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# Title News

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In this issue: McConville Interviewed Over Mutual Network





## a message from the Chairman, Abstracters & Title Insurance Agents Section

Almost 21 years ago, I attended my first ALTA Convention. It was the 1957 gathering at the John Marshall Hotel in Richmond, Va. Those few fall days—filled with opportunities of meeting industry leaders and for excursions into the history-rich cities, towns and countryside of Virginia—were a memorable introduction for a neophyte titleman.

Moving into the chairmanship of the Abstracters and Title Insurance Agents Section—with all the pleasure, the work, the honor and the responsibility the job entails—has been an occasion for me to look back at the ALTA I've known in the years since the 1957 Convention and to come to two conclusions—namely, "My, how we've changed!" and "It's a good thing we have." The change, I think, primarily is a matter of self-image.

There was a time when the state which regulated the title industry in more than a perfunctory manner was a rarity; when members of Congress seemed unaware of our existence; when our only concern with the federal bureaucracy was the set of standards for title evidence imposed by a federal agency acquiring land; when a "consumer group" was a cooperative purchasing unit, and when our major external concern was the threat or the reality of unauthorized practice suits. Like the unsure girl at the dance, if anyone looked our way, we tried to blend into the wall covering.

The Proxmires, the Lobels, the Whitmans, the Naders and the many others whose names each of you can add have convinced us we can't shrink from their charges or ignore their proposals and survive. For that, we owe them all a debt of gratitude. We've moved from a time of wishfully thinking we could escape the attention of those in positions of authority or influence, through a time of belated reaction to charges and events, to a time of successfully anticipating developments, planning for them and seeking to influence them. Despite the distractions of criticism and attack, our industry has become of increasing importance to the American economy. We title people have come to recognize that value and to realize, too, what we as an industry can accomplish.

Having attained—and given the will to maintain—that posture, the future of the title industry is bright, indeed, provided we:

- Acknowledge that there are practices within our industry which need correcting and that the industry, itself, must take the lead in bringing about the corrections;
- Recognize our commonality of interest—be we abstracter, agent or underwriter—in preserving for our own good, the good of those who use our products and services and the good of the economy as a whole a system of title evidencing provided by independent, privately owned and operated, businesses;
- Continue to remind ourselves, those we serve, those with the power to regulate us and those in position to influence public opinion of the worth of the system and our part in it;
- Resist the temptation to achieve short term competitive advantage by means which in the long term are harmful to the perpetrator as well as to the industry and its customers.

I look forward to attending many more title conventions and, whenever I look back, to realizing that the industry has continued to change—always for the better.

Sincerely,

J. L. Boren, Jr.

# Title News



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On the cover: ALTA President C.J. McConville (left) is interviewed by radio host Gene King for the Mutual Broadcasting System. The story appears on page 5.

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# McConville featured in network interviews

ALTA President C.J. McConville traveled to Washington, D.C., late in January for a series of radio interviews that emphasize the importance of land title services to home buyers and other real estate investors.

The interviews were broadcast across the nation in February after taping sessions with radio host Gene King. King regularly produces the "Consumer's Buyer Guide" for the Council of Better Business Bureaus.

President McConville recorded five, 90-second "Consumer's Buyer Guide" shows with King that were aired daily the week of Feb. 20 over the Mutual Broadcasting System. The program is heard over 85 stations in 33 states, with 20 of these stations located in the top 100 radio markets.

On the same day, President McConville and King taped a longer interview on land title services. It was broadcast in quarter-hour time slots over stations including those

serving New York City, the Chicago area, Kansas City, Omaha and Las Vegas.

Interview content was concentrated on providing consumers and opinion leaders with a better understanding of land title services, as the below transcript of one of the "Consumer's Buyer Guide" programs demonstrates.

During the interview sessions, President McConville was accompanied by ALTA Director of Public Affairs Gary L. Garrity, who handled initial liaison with the producer and assisted in the development of program content.

After a busy day in the broadcast sessions, the ALTA president returned to his desk as president of Title Insurance Company of Minnesota in Minneapolis. As those who heard the programs are sure to agree, his radio efforts in Washington made a very significant contribution to a positive public awareness of the land title industry.



