it. Then you make your report that Joe is the owner now, you search your taxes and general index on Joe and you make your preliminary report, which has about, I would guess, fifteen lines of writing, instead of a long abstract. Then you do not even write Joe Doakes' name

again, you just put a line down here (indicating) and mark O.K. That means Joe Doakes and his wife signed it. You put the name of the purchaser in here (indicating), the type of instrument and the date recorded and so on. That is your complete abstract.

MR. BOYD: Then you have a separate sheet for lot one and another sheet for lot two from there on?

MR. JOHNS: I do not believe we have. I think we have them all. If there are forty lots in one block, we have forty lines all the way down.

CHAIRMAN GLASSON: No; he means your insurance issue record.

MR. JOHNS: The insurance record you mean—title insurance record?

MR. BOYD: For your files. In other words, Joe Doakes sells lot one to John Smith and lot two to Henry Smith. Do you have a separate sheet for Henry Smith and John Smith—a separate sheet for lot one and a separate sheet for lot two?

MR. JOHNS: We do not make any sheets until we insure a title on that property.

Here (indicating) is a complete search of four lots in a certain block in Irvington Heights Addition to the City of Pendleton. That is our entire abstract.

MR. BOYD: Does the same man own all four of those lots?

MR. JOHNS: Yes.

MR. BOYD: If those four lots belong to four different men?

MR. JOHNS: We would have four different sheets, but it would be four different orders, undoubtedly. Each order has one of these (indicating). when we re-issue this policy, if it covers the entire four lots, we take this out and put it away.

Our books are set up so that if block one has forty lots in it we have forty lines, and each one numbered from one to forty, and if block two has eight lots in it we only have eight numbers, and like that. We post our title insurance policies just the same as deeds and mortgages and other things.

With mortgages, we have a girl who checks the mortgages, the releases of the mortgages, to see if they are properly released. If they are, she puts on our index where the mortgage appears, satisfied, book 186, page 432, O.K. for title insurance, and we never look at that mortgage again. When we take in a new girl, if she shows any intelligence at all, we teach her to do that. She does that within three months of the time we hire her.

MR. W. H. SHOREY (Davenport, Iowa): Supposing a man buys a property and you issue a policy of title insurance on it and he immediately mortgages it to the bank—do you have two policies on it or does the owner's policy cover the bank too?

MR. JOHNS: No, sir; we do not cover more than one interest in any policy. I am speaking about us now.

MR. WETHERINGTON: No one does now.

Owners and Mortgagee Policies

MR. JOHNS: Here is an explanatory note: An owner's and standard form mortgage policy will be written simultaneously at the owner's rate plus five dollars. We have no additional liability—ten thousand dollar owner's policy and a five thousand dollar mortgage policy. The mortgage policy or the owner's policy has a pro tanto clause, which means that if we pay a loss on the mortgage policy the owner's policy is reduced by that amount, so we do not have any additional liability, and we just have five dollars for writing the extra policy.

MR. HOWARD HUGHES, Moore Abstract Title Co., Cherokee, Iowa: Mr. Johns, I want to back up here a minute to Mel Josephson's question about your incorporation. When you

MRS. ESTELLE M. KELLY
President, North Dakota Title Association, Hillsboro, North Dakota.

decided to begin writing title insurance, did you incorporate under the laws of Oregon in accordance with the insurance laws of that state or was it necessary for the legislature to make special laws to grant title insurance, setting up the regulations of such companies, and so on?

MR. JOHNS: When our company was organized in 1877 they put in something like this, "to make abstracts or guarantee the title to land," and when we put that up to the insurance commissioner he said that was plenty satisfactory. We did not have to reincorporate or anything. But you can reincorporate. If several of you in Iowa want to go in together, you probably should incorporate a company.

CHAIRMAN GLASSON: Jim, I think Don's question had to do primarily with an enabling act of the legislature allowing a properly organized and empowered company to write title insurance. That is the point.

MR. JOHNS: In Oregon there was one title insurance company organized before we had any legislation on title insurance at all. It was organized under the general corporation laws. The other companies which have been organized in Oregon were organized after the title insurance code was adopted. Those companies conformed to the title insurance code, and all of us are under the jurisdiction of the insurance commissioner. His jurisdiction is not nominal. He tells us in many respects what we have to do, and we have to do it. For instance, we are examined very, very carefully. We are examined as carefully as any bank is examined, at our cost.

MR. WETHERINGTON: Let me amplify a little bit on that. In our state we do not have any title insurance legislation, as such. The insurance commissioner classifies us under the classification of miscellaneous insurance companies.

MR. HUGHES: I have just one more question. I assume that when you did start to write title insurance you were a comparatively small company with small capital. Is that right?

MR. JOHNS: It just depends on what seems small. We thought we were putting in quite a little bit, but we have put in quite a little more several times since.

MR. HUGHES: My point is that in Iowa we have many small companies in these small communities — abstract companies—and should the time come when we wish to write title insurance, no doubt some state organization will be set up, let us say. There is also the problem of our competitors. Are we going to allow our competitors right across the street to join the same title insurance organization and write title insurance right along with us in the same organization?

MR. JOHNS: It worked fine for us. It is working nicely in Idaho. We have in some counties, as I recall, the two competing title abstracters writing title insurance for us, and it is all right. That is rather a detail. By the way, if you try to work this all out day after tomorrow, you will find that by cooperating with your competitor and letting him make some money while you are making money, pretty soon you are going to find that he is not such a bad fellow. You are probably going to just keep up one set of books, and that saving in expense will make quite a little profit for both of you.

Amount of Capital

MR. C. W. SPACHT (Lusk, Wyoming): I feel sure that starting a title association in Wyoming requires a hundred thousand dollars capital.

CHAIRMAN GLASSON: I think you will find quite generally that a minimum is pretty close to two hundred thousand with a surplus, making a quarter of a million dollar deal to start with. It varies as between the states.

Next: "What is required of the per-

son who is to certify to the title insurance company the name of the owner and the condition of his title? Must this person (a) have tract indices in his own office, (b) be a member of the A.T.A., (c) have a title plant, or (d) is it enough if he is a member of the bar?" In other words, how is the line drawn between the abstracter and a curbstoner?

MR. JOHNS: That is not a hard question. What is required of the person who is to certify the title, certify to the title insurance company the name of the owner and the condition of his title? Now, that means the person who makes the preliminary report or the binder or whatever you would call it.

Must this person have the title indices in his own office? On the Pacific Coast, yes.

Be a member of A.T.A.? Not necessarily, but he is going to be a member before we get through with him.

Have a title plant? Most certainly, and we will look that title plant over and be sure it is a good one. And he must be a qualified examiner.

Competition by Governmental Agencies

MR. A. F. SOUCHERAY (St. Paul Abstract & Title Guaranty Co., St. Paul, Minnesota): I have listened to your discussion today, and it would seem to me that in every other state except Minnesota you can do just what this gentleman said, he who bought out federal savings and loans, and who got to be a director of a bank and everything else. But what would you do in a state of eighty-seven counties with about sixty-seven of them in government (county) competition with private enterprise? In other words, you cannot go to the government and say, "Now, you are out of business; we are going to write title insurance." I think our state is the only one in the Union where we have that type of competition.

MR. JOHNS: I am surprised that a man from the great State of Minnesota, which has furnished such individualists as Harold Stassen and Joe Ball, would have government control of anything, even abstracting.

Seriously, you have a problem. Now, not so seriously. We had one county in Idaho where the County Clerk was the abstracter and the county owned the books. One of our men made a deal with the county. We were to take the books, photograph the books or something along that line. I do not recall all the details.

The deal was closed at four o'clock, and the County Clerk, whose name was Bessie, said, "Let's go have a drink," to our men. She said, "We will take Charity with us." Charity was the Deputy County Clerk and Abstracter. So far as I know that is the only case where the courthouse has been closed in order to celebrate getting rid of a set of abstract books. Closed at four o'clock, and no business done after that hour.

You have a question there, and, as I recall your law, the County Clerk or some county official has to certify to abstracts for some nominal fee like that. Isn't that correct?

MR. SOUCHERAY: That is correct?

MR. JOHNS: Is there any liability back of those abstracts?

MR. SOUCHERAY: I do not believe the county assumes liability. The County Abstract Clerk in my county supposedly furnishes a bond, and, as you and I know, its value and collectability is questionable. I write title insurance, and I furnish abstracts, and I can say this, that while I am not like that soap we have, ninety-nine per cent pure, I am eventually getting to that point. I would like very much to shut the doors and say, "You cannot have any more abstracts," like you did out there on the Pacific Coast, but I

MR. S. H. KUNAU
President, Idaho Title Association,
President, Cassia County Abstract Co.,
Burley, Idaho.

cannot do that with the county operating in the abstract business.

Last year in Los Angeles, I asked one of the men in a company out there, "How would you sell title insurance?" He said, "There are two ways"; one is education and the other one is like you explained today. "You cannot have any more abstracts as we are not making them." I would like the latter one because I think making abstracts is largely just a waste of energy, but we cannot do that in our state, when we have the government (county) interposing or interferring with private enterprise and cutting prices, as you can probably appreciate.

MR. JOHNS: That has to come through education in Minnesota, is that correct?

MR. SOUCHERAY: That is right.

MR. SHOREY (Davenport, Iowa): I think one of the points of that question was, "Would any title insurance company use an abstract company as an agent in the county," that is, for example, some Kansas City or Lawyers Title or some other company, set up an agency in our county. We were the agent to issue their insurance, and we have the only set of tract indexes and the only title plant in the county. We do have a few lawyers who "curbstone" on the side and make some abstracts from time to time. Would some other title insurance company desiring representation in the county be apt to go to one of our lawyer curbstone competitors and say to him, "We will take your certificates", and on the basis thereof issue title insurance and thereby set him on the same basis as ourselves competitively?

CHAIRMAN GLASSON: That is largely a matter of a problem of the national companies for individual response. Mr. Eisenman being, of course, the representative of the national companies here, is not able to be here tonight.

Perhaps one of these other gentlemen could answer the question in a satisfactory manner. Al Wetherington has quite an agency proposition. Perhaps he can tell us something about it.

Requires Plant

MR. WETHERINGTON: My company would not appoint anyone as an agent who did not have a credited abstract plant. We think our exposure would be too great. We are not anxious for business, that badly. I think that is the answer. It is purely a question of the insuring company, if they would be willing to risk their capital structure on a set-up of that kind.

Curbstoning

MR. GIL K. PHARES (Port Arthur, Texas): We had some of these curbstoners down our way, too. We were getting considerable complaint from the Bar Association about illegal practicing of the law. So we said, "Let's both clean our houses; you quit curbstoning and we will quit practicing law." The Texas Title Association entered into an agreement with the Texas Bar Association. There is not a lawyer in the State of Texas who can "curbstone" at the present time legally, and if he does, he is brought before the Bar Association. A title insurance policy has to be issued through a recognized title company which is a member of the Texas Title Association. We in turn put a little sign upon our counter saying we do not practice law, to see your attorney. I think that answers his question.

CHAIRMAN GLASSON: It is a very good answer. Congratulations on the results of your work down there.

MR. BLOCK: The Texas solution won't work in our case, because both Mr. Shorey and I, who are the officers of the Davenport Abstract Company, have ourselves enjoyed A ratings in

Martindale's Register for quite awhile.

CHAIRMAN GLASSON: But you do have a title plant, do not forget that.

MR. PALMER W. EVERTS (New York State Title Association, New York City): May I ask Texas if they ever took active steps against one of those attorneys who was curbstoning.

MR. PHARES: That arrangement was entered into only in the last three or four months. I will tell you what we did do. The Bar Association in Texas is very strong and very active, and I happen to be a member of both associations. It did do this, it stopped almost a dozen lawsuits against title companies for illegal practice of the law; it did do that. The suit has to be instituted through the State Bar Association; it cannot be instituted by a local bar association or county bar association; there is one coming up, I am sure, soon. We have a committee already set up made up of men in the Bar who know what title companies are and can appreciate their problems, and I think it will be handled in that committee.

MR. EVERTS: That means that your Bar Association takes the position that an attorney cannot check titles?

MR. PHARES: That an attorney cannot issue title insurance without a recognized plant.

MR. EVERTS: Title insurance or make a report?

MR. PHARES: He cannot do that for title insurance companies. In other words, what we call curbstoning, running the public records, in other words.

Faster Services

CHAIRMAN GLASSON: I have one small one to pose to these gentlemen. I do not think they will have any trouble in answering it, because I think it goes to the matter of procedure. I think you all remember the fact that by the time your abstracter gets through with an abstract, from the time your abstracter gets through with an abstract to the time that your typist finishes, it is proofread, checked, and signed, there may be a lag of three or four or five days or perhaps more in some cases from the time your title is certified. What is the difference in effect there as to the facility of getting out title insurance. Mr. Kennedy, tell me about that, will you?

MR. KENNEDY: There is not very much difficulty there. We could cut out that lag and certify down to the date that we picked the instrument off our book, because it is examined within a little while after we take the record off our docket sheet.

Of course if we are closing an escrow deal we go further than that, because we do not examine the paper or we do not record the papers until we first examine the records in the Register of Deeds' office, to span the intervening few hours for the day between the posting on our docket and the exact minute of recording the papers. Of course only rarely do you find anything, although in one large transaction we did. We held up the consummation of the transaction and made the parties go out and make his peace with the gentlemen who had recorded a deed.

CHAIRMAN GLASSON: That is exactly the information I wanted to elicit from the standpoint that in my own case we have known of the time when the abstract would be dated ten, fifteen days prior to the time of the closing of the deal. With title insurance and coupled with an escrow agreement that lag just does not exist. You have a coverage for the intervening period there, which in one case that he cites and in some that I know of would be very, very valuable.

Are there any other questions?

MR. DAVID BLANCHARD (Madison, Wisconsin): I would like to ask these gentlemen if they use attorneys

ARTHUR A. ANDERSON

President, Washington Land Title Ass'n

President, Snohomish County Abstract Co., Everett, Washington

to any extent in their plants or if they hire attorneys when the particular occasion arises, just limit it to the legal problem that arises.

Use of Attorneys

MR. WETHERINGTON: Our general counsel is not in our own office. Their offices are in a different building. We operate under both systems, that is, the order that comes over the counter with no recommendation or no request that it be submitted to a certain attorney, that goes through our own offices, but they are attorneys, and they are paid a fee on each transaction, percentage-wise on the amount of charge we make. Of course if they specify one of our approved attorneys, then we ship it over to him.

MR. BLANCHARD: You are speaking of the title evidence that you may gather that you ship over to him or are you speaking about the abstract?

MR. WETHERINGTON: Oh, it is the slips. We never make an abstract. We purely assemble the chain of title.

MR. KENNEDY: Where we have our own plants we have attorneys on our pay roll, and they examine the slips. We do not make an abstract. We use just a minute sheet, something like Jim Johns spoke of. We use a minute sheet, and they examine the original take-offs in our files, but they are all attorneys. We do not have any examinations made by persons who are not attorneys.

MR. WAYNE CAMPBELL (Garden City, Kansas): I have this question regarding oil companies or any leasing companies. Where do they come into the title insurance picture?

MR. KENNEDY: We do not have any oil down in my part of the state, and we have not been asked to make any big oil policies. These oil companies coming into the oil fields have demanded complete abstracts from the local abstracters. One man gives them photostats, and they examine them through their own attorneys, who are not always infallible, but that has been their system in our state. If oil hits our part of the state, they may have to work differently.

MR. C. W. SPACHT: In our county we have quite a lot of oil, and in making an abstract (I have never made title insurance on any of the lands in the county) for an oil company we make it very full and sometimes word for word on the leases and things like that.

Another thing we do there is make certificate of title or last grantee search. That gives the record owner's name, who own the oil rights, and taxes, judgments. On that we make a certain charge. We also put on a certificate "Liability limited to fee", and that protects on that.

MR. PHARES: One of these gentlemen here, I would like to ask you, in your locality where it is totally title insurance, what would you do where, say, a tax levying body wants ownership reports, strictly ownership reports, do you give anything like that?

MR. WETHERINGTON: Surely.

MR. JOHNS: We all do.

MR. PHARES: On what basis do you do it? Do you insure each title?

MR. WETHERINGTON: It is not insurance. We are still in the abstract business, you understand, Mr. Phares. We still have our plants, and fortunately we have encouraged our recorders not to hold tax sales until they know the former owners and the lien holders and things of that kind, thereby perfecting a title which we think sooner or later we will be called upon to insure, but that is purely a service charge at the time.

MR. JOHNS: If I may be pardoned for jumping up all the time, we have a manual of practices which covers that, and every agent has to conform to that. Everything that can possibly

come up we have in a manual of practices.