*President McConville (left), accompanied by ALTA Director of Public Affairs Gary L. Garrity, arrives for the interviews.*



*Before the interviews, "Consumer's Buyer Guide" host Gene King (right) briefs President McConville on taping procedure.*

**King:** This is Gene King of the Council of Better Business Bureaus with Consumer's Buyer Guide. In a moment, you'll be hearing from C.J. McConville, president of the American Land Title Association. Mr. McConville, title insurance is important isn't it?

**McConville:** It certainly is, Gene. When you buy a home, your mortgage lender probably will require that you purchase lender's title insurance to protect his investment in your property against possible land title problems. But don't make the mistake of assuming that lender's title insurance protects a home buyer. It doesn't.

**King:** How can a home buyer get title protection?

**McConville:** By making sure that he receives an owner's title policy in addition to lender's title insurance. In some parts of the country, the seller of a home customarily furnishes owner's title insurance for the buyer. In other areas, the buyer must request owner's title coverage and pay for it. Either way, owner's title insurance typically is available for a small additional charge when bought simultaneously with lender's coverage. The time to check into this is before a home is purchased.

**King:** This has been Consumer's Buyer Guide with C.J. McConville, president of the American Land Title Association. I'm Gene King for the Council of Better Business Bureaus.

**W**ith the housing industry—new and resale—booming in 1976, the title industry was expected to have a very good year. With the following figures we will attempt to show just how well the industry fared in 1976.

Our 1976 operating income (exclusive of mortgage division income), as compiled from the National Association of Insurance Commissioners (NAIC) Form 9, was a record high of approximately \$776 million. This is a dramatic 31 percent increase over 1975's \$590 million. At the same time, operating expenses increased by about 25 percent over 1975's \$527 million to a record \$660 million.

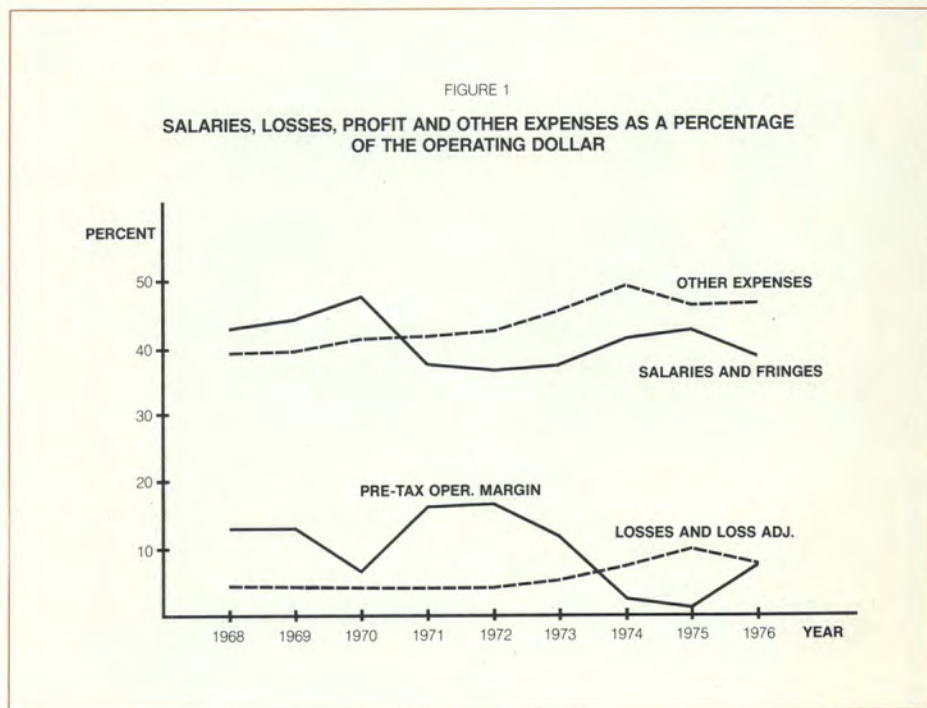
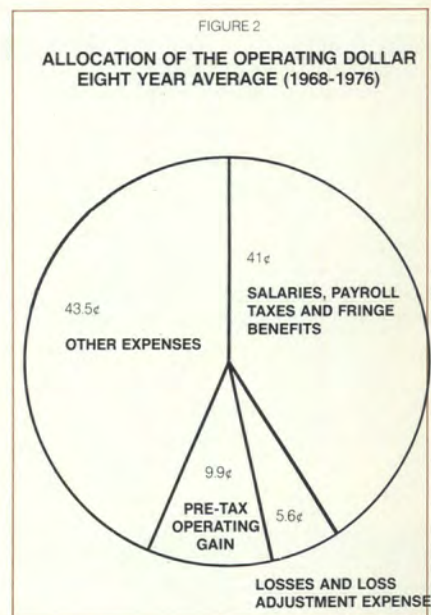
These expense and income figures indicate that about 85 percent of our operating dollar was used to meet expenses in 1976 as compared with 89 percent in 1975, 91 percent in 1974 and 83 percent in 1973. Out of the approximately \$116 million difference between revenues and expenses once again, losses and loss adjustment expenses totaled almost \$55 million—a decrease of \$3 million from 1975's figure. However, this \$55 million is still 240 percent above 1972's figure of \$23 million. In 1976, these expenses accounted for about 7.1 percent of operating income. Therefore, the above figures indicate that 92.16 percent of every dollar of revenue is used to meet either current expenses or losses.