MR. KENNEDY: Jim, those are just the last title holders, aren't they? You do not pretend to give them any examination of title?

MR. JOHNS: No, we do not give them any examination of title.

Policy Always for Full Value

MR. LEONARD F. FISH (Dane County Title Co., Madison, Wisconsin): I would like to ask the question as to how you answer an argument why an insurance company will not allow a policy to be issued for less than the full value of the property. In our county we are not issuing insurance, but we are considering it. That is one of the things which has been asked of us, because they are beginning to compare it now with other types of insurance, and they cannot understand why, if they wish to go only part way in their protection, they should not be allowed to do that.

CHAIRMAN GLASSON: All right, Al, there is a good question for you. That is the perennial.

MR. WETHERINGTON: The way I personally feel about it, the way our company has handled it, we do not like to sell a man something and then not give him protection. When you sell him a policy on a piece of property worth twenty thousand dollars and he pays you a fee and you issue him a policy on five thousand, he becomes coinsurer on that to the extent of fifteen thousand. In the event of a loss you would only pay him the five thousand dollars and take over his property. That is the best answer I know. That is what I use all the time.

MR. KENNEDY: Furthermore, most insurance, casualty insurance, such as fire insurance, is written just out of hand because they do not do any preliminary work as you do in the case of title insurance, so you have the same expense in getting ready for the risk. Then if you take a fifty thousand dollar piece of property and write a five thousand dollar policy against it (unless he has a complete failure of title), the chances are any claim you pay will fall within the amount of that five thousand dollars. So you are practically giving him complete coverage on his claim, and you are getting the premium based maybe on one-tenth of what the property is worth. Percentagewise you cannot do that unless you are going to raise your rates, because you have to have certain revenue come in, and you fix your revenues based upon all the types of charges you make.

If we were going to write policies for a quarter, for instance, of the face value, we would simply have to raise our rates and get more for writing on that lower basis.

CHAIRMAN GLASSON: Jim, do you have anything to say about that?

MR. JOHNS: I will just say that we are not sure that all of our clients are honest. As an order goes through the office, if anybody thinks the value has been put down for some purpose, either for "hooking" the government on income tax or revenue stamps or hooking us, we find out what the property is assessed for, in order to determine the approximate value of it. That happens occasionally. A man will buy a house for ten thousand dollars. They call it five thousand, slip five thousand under the table and want a policy for five thousand on a ten thousand dollar property. If we can catch them, we do not go for it at all.

MR. BLOCK: What do you do, refuse to insure it?

MR. JOHNS: No. We tell them they had better look out, the income tax man will get them. We scare them.

Frank Hogan, who was President of the American Bar Association a few years ago, a Washington, D. C., lawyer, was asked what he considered the ideal

MR. RALPH L. BATES
President, Colorado Title Association
President, The Security Abstract & Title Co., Colorado Springs, Colorado.

client. He said, "A very well-to-do man who is badly scared."

MR. R. S. BRINNEY (Atwood, Kansas): I write fire insurance. I am wondering about a policy on a two thousand dollar lot and we get a ten thousand dollar house on it and your insurance policy is only for two thousand dollars, what is your situation there with that, where your values have increased?

MR. KENNEDY: We have not found a way to cover that or we would, since we have only a single premium, but we will catch up on them the next time that comes in the office.

Co-insurance

MR. EVERTS: That immediately becomes co-insurance. You cannot assume responsibility of ten thousand dollars for a man who has only secured two thousand dollars coverage. It is exactly as your fire insurance policy. Today, when your values are going up, there are those who have gone out to sell increased title insurance because the house today sells for ten thousand dollars, originally insured and sold for three or four thousand dollars six years ago.

Mr. Kennedy has the answer to this equity insurance. If you take a two thousand dollar policy and assume all the errors and mistakes and taxes and all that sort of thing on a ten thousand dollar transaction, then you are cheating nobody but yourself. If he has a ten thousand dollar transaction, make him pay for it, buy a ten thousand dollar policy, and nothing less; also the mortgage policy must be for the full amount of the mortgage.

Years ago I sold mortgage policies, not only for the full amount of the mortgage, but for the additional one hundred fifty to cover the foreclosure costs of that mortgage.

Consideration of Bad Titles

MR. WILLIAM EDGAR (Ironton, Missouri): I am not very familiar with title insurance practice, and this may seem an unusual question. I want to know what is the policy where you have what you know as a title examiner or as an abstracter to be an indefeasible title but you have a very, very bad record title, what is the policy of the title insurance in that case?

MR. WETHERINGTON: We do have that arising from time to time. We have an executive committee that receives these cases, that the examiner is not altogether sure, cases that probably it might be cured by adverse possession or something of that kind. But when we pass one we make no additional charge. We merely go through the risk to see if it will come within our yardstick of the risk we can assume. If it will, then we go ahead and pass it.

Is that your question? Does that answer your question?

MR. EDGAR: In other words, you take the matter as a lawyer to determine whether you have a defensible title; if you do, you go ahead, you proceed to issue the policy?

MR. WETHERINGTON: That is right.

MR. KENNEDY: We cannot do that so well, because our policy insures that it is a marketable title, and when there is a falling off in the market sometimes people like to get out of a deal. We raise these matters and ask in our binder or commitment to have them cured. If we are sure that a title is defensible even though it is not marketable, we will offer to insure against failure of title but not against questions of marketability.

MR. JOHNS: May I add to what Frank has said?

CHAIRMAN GLASSON: Surely.

MR. JOHNS: You will be surprised at this. If there is any question of a

title where we insure indefeasibility rather than marketability, we will not write the policy until the attorney for the purchaser has told us in writing that he passes that defect.

MR. JACK L. GEHRINGER (Waukesha, Wisconsin): What is the percentage of losses you have paid in the last five years?

MR. KENNEDY: It depends on whether you are talking about the face amount of the policy or the premium. Our losses have run under five per cent of the total premium charge. I would say perhaps about three per cent of the total premium charged. The rest of the losses are averted by the reason of the fact that we use lawyers to examine our titles, and spend a fortune maintaining a good plant.

CHAIRMAN GLASSON: It has been a great pleasure to see the interest taken in this program today. I certainly appreciate your attention and your willingness to come for an extra session, which in my experience is a thing which happens very, very rarely.

I will now adjourn the meeting until 10 o'clock tomorrow morning.

Training of Employees

(Address delivered at 1947 Convention, American Title Association)

By OSCAR W. GILBART

President, West Coast Title Company, St. Petersburg, Florida.

Mr. Chairman, and ladies and gentlemen of the Abstracters' Section of the American Title Association: The preceding panel was so interesting to me that, frankly speaking, I would like to get off of this program, but they beat me to it and are going to have it extended until tonight, for which I am awfully glad. I am sure it will be well attended here this evening.

This morning you heard a Chamber of Commerce man talk on Kansas and one on Arkansas and reference made to Texas and a few other states. I believe we had one about Indiana, too. But I would like to answer one question that has come to me at this convention here, and that is what do we do in Florida when we have a hurricane. I will answer the question and then proceed with my topic.

When we have a hurricane in Florida we close the doors, pull down the windows, and let her blow! It blows and rains all it wants to. In the morning or the following day we open up the doors and open the windows and we get busy and clean up the debris. All you have to do is rake up the leaves and pick up the branches and cut down the trees and let the water run off and you are all set. That is what we do whenever we have a hurricane. It is very simple, nothing to it at all.

When our chairman of the ABSTRACTER'S SECTION of the American Title Association, Earl C. Glasson, asked me to accept the assignment of a short talk on the subject of "Training of Employees," it was impossible for me to refuse. In the first place, Earl is such a swell fellow that you simply cannot refuse, and in the second place, I am very much interested in this subject. Refusing assignments in the American Title Association is something that the members should not do because in the spirit of cooperation and helpfulness, they should be willing to pass on any information that may happen to be for the good of all, thereby beneficial to the industry.

My few remarks will necessarily be confined to our own community and our own experience, and I do not speak from any wide experience in other cities and companies.

It Pays

You may wonder why I have spent considerable time on training employees and the answer to that question is simple, "our payroll is one of our largest expenses; therefore, why shouldn't we spend time in trying to reduce our largest expense, and at the same time get maximum efficiency."

The finding and choosing of employees is almost always controlled by the size and population of your particular city. It is obvious that finding qualified employees in a very small community would be more difficult than in a large community where you have a large population and more sources from which to draw.

Sources

The sources of employee prospects in our community are as follows: Junior College, — Senior High School,— Business College, — Vocational School, — newspaper advertisements, — and the United States Employment Service, which is tied in with the G.I. training system. It has been our experience that we get the best employees from Junior College, although we have some excellent employees from the Senior High School, and two very good G.I. trainees.

We have a general policy which we attempt to follow in most cases; however, it is not an iron-clad policy, and is more or less flexible to individual cases.

We try to use a considerable amount of psychology in the choosing of our employees and the handling of our employees in the attempt to understand their problems, — their thinking, — in keeping with efficient operation of smooth-running organization. We make a study of human relations and give considerable time to the study of employee problems in order to promote better understanding in our human relations with our employees.

Maximum Salary and Opportunity

We have also given much time and study to what are fair salaries in keeping with the economic conditions of the entire community, and have always attempted to pay maximum salaries for efficient and particular work done. We are fully cognizant of increased living costs and try sincerely to keep up with these costs in our salary increases and bonuses. We try to be alert to the improvement of working conditions and frequently we ask the advice of our key employees as to how things can be

made better for desirable working environment.

We bear in mind that future security is one of the primary objectives and desires of all employees; therefore, we have instituted a Pension Plan and Group Life insurance for all employees who qualify for such benefits. It has been our experience that these two benefits create a lively incentive for better work,—more accurate work and a keen desire to promote company business and increase employee morale.

We Require

The selecting and interviewing of prospective employees is based upon the following outline and applies to both male and female regardless of the particular position to be filled:

1. They must be willing to work and to do it cheerfully.
2. Everybody must be able to use a typewriter, however, not necessarily a speed expert, but must be able to use one accurately and neatly.
3. Every employee must be clerical minded and must like and show an aptitude for clerical routine.
4. The prospective employee, or at least the beginner in the office, must be willing to study any material or books given to them in course of training.
5. We like to select the studious type of person.
6. Compulsory reading is as follows:

a. Thompson on Abstracts of Title
b. Warvelle on Abstracts of Title
c. Titles to Real Property (Title News Volume 26, No. 5, September issue)
d. Title Course by William Gill, Sr.
e. 101 problems and questions on the title course.

7. The prospective employee must be willing to go on probation from 60 to 90 days to prove ability, aptitude, fitness and cooperativeness.

We arrange classes of instruction and give individual help wherever necessary or advisable. We also believe in assigning a trainee to a senior in the office to assist in carrying on this education and training. This team of senior and junior has worked extremely well in the posting and stenographic departments.

The intensiveness of our training title courses together with books to be read is relaxed in some instances where the particular work to be done does not require such training course. We have in mind such employees as file clerks, miscellaneous machine operators or delivery clerks. The duties of these people would not require the heavy reading that would be required of an abstracter or a first-class abstract stenographer; therefore, as I indicated above, this training course must be flexible enough to include all duties and types.

Bonus and Promotion

When it comes to increases, bonuses and promotions, we use the following merit yardstick:

1. Attention to business and duties
2. Cooperation with others in the office
3. Attitude toward work
4. Time wasting and clock watching
5. Accuracy - thoroughness - neatness
6. Courtesy - pleasantness - cheerfulness
7. Alertness and capacity to learn
8. General habits and conduct
9. Amount of sick time off
10. Responsibility - initiative - leadership

Class Procedure

The technical procedure of classes on the title course follow a general pattern,

OSCAR W. GILBART

a. General office procedure which usually includes office regulations and time-honored customs that we do or do not do in our particular office; the things we like and the things we do not like.
b. Legal descriptions of all kinds— platted lands, — acreage descriptions, sometimes known as unplatted lands. — and metes and bounds descriptions.
c. Chancery Court cases and litigations of all sorts.
d. Estate and Probate matters
e. Tax structures, — county, — city and drainage
f. The important parts of all legal instruments, the study of samples and illustrations; in other words, what to look for in any instrument with reference to the most important parts of it.
g. Definitions and legal phrases.

The time required to complete the training schedule included in the following outline is approximately 3½ to 4 years for an abstracter and less for minor positions:

1. Take-off or transcription of the record Department—3 months
2. Posting Department—6 months
3. Indexing Department—3 months
4. Tax Redemption and Docket Posting Department—3 months
5. Abstracting Department — 12 months or more
6. Abstract Stenographer Department—3 months
7. Title Insurance Department—12 months or more

Our management recognizes the fact that sickness is inevitable and that employees are absent from work with or without permission for one or more of the following reaons: sickness,—vacation,—urgent personal business,—uncontrolled appointments, — and irresponsible attitude toward work and employer.

Sick Leave and Time Off

Our sick leave and time off policy has been and will continue to be most liberal and with the distinct understanding that we will receive honesty of purpose, loyalty and sincerity in their work under the circumstances surrounding each individual case. Irresponsibility and deliberate absenteeism is very much frowned upon, and thankful to say, we have very little of either.

Vacations

All persons who have been in the employ of the company one year or more will receive two weeks' vacation with pay and the employees may have extra time on their vacation if they so desire by requesting it in advance so that proper plans can be made for that vacation and time off.

Personal Problems

We try to help our employees all we can. Each one has problems coming up from time to time which directly affect his or her work and the commercial time which we have purchased, therefore, if we can help them to be contented and satisfied in what they are doing with a clear understanding of what is required, we get better work and more work accomplished at less expense.

References

I would like to gratefully acknowledge material assistance from the following sources, where, after reading the books, I obtained many of my ideas.

Human Relations in Business by The Stevens-Davis Co., 1234 Jackson Blvd., Chicago, Illinois.

Human Relations Manuel for Executives by Carl Heyel, published by McGraw Book Co., Inc., New York.

Personnel Management Course of Instructions by Henry Megill Company, St. Petersburg, Florida.

Report of Committee on Federal Legislation

H. STANLEY STINE, *Chairman*
Vice-President, Washington Title Insurance Co., Washington, D. C.

The report of this committee at our last convention concluded with the general statement that, since the report had been compiled, there had been a general election and that the result indicated a complete change in the complexion of the next Congress. That prophecy proved to be fact as can be seen by the organization of the 80th Congress.

For the first time since 1921 we find one political party in control of both the House and Senate and another party in control of the Presidency, with the result that Congress was continually working under the threat of a Presidential veto of any bills passed. This is the picture of the 80th Congress as we approach the study of the legislation as it pertains to the title industry.

To give you a summary of the 7289 bills and resolutions which were introduced in the first session of this Congress would, I am afraid, tax your patience and the resources of this committee. Suffice it to say, of those finally approved, 388 became public law and 32 were vetoed.

The Breather Law

There is nothing within the laws passed by this first session of the 80th Congress which had any particular bearing on the title industry with this one exception, and that is Public Law 238 (S. 1508) which grants to the states an additional six months time, ending June 30, 1948, to enact legislation and set up machinery for regulating insurance companies. This legislation results from the 1944 Supreme Court decision in the Southeastern Underwriters case which held that insurrance is interstate commerce and, therefore, subject to Federal Laws. Heretofore the moratorium expired January 1, 1948.

There are many other bills which have been passed which do not affect us as a title industry specifically, but which do have a tremendous influence on us as private citizens.

Public Law 101 (HR. 3020) which was enacted over a Presidential veto is generally known as the omnibus labor law and includes so many features that a resume of its provisions can hardly be set out here. It is recommended that each of you study this bill in detail.

Public Law 120 (S. 1230) and Public Law 366 (S. 1720) combined to extend the Federal Housing Administrations authority to insure home loans, and they increased the maximum of insurance which the National Housing Agency may issue on mortgages of new homes.

Public Law 129 (HR. 3203) extended rent controls until March 1, 1948. It authorized landlords and tenants to agree on 15% increases in leases extending through December 31, 1948, and it created the supervision over rents in the hands of boards operating in the rental areas of the county with the authorization in these boards to increase or decontrol rents locally.

Public Law 253 (S. 758) provided for the unification of the Armed Forces under a cabinet officer known as the Secretary of Defense. The Army, Navy and Air Forces are given equal standing under this one cabinet officer.

H. STANLEY STINE

Public Law 328 (SJ. Res. 130) adopted the Federal Mine Safety Code for bituminous and lignite mines. This law was passed after reviewing the coal mine situation from actual or threatened strikes of the United Mine Workers and following a mine disaster at Centralia, Illinois.

Public Law 372 (HR. 2800) authorizes home owners to borrow as much as $1.500.00 for property repairs and alterations from Federal Savings and Loan Associations without having to secure the loan by mortgages.