Figure 1 graphs our annual results since 1968 concerning salaries, losses and loss adjustment expenses, pre-tax operating margin and "other expenses" as a percentage of our operating dollar. Salaries and fringe benefits in 1976 increased by 18.5 percent over 1975 to a record high of \$298 million. It is interesting to note that the increase in salaries was less than the increase in operating income (31.4 percent). This points up what we have been saying for years, namely that we are an industry that hires a large number of highly

## Form 9 study shows industry broke bleak streak in 1976

trained specialists whose jobs must be done regardless of the amount of business that the industry does. Therefore, since our costs remain fairly constant while our volume of business varies, we experience very large fluctuations in profitability. For the first year since 1972, our pre-tax operating margin increased. Last year, the margin rose to 7.8 percent as compared with 1.1 percent in 1975, 2.1 percent in 1974 and 11.7 percent in 1973. This figure does not compare favorably with *Standard & Poor's* 400 Industrials, which recorded a combined pre-tax operating profit

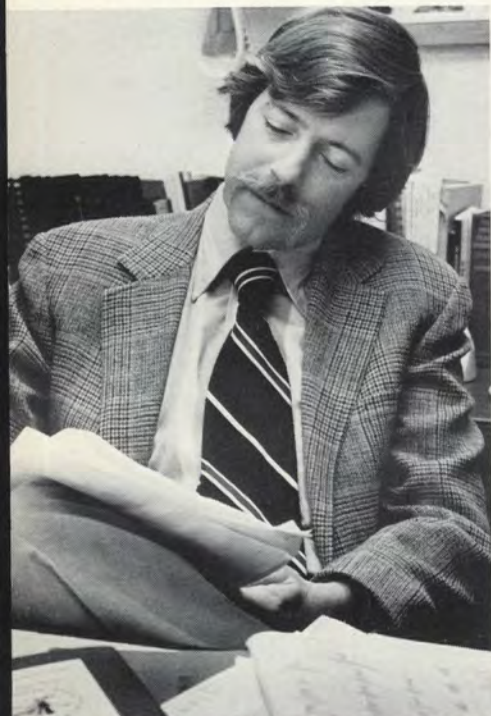
margin of 14.4 percent in 1976—a slight increase from 1975. In fact, the margin for *Standard & Poor's* 400 Industrials has not gone below 14 percent in any year since 1955.



By John E. Jensen, Chairman, ALTA Research Committee, and Richard W. McCarthy, ALTA Director of Research

In Figure 2 is a nine year comparison of what makes up our operating dollar. About 84.5 percent of every dollar went for expenses. Approximately 5.6 percent went for losses and about 9.9 percent went to operating gain. However, this 9.9 percent is a pre-tax figure and if we are taxed at the customary rate of 48 percent, it means we kept about 5.15 percent of every dollar that we earned.

However, as we stated in our July 1977 *Title News* article, the rate of return on total capital is a far better indicator of a firm or industry's viability. As Dr. Jerry D. Todd and his colleague Richard W. McEnally point out, "... for the investor, return on net worth is a more relevant figure than return on premiums or sales volume. He knows that he can make 5-6 percent after taxes in the bond market with relatively low risk. Thus, this becomes his opportunity cost—



Research Director McCarthy

i.e., what he must earn on his investment to equate this venture with alternative ventures. The comparison between one businessman's 50 percent profit margin and another's one percent is meaningless.