The Congress approved a proposed constitutional amendment (HJ. Res. 27) limiting the term of a president to two terms in office and submitted the amendment to the States for ratification. President Truman is exempt from the provisions of the legislation, but all future Presidents would be restricted to two terms.

Public Law 199 (S. 564) being the Presidential Succession Act makes the Speaker of the House next in line for the Presidency after the Vice-President. The President Pro Tempore of the Senate is next in line after the Speaker, followed by Cabinet members in their former order.

Left for Second Session

There is much legislation, which has been considered but has been left pending for the second session. Prominent among this are various bills pertaining to housing by the several agencies of the Federal Government with particular emphasis on (S. 866) jointly sponsored by Senators Taft, Ellender and Wagner which is designed to encourage the construction of 15 million new homes in the next ten years. Another group of bills would attempt to solve the problem of tax losses suffered by localities on lands taken by the Federal government.

Of the legislation considered and rejected we find the bills on income tax reduction of sufficient interest to record them here. Congress made two attempts to reduce income taxes. Both bills were vetoed by the President. The veto on the first bill was sustained in the House by vetoes which were six less than the required two-thirds mapority. The second bill provided the same schedule of tax cuts but became effective at a later date. The House overrode the veto on this bill but the Senate failed by five votes to override and thus ended any chance of income tax reduction in 1947.

Abandoning the customary proceedure Congress did not adjourn its first session but merely recessed until January 2, 1948. The purpose of this was to make it possible to call a special session at any time if the world situation demanded.

There is much on the agenda for the second session including the foreign policy, the new tax program and legislation written after long range studies had been made and as the result of the reports of numerous investigating committees of both houses of the congress.

It is difficult to analyze all of the laws passed by Congress, let alone the multitude of bills introduced. We attempt to give you a report on those bills passed or introduced which affect first, the title industry, and secondly those which affect each of us in the pursuit of national economy, and on this basis we thus submit this report. We hope that we have briefed the legislation which is of real interest to you.

Report of Committee on Title Insurance Legislation

FLOYD B. CERINI, *Chairman*
Executive Secretary, California Land Title Association.

The primary purpose of this committee was to ascertain and report on legislation directly affecting title insurance that my have been introduced in or enacted by the 1947 legislatures of the various states with particular refcrence to legislation arising as a result of the S.E.U.A. decision and Public Law 15. Secondary purposes were to determine the over-all attitude of title insurers towards such legislation and to coordinate the results of such study into any common pattern which may have developed.

The legislatures of Kentucky, Louisiana, Mississippi and Virginia did not meet in regular session in 1947. The committee received information from twenty-six of the remaining states as to whether or not legislation directly affecting title insurance had been introduced or enacted. In one or two instances the committee was apprised of legislation having been introduced but not informed as to the final disposition of such legislation. Because of this lack of complete knowledge and due to the nature of some of the replies received to requests for information, this report should not be regarded as being entirely accurate with respect to the legislative picture of particular states and it should be regarded as limited to the states mentioned. Anyone interested in a legislative enactment of a specific state should make his own check of such legislation and contact someone in that state for detailed background and operative information.

1. Rate Regulatory Legislation

(a) States in which no legislation affecting title insurance was enacted.

There was no rate regulatory legislation affecting title insurance enacted in the following nineteen states: Alabama, Arizona, California, Connecticut, Florida, Indiana, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, Tennessee, Utah and Wisconsin.

The governor of Florida vetoed a comprehensive measure unanimously passed by both houses of the Florida legislature which provided for the licensing, qualifications, powers, duties, examination and regulation of title insurers and their agents and also provided for the filing and approval or disapproval of policy forms and rates. This measure sought to regulate only the bare title insurance premium without regard to charges for abstracting, searching of records, closing or service fees, or for the examination of the title.

In Missouri a rate regulatory measure, which has title insurance support, is presently pending in the state legislature which is in recess until next January. This measure calls for filings and approval of rates and seeks to regulate only the bare title insurance premiums. Of all the states mentioned, excluding Florida and Missouri, there was apparently no effort on the part of title insurers to sponsor or support rate regulatory legislation.

One measure was introduced in New York to amend existing rate regulatory statutes to which title insurance is

FLOYD B. CERINI

subject and another measure was introduced to repeal such existing statutes and substitute therefor a completely new rate regulatory law. Both of these measures, however, failed of enactment.

(b) States in which legislation affecting title insurance was enacted.

Legislation to regulate the rates of title insurers was enacted in the six states of Maryland, Michigan, Minnesota, Oregon, Pennsylvania, and Washington.

In Washington title insurers have previously operated under a rate regulatory law which required the filing of rates and policy forms and approval thereof by the Insurance Commissioner. The new enactment in Washington, which relates to title insurance only, is extremely brief. It provides that premium rates shall not be excessive, inadequate, or unfairly discriminatory and requires the filing with the Commissioner of a schedule showing the premium rates to be charged and the filing of any additions or modifications. No approval is required of the Commissioner, but he may order the modification of any rate found by him after a hearing to be excessive or inadequate or unfairly discriminatory. Any such order cannot require a retroactive modification. The Washington law does not authorize title insurers to act in concert or through an underwriting board or rating organization in the formulation and promulgation of rates.

Maryland adopted a new act which is applicable solely to title insurance. This measure follows the pattern of the All-Industry Casualty and Surety Rate Regulatory Bill with respect to the filing and approval of rates although the standards for making rates are not identical to those set forth in the All-Industry bill. The Maryland enactment otherwise differs from the All-Industry bill in several material aspects. The formation and operation of a rating bureau or board of underwriters is not authorized nor are there any provisions relative to such organizations. Rates must be made by individual insurers but title insurers are authorized to exchange information and experience data and to consult and cooperate with each other and with title insurers in other states and with national organizations in respect to rate and premium making and forms of policies. Rebates or discounts from filed and approved rates cannot be made to an insured, but as compensation for procuring business a commission can be paid or allowed to any licensed real estate broker, attorney-at-law, or an agent duly licensed to represent a title insurer.

The All-Industry Casualty and Surety Rate Regulatory Bill, with some modifications, was enacted in the states of Michigan, Minnesota, Oregon and Pennsylvania. The measures enacted in each of these states specifically included title insurance as being within their scope. In Minnesota the title insurers are apparently taking the position, with the consent of the insurance commissioner, that only the bare title insurance premium is subject to regulation under the act. Your committee is uninformed as to whether title insurers in Michigan or Pennsylvania are taking a like position. Oregon is filing all-inclusive rates.

2. Unfair Practices Acts

Closely allied with the subject of rate regulatory legislation are the various unfair practices acts and anti-discrimination and anti-rebate legislation which have been enacted in some of the states by reason of the provisions of Public Law 15 that after June 30, 1948, the Federal Trade Commission Act shall be applicable to the business of insurance to the extent that such business is not regulated by state law and because of the possible application, after June 30, 1948, of the provisions of the Robinson-Patman Act to the extent that the insurance business is not regulated by state law.

The five states of Florida, Indiana, Maryland, Utah and Washington enacted unfair practices acts which relate solely to the business of insurance. These acts define, provide for the determination of, and prohibit practices which are designated as unfair methods of competition or unfair or deceptive acts or practices. In general the type of acts and practices prohibited and defined as unfair are: misrepresentations and false advertising of policy contracts; false information and advertising generally; defamation; boycott, coercion and intimidation; false financial statements; unfair discriminations; granting of rebates, etc. With certain exceptions these acts are enforced by the issuance of a cease and desist order by the insurance commissioner after notice and hearing. Judicial review of such an order is ordinarily available and penalties are provided for failure to comply with a cease and desist order.

The Florida, Indiana and Maryland Acts, which more or less follow the pattern of the All-Industry Unfair Trade and Practice Bill, give to the Insurance Commissioner the authority to cite any insurer and hold a hearing on the question of whether or not a specified act or practice of such an insurer constitutes an unfair or deceptive practice or act notwithstanding that such specified act or practice is not defined in the law as an unfair act or practice.

In the Utah and Washington acts the insurance commissioner is authorized, after notice and hearing, to promulgate regulations defining unfair methods and unfair deceptive acts or practices in addition to those defined in the law.

The Indiana act defines as an unfair method of competition and as an unfair or deceptive act or practice the making of any excessive or inadequate charges for premiums or rates for abstracts and title insurance policies. This borders on rate regulatory legislation if it is not in fact rate regulatory legislation.

Oregon enacted an anti-compact and anti-discrimination act, but a copy of such act was not made available to the committee. An unfair practice act and also an anti-monopoly and anti-restraint of trade act was introduced in the New York legislature, but the New York act failed of passage.

California enacted an anti-rebate and anti-commission act that requires every title insurer to print and make available to the public a schedule of its fees and charges for title policies and prohibits a title insurer from making any rebate of any portion of its fees or charges for a title policy, whether for insurance or services upon which insurance is based. A title insurer is also prohibited from paying any commission to any person acting on behalf of an insured or his grantor, mortgagor or lessor. Each title insurance policy issued by a title insurer must specify the premium charged therefor.

3. Other Legislative Enactments Directly Affecting Title Insurance:

(a) California enacted legislation to provide that in addition to the $100,000 minimum paid in capital requirements for a title insurer to qualify to transact business, a title insurer must also have a surplus of not less than $100,000 to qualify.

(b) In New Jersey legislation was introduced to increase capital and surplus requirements of title insurers from a minimum of $100,000 capital and $50,000 surplus to a minimum of $200,000 capital and $100,000 surplus. Your committee was not informed as to whether this measure was enacted.

(c) Oregon re-enacted its retaliatory law which had been repealed in 1945 so that now foreign insurance companies are required to pay a gross premiums tax which is not imposed upon domestic insurers.

(d) Pennsylvania enacted legislation to authorize title insurers to pay commissions to attorneys-at-law and to licensed real estate agents or brokers.

(e) Washington provided by legislation for the mandatory establishment by each title insurer of a special reserve fund by annual apportionment of an amount determined by applying the rate of 25c for each $1,000 of net increase of insurance it has in force as at the end of such year. Such apportionment must be continued until the fund is equal in amount to the guaranty fund deposit required of the insurer, at which minimum figure it must thereafter be maintained.

Other legislation directly affecting title insurance has probably been passed in other states but such has not come to the attention of your committee.

4. Committee Comments

Your committee is not prepared nor does it feel qualified to express any views as to the over-all attitude of title insurers towards legislation introduced or enacted as a result of the S.E.U.A. decision and Public Law 15. It observes from the information received by it, that legislation to regulate the rates of title insurers was enacted in but six states, one of which had previously had a rate regulatory law. Of the five states where such legislation was enacted for the first time, only one state enacted a law relating solely to title insurance. In the other four states, title insurance was included within the scope of measures regulating the rates of other classes of insurance; which measures are, in essence, the All-Industry Casualty and Rate Regulatory Bill. In some cases the inclusion of title insurance in such enactments was not entirely a voluntary participation by title insurers.

Your committee does not believe that the legislation introduced or enacted has produced any common pattern.

The committee directs particular attention to the unfair practices acts adopted by some of the states which give one man—the insurance commissioner—the power and authority to determine whether any act or practice not specifically prohibited by the act does constitute an unfair practice or act which can be prohibited.

Every state with the exception of Rhode Island has now enacted rate regulatory legislation covering either fire insurance or casualty insurance or both. In one or two instances there presently exists a doubt as to whether title insurers are included within the scope of casualty insurance measures. It is suggested that title insurers give careful study to these enactments to definitely ascertain whether or not they are subject to such rate regulatory laws.

Respectfully submitted,

Floyd B. Cerini, Chairman
Charles H. Buck
E. J. Eisenman
E. B. Southworth
A. B. Wetherington

Ex-officio members:

J. J. O'Dowd
Frank I. Kennedy
George C. Rawlings
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Report of Committee on Standard Forms

BENJ. J. HENLEY, *Chairman*
Executive Vice-President, California Pacific Title Insurance Co., San Francisco, Cal.

Under date of July 2, 1947, a bulletin was addressed to title insurance company members at the request of Metropolitan Life Insurance Co. asking for the views and a statement of the practices of the companies on certain questions which I have summarized as follows:

Does your mortgagee policy make the title company liable to the insured for the full amount of the mortgage whether the full proceeds of the loan were received by the borrower, or not?

Is it the practice of your company to obtain estoppel certificates (or mortgagor's waivers) in connection with mortgage loans?

An intelligent consideration of these questions requires that they be divided into two main questions and two subquestions:

(1) Does the mortgage policy render the insurer under a title policy liable for the face amount of the mortgage whether this amount is paid out or not:

(1a) When the insured is the original lender?

(1b) Where the insured has acquired the loan by endorsement or assignment?

(2) Is an estoppel certificate (mortgagor's waiver) taken:

(2a) At the time the original loan is made?

(2b) At the time of the assignment?

First, let us consider the replies to the questionnaires. Thirty-eight replies were received. On the question of liability few of them made any clear distinction between cases where the insured is the original mortgagee or where the insured is an assignee. Nine of them stated that in the opinion of the writer the title company would be liable. Fifteen companies stated that they thought there would be no liability on the title company. Three companies made qualified answers and eleven companies who responded to the questionnaire did not reply to the question at all.

Two companies reported that they regularly obtain estoppel certificate at the time the loan is made when insuring the lien of a mortgage. Twenty-eight companies replied that they did not. Five reported that they did this on Metropolitan Life Insurance Company loans because that company required it. Thirteen companies stated that they regularly secured such certificates at the time they insured assignments of loans, and seventeen reported that they did not. Six responses did not answer the question.

It is apparent that the confusion of opinion on the liability question would seem to require a clarification of the policy forms in use as they affect this question.

Because of the differences in language used in different policy forms, it is probable that this discussion will not be pertinent as to some of them. It will be directed particularly to the language of the A.T.A. policy form.

Most title policy forms limit recovery to the actual loss of the insured. Paragraph 8 of the Conditions and Stipulations of the A.T.A. expresses this limitation in the following language:

> "The liability of the company under this policy shall in no case exceed in all the actual loss of the insured and the costs and attorneys' fees which the company is obligated hereunder to pay."

BENJAMIN J. HENLEY

It is difficult to see how any loss could be sustained either by the mortgagee or the title company in a case where the original mortgagee is the insured under the policy and that mortgagee failed to pay to the mortgagor the full amount of the loan. While it is true that the mortgagee could recover only the amount actually advanced to the mortgagor, it could suffer no loss by reason of that fact because its investment in the loan would not exceed the amount it could recover.

Furthermore, the A.T.A. policy provides, as do most other policies, in one form or another, that:

"The company will not be liable for loss or damage by reason of defects, claims, or encumbrances . . . existing at the date of this Policy and known to the insured claiming such loss or damage at the date such insured claimant acquired an insurable interest but not known to the company or disclosed to it in writing by the Insured."

Obviously, if the insured mortgagee failed to advance the full face of the loan, and did not disclose that fact to the insurer, the insurer would have no liability for loss resulting therefrom.

The liability of the insurer where the insured has acquired the loan by assignment or endorsement is not free from ambiguity.

In considering the question under the A.T.A. policy, it must be kept in mind that this policy on its face insures both the validity and priority of the lien of the mortgage, and the validity and the priority of any assignment of the mortgage shown in the policy.

The provisions of the A.T.A. policy which affect this question are as follows:

> The company hereby insures "the owner of the indebtedness secured by the mortgage or deed of trust described in Schedule A, herein called said indebtedness, and each successor in interest in ownership thereof, . . . against loss or damage not exceeding $..... which the insured shall sustain by reason of . . . the invalidity of the lien thereof upon said land."

The language of the A.T.A. policy insuring the validity of assignments, is as follows:

> "Subject to the provisions of Schedule B and the Conditions and Stipulations hereof, the company further insures that, at the date hereof, any assignments shown in Schedule A, whether reported or not, are good and valid and vest title to said mortgage or deed of trust in the insured, free and clear of all liens."

As expressed in the policy the insurance against loss by reason of the invalidity of the lien of the mortgage, or by reason of the invalidity of any assignment shown in the policy would seem to be all comprehensive, and that if there is no valid lien there can be no valid assignment. However, in determining the meaning of this language, it must be related to the character of the transaction between the insurer and the insured. To say that the insurer would be liable for loss resulting from the failure of the mortgagor to receive from the mortgagee, whose assignee is the insured under the policy, the full amount of the loan is to say that the insurer under the title policy insures that there is due upon the loan a specified amount of principal. This, in spite of the fact that nowhere in the policy does the insurer assume any such obligation.

Such a conclusion would further say that if the assignor of an insured assignee had advanced One Dollar of principal upon a Five Thousand Dollar loan, and as a result the assignee could collect from the mortgagor only One Dollar of the Five Thousand Dollars paid for the assignment of the loan, with a resulting loss of Four Thousand Nine Hundred Ninety-nine Dollars the insurer would have no liability under the policy because there would be a valid lien for One Dollar and the assignment would be valid. On the other hand, if the theory that the title company is liable for loss of the assignee where the mortgagee-assignee did not pay the full principal to the mortgagor is sound, if no part of the principal of the loan was advanced to the borrower and as a result the assignee of the mortgagee could collect nothing, the insurer would be liable for the full Five Thousand Dollars because there would be no valid lien, and therefore no valid assignment.

It is difficult to believe that the language of the policy would be construed so that it would lead to such a conclusion. However, the answer to the question as applied to assignments is not clear.

Future Advances

A second subject referred to the committee for consideration is the suggestion by a member of the association that where a mortgage or deed of trust by its terms secures advances additional to the original indebtedness, which may be made to the mortgagor or trustor after the security instrument is executed and recorded, it may be necessary for the protection of the insurer to include in title policies, including the A.T.A., an exception relieving the insurer of liability if the lien as to such additional advances is subordinate to claims intervening between the recording of the security instrument and the making of the additional advances.

Most title policy forms provide that "The Company will not be liable for loss or damage by reason of defects, claims, or encumbrances created subsequent to the date hereof." The language is from the A.T.A. form. Therefore, it would seem that the insurer would be liable for no item which might affect the priority of the lien for the additional advance, unless such item was also prior to the lien securing the original indebtedness.

If this premise is correct, no endorsement would be necessary to protect the insurer against loss should the insured suffer such loss by reason of liens intervening prior to the lien securing such additional advances.

The third matter presented to the committee relates to an amendment of the insurance code of California which requires that the amount of the fee or charge for every title insurance policy shall be shown thereon. To comply with this law, California companies request that the association approve the practice for that state of including in the policy a statement of the amount of the charge therefor.

Abstracters Section

A PANEL DISCUSSION

EVALUATING AN ABSTRACT PLANT

MEMBERS OF THE PANEL:

Lynn Milne, President, Security Land & Abstract Company, Sturgis, South Dakota.

W. A. McPhail, Secretary, Holland Ferguson & Co., Rockford, Illinois.

Moderator: Joseph T. Meredith, President, Delaware County Abstract Co., Muncie, Indiana.

CHAIRMAN GLASSON: Ladies and gentlemen, we pass to a subject of great interest. As a matter of fact, it is the most valuable thing you have in your offices. Your abstract plant you have built up from scratch or have acquired from someone who built it from scratch. Day by day you continue to make an investment in that plant which grows continually. Whether you do a dollar's worth of business does not make any difference—you still have to keep that plant up-to-date and thereby increase its value.

There has never been any good formula for valuing an abstract plant. Usually we charge to capital account what money we put into the thing to start with and from there on we charge everything to expense. Yet, obviously, we are continually enlarging the plant. perhaps improving it, and, therefore, making it more valuable.

In addition, the financial growth of our community increases the possibility of doing business, and thereby the possibility of profits, if any. Again we have a factor which makes for an increase in value of our plants.

We have asked a panel to give us some ideas as to what is a fair method of valuing abstract plants. This panel, of which Mr. Joseph T. Meredith, President, Delaware County Abstract Company, Muncie, Indiana, is the Moderator, consists of Mr. Lynn Milne, President, Security Land and Abstract Company, Sturgis, South Dakota, and Mr. W. A. McPhail, Secretary, Holland Ferguson and Company, Rockford, Illinois.

LYNN MILNE

JOSEPH T. MEREDITH

MODERATOR MEREDITH: For several years we had been discussing the question of being able to get some sort of a rule or formula to value our abstract plants—a valuation for sale, not for assessment. Rental property used to have (possibly not in the last few years) a rule of valuation. It was twelve times the rental value.

Formula

Our abstract plants have been built over many years, and there are not too many sales from which we can develop formulae. It is hard to get all usable data, but we think maybe with your help we will be able to evolve some rule of thumb. One was suggested and thrown out to a good many abstracters who accepted it with varying degrees of enthusiasm. First take the cost of reproduction, which, of course would vary in different places. Take forty per cent of that. Then take

a ten-year average of the net earnings, and take twenty per cent of that. Then take your last year's gross business and take forty per cent of that. Then you add up the total of these percentages and you will have the value of your plant. You can roughly do that in your mind and see whether or not you think they are within gunshot of it.

Of course, in addition to all of those things you have to consider loading. A loading for whether or not there is competition, whether or not it is in a growing community, whether there is enough population to warrant a growing business, and all those things.

The question is of such interest that yesterday afternoon in the Title Insurance Section they had a similar forum. A lot of ideas were expressed there, which finally got down to one which I will give you later on in the panel. Perhaps some of you gentlemen were in that session.

We have with us this morning two gentlemen who have been in the title business quite a while, and have given this some thought. I am sure they will come up with some ideas that will be interesting.

Mr. W. A. McPhail is the Secretary of the Holland Ferguson and Company, Rockford, Illinois. (Applause.)

W. A. McPHAIL

MR. McPHAIL: When a Chairman of a Section asks you to take part on a program, it is awfully easy to say "yes." Right after you consent you commence to realize you have a real assignment. I think this topic on our program is probably the most difficult of any. So far we have not talked much about this in our conventions. It has been just the last two or three years that it has come up.

I do not know who proposed this topic. At least he did not say whether he was buying a plant or selling a plant.

I think there are three major factors we must consider in valuing an abstract plant. The first of these is that we must estimate what it will cost to build a new plant to take the place of the old. Second, we must consider the gross earnings of this plant as it stands today; and, third, we must consider what the plant will earn. I think that last is probably the most important of all three.

Factors

Let us look at these three for just a few moments. Under these three headings there are several items which must be considered. First, you have the cost of reproduction. You have all been around this convention for three or four days, and you have noticed the exhibits which we have, especially the machinery and photography. In the old days it was estimated it would cost $100 per volume for every volume in your courthouse to build a plant. Today under modern methods I understand that it can be done for a little under $50 a book. By that I mean taken off and posted.

The next is the completeness of the plant. Bear in mind if we have a new plant made, if we were to have it made today by new machinery, new methods, we would have nothing but the bare plant at that time. We would not have any difficult chains of title worked out. We would not have any arbitrary plats worked out for the congested areas, so a certain percentage would have to be added to the original cost of the plant if you had those things done. I think we must consider in valuing a plant, if it is up to date, that all instruments on record are taken off, either by photography or abstracted and posted. I think that it has a vital bearing on the value of a plant.

I have mentioned the arbitrary plats already. I think that is one of the most helpful things we have in our plants. If this plant we are considering selling or buying has those plats worked out

JOSEPH T. MEREDITH

and posted, it is a very important thing, because they are of great assistance.

Copies of Prior Work

Then, too, if this plant has been in operation, we will say, for fifty or seventy years, if they have kept accurate copies of all work they have done, they have chains of title worked out on almost every area, especially the difficult ones. You who are in the business know how important it is to have a letter press copy or a carbon copy to assist in giving you a chain of title on a particular eighty acres for a period of fifty to seventy-five years. That is one thing which is of great value to us who have been in the business for some time.

I think we should consider the cross-indexing of all estates, chancery suits, and proceedings of that kind which we have taken off. In a great many cases these proceedings will cover ten, fifteen, twenty, and sometimes a hundred tracts. If they are cross-indexed for ready reference it is a very handy thing to have, and worth much money.

Earnings—Management

The gross earnings of the company are important, too, and under certain supervisions it might be more than under others. I will say the management of the plant has to be considered. Have they worked at it with a great deal of care? Have they eliminated possibilities of error? So we work into this the good will of the plant. That certainly has a share in the value of the plant.

Population of County

I think the population of the county has a great deal to do with it. In a small community you are naturally not going to have as much business as in a large community. The character of the particular business in that county is to be considered. If it is a farming community where there are few transactions, there is not very much activity; whereas, if you are in a large community where there is an industrial population—manufacturing, and all of those things that go with that; a great many men engaged in business—they need homes, then there is bound to be more activity.

Competition and Growth

We must consider whether or not there is competition in this county. That is an important factor.

The prospects for growth in this county are to be considered. I have already stated that an industrial area is liable to grow more than a farm community area where there is little or no activity. So much for the gross income.

The Net

Now for the net income, and that is really the meat of the cocoanut. I think we have to consider, first, the rates which have been charged. If you have been coming to these conventions as long as I have, you will find, if you do not already know, that we have about as many different rates as we have companies or ways of figuring. Of course, that is probably a broad statement, but I know some charge more for their entries and certificates than others.

We would have to consider whether or not this company is in the title insurance business. If it is, I know their gross income and their net profits would be much larger than mine, because I am just in the abstract business.

Management

The efficiency of operation, the number of employees, the amount to which they have been trained to carry on this work efficiently would have to be considered. I think those are the main things that we would have to think of in the placing of a value on an abstract plant.

I have talked with several people about this and I have gotten down to the point where I think I am going to "stick my neck out" and give you my theory on how I would put a value on a plant.

You all know how much your gross income is. You all know how much your undivided profits are. I think if we will take those two figures and consider the population in the county, we can come very nearly arriving at a figure. I am considering the small abstract plant, not the large title insurance company which operates in the metropolitan area, because most of us are in the smaller communities. I think if we take our gross income for the year 1946—(I am going to take one year on this)—and multiply that figure by two, you will have a minimum price on your plant. You multiply it by two and a half, and you are going to come pretty close to a maximum price.

I am going to take the population in the county. If you want to get a minimum figure, multiply it by one, and if you want the maximum figure, multiply by one and a half. Take our average net income over a period of ten years, multiply that by ten, and you are going to come very close to the same figure.

I may be all wrong, but it is my idea of how we might begin to arrive at the value of an abstract plant. I hope everyone in this meeting will take an active part in the discussion.

MODERATOR MEREDITH: Mr. Lynn Milne, President, Security Land and Abstract Company, Sturgis, South Dakota. (Applause.)

LYNN MILNE

MR. MILNE: Ladies and gentlemen: This is a bad spot to be in after these two gentlemen have just finished. They have stolen my thunder. The over-all picture has been very carefully, and, I think, very well covered.

Purchase or Sale

To arrive at a valuation of an abstract plant depends entirely on what you intend to do. Are you going to buy, or are you going to sell, or are you valuing it for taxation purposes or for insurance purposes? As far as the over-all value is concerned for a bare plant, Mr. McPhail has told you that a plant can be reproduced for approximately $50 per volume. The figures which have been given at this convention bear that out.

Factors

There are a lot of factors which he has mentioned which further change the over-all picture. The type of community in which you are doing business has a tremendous effect on the value of this plant. Assuming that you were interested in purchasing an abstract plant, your basic figure would be the cost of setting up that plant in the county in which you intended to go into business. If, for $50 per volume, you can set up a plant, step in there cold and start business, you still have to make your contacts, you have to become acquainted, you have to develop your business. You are not including in that cost any good will or any business which comes to that office. If you were to purchase a plant which is in existence, the fellow has thousands of abstracts out, and his name is on them. There is a certain percentage of those which are coming back to you for continuation merely by reason of the fact that the name of that company appears on the cover.

Type of Community

As a further consideration, I think you are going to have to take notice of the type of community in which you are operating or in which you intend to operate. In your industrial districts probably there are a number of sections where the big percentage of abstracts are already in existence. I would say ninety-five per cent of your work would probably be continuations. In some of these midwestern states, particularly in South Dakota, Montana, and Wyoming, we have lost a lot of our land during the drought and depression, a lot of the land reverted to the county in tax deed procedure. As a result, the abstract to that property is out of circulation. In the last four

WILLIAM A. McPHAIL

or five or six years some of this property has been put back into private ownership, and those people are now ordering and demanding new abstracts.

In our particular county, the county acquired title to a half million acres during the depression. The county in which I operate is one hundred twenty-five miles one way and about eight miles the other, so we have a lot of acres in that county. The abstracts on close to a half million acres of land are quite an item. If you are operating in one of those states you must take into consideration the valuation of the plant, whether you are going to be continuing abstracts, or whether you are going to make new ones from inception of title.

As far as any rule or formula for valuing an abstract plant is concerned, personally I doubt that it can be done. After all, if you are purchasing a plant, you are interested in what the net income will be. Your purchase price is going to be based upon that consideration.

As Mr. McPhail has said (and he has given you some figures as to what it would be worth), I take it his figures are on a sale basis. I do not think there is a person in this room who would sell his plant for the same amount that he would buy if the situation was reversed, and he was going out to go into business. Your sale price is going to be a lot higher than your purchase price—so, after all, your price seems to be based upon what it will earn for you, what your net percentage of profit will be over a given period of years, if you want to purchase an abstract plant.

On Obsolescence

In the event you wish to put your plant up for sale you have to arrive at some basis. Mr. McPhail has given you the figures which he believes would be applicable. There again the territory in which you operate is a very deciding factor in how much of that plant is obsolete, how much of it you use daily, and how much of it you refer to maybe once a year, maybe once in five years. In your localities where your property is turning over, in many cases you probably do not go back over five, possibly ten, years in your plant. In other states where titles are new, you go back to inception of title. If you have a question of obsolence there, you have that to take into consideration. All in all, I think this question is probably the hottest potato that has been dished up to this convention.

MODERATOR MEREDITH: Thank you, Lynn.

Formulae

Let us get our thoughts together. As you can see, the committee had a meeting or two, and we did not see "eye to eye". Here is about the way it sizes up. You have four different methods of evaluating a plant. The first is reproduction, the second is use, the third is income, and the fourth is population. If you use those four elements you will not be far wrong from a true picture of your plant valuation. In other words you capitalize your plant at ten per cent and your population at a dollar per person. If you will take those four figures and average them, you will be pretty close to a true value of your plant. Of course the plant is worth what a willing seller can get from a willing buyer, and that is all there is to that.

MR. DAVID BLANCHARD (Madison, Wisconsin): Mr. McPhail touched upon the valuation of good will. My question may be a large order, but I would appreciate an answer of some kind for these three situations, the valuation of good will, first of all, where there is no competition; second, where there is competition, and third, where there is potential competition. That may be a little large, but if you can give me a little help, I will appreciate it.

Good Will

MR. McPHAIL: The valuation of good will where there is no competition, where there is competition, and where there is potential competition, is all the same. The standing of your company in the community, the way you treat your customers, I think is one thing that all of us want to remember, and also that the customer is right. When you have a customer come in and he argues with you about something and you argue with him, you do not feel very good about it. You are sure he does not feel good about it, and that, I think, is a violation of good will. To have the people who do business with you feel right toward you, have them feel when they come to your office that they are going to get a fair deal, builds for good will.

That same thing will apply in all three cases, and especially if you think you are going to have competition. You want to have a good standing in your community, whether you are lawyers, whether you are real estate men or city officials, and I think there is quite a little value to it.

Does that answer your question at all?

MR. BLANCHARD: In other words, you would not make any particular distinction?

MR. McPHAIL: No, I would not make any particular distinction, and I would not set any particular value on it because it is an awfully hard thing to do.

MR. MILNE: Isn't that included in your net and gross profits?

MODERATOR MEREDITH: I was going to say if you will use the formula that we have given you of the four different ideas, and value your plant, you may have a book value. The only reason you may want to value good will is to fill a gap between formulae and asking price. The difference of what you have set up and what this formulae shows is what you can call good will.

MR. BLOCK: Maybe in the red?

MODERATOR MEREDITH: Well, could be, and then you ARE looking for a buyer.

MR. ELLISON: What did the title insurance people figure out yesterday?

MODERATOR MEREDITH: About what we are figuring out, sir.

MR. ELLISON: Didn't you refer to that?

MODERATOR MEREDITH: Yes. They had several formulae but it finally got down, I think, to this, which was generally accepted, taking your average net income over a period of ten years and capitalizing at ten per cent.

CHAIRMAN GLASSON: Do you mean they simplified it to that extent?

MODERATOR MEREDITH: Yes; average net income capitalized at ten per cent.

MR. BOYD: How do you figure depreciation on the plant?

MODERATOR MEREDITH: You are going to get that in a little bit from the gentleman from Pueblo, Colorado, because he is going to tell you all about accounting. We will have that later.

MR. ED FULLER: If you buy a plant, in how many years should you be getting your investment back?

MODERATOR MEREDITH: That would all depend if you capitalize the ten per cent, theoretically you would have it back in ten years. Yesterday in figuring the net income, they said that the ideal would be an eighteen-year average and that would take you over a spread of good times and bad times. We are talking about ten years, but they maintained that the ideal average would be eighteen years.

Thank you very much for your attention.

CHAIRMAN GLASSON: Thank you, gentlemen, very much for a good program. I am sure we, at least, have a lot of things to think about now with respect to this subject, even though we may not have agreed entirely upon the exact formula we should use.