"Likewise, it is meaningless to compare the profit margin earned in the title insurance business with that earned in automobile insurance or any other line of insurance. In fact, it is not even valid to compare the profit margins of two different companies in the same business if the product or service rendered is not strictly comparable.

"For example, an exclusive downtown furniture store might have a much higher profit margin or "mark-up" than a suburban store, yet the suburban store survives while the downtown store becomes insolvent because of inadequate volume. The determining factor is profitability on funds invested, not mark-up on goods sold."

For the title insurance industry, the after tax rate of return on total capital for the years 1973-1976 was 5.06 percent, 1.82 percent, 3.69 percent and 6.02 percent respectively. This is significantly below the average figures for the private sector of the American economy. (For a more complete discussion of this point see our article in the July 1977 issue of *Title News*.)

Actual loss expenses in 1976 again increased. A look at the 1976 claims study will give a clear picture of our actual loss payments by category.

Because the participation rate of companies has increased since the initial claims study (41 percent of gross revenue in 1971), the actual dollar figures reported for loss payments and actual number of new claims received cannot be compared from year to year, although the percentages of figures



Research Committee Chairman Jensen

are comparable. To overcome this limitation, additional calculations were made wherein this difference in participation rates was taken into account thus allowing one to compare, for instance, the relative size of loss payments between 1971 and 1976.

Since 1971 was the first year in which at least 70 percent of the industry participated in terms of gross revenue, it was used as the "base" year.

Figure 3 on page 8 shows a comparative index of loss payments reported for the years 1971 to 1976, indicating total losses and losses due to taxes and special assessments. Total losses have again increased, however, they have not increased at an increasing rate as they did between 1971 and 1975. (That is, from 1971 to 1975 the percentage increase in loss payments each year was greater than the increase registered for the preceding year.) In fact, 1976's losses were 2.7 percent above 1975's and were 202 percent greater than in 1971. In dollar terms, our loss payments in 1976 were approximately \$29.2 million. Losses due to taxes and special assessments once again increased dramatically and are now 240 percent greater than they were in 1971.

(Continued on page 8)

FIGURE 3

INDEX OF LOSS PAYMENTS REPORTED:  
TOTAL AND SPECIAL ASSESSMENTS

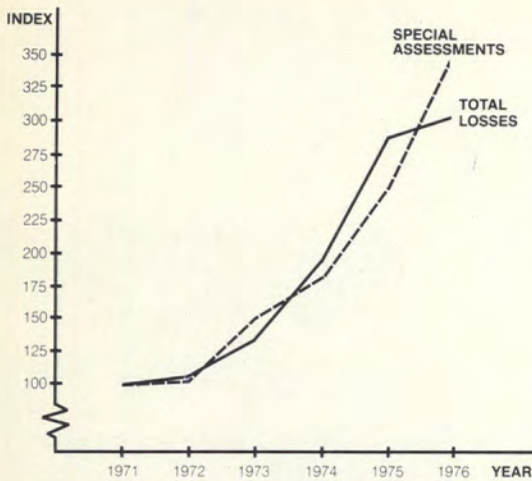


FIGURE 4

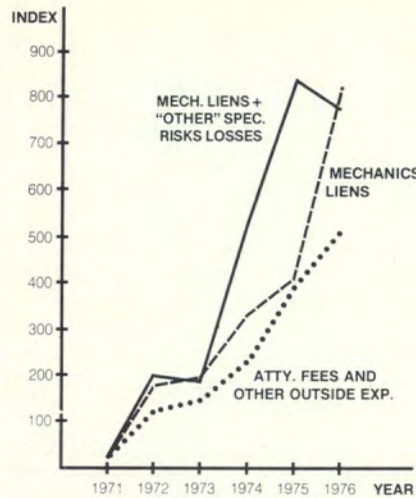


FIGURE 5

INDEX OF NEW CLAIMS RECEIVED  
TOTAL, CLOSING PROCEDURE,  
SPECIAL ASSESSMENTS



Once again the largest increases are in losses due to mechanic's liens, attorney fees and other outside expenses and losses reported in the "other" category listed under special risks. All these categories are portrayed in Figure 4. Mechanic's liens continued their steady climb and are now 722 percent greater than in 1971. In dollar terms, mechanic's liens losses were \$9.5 million in 1976 which was 32.5 percent of all losses as compared with figures of \$1 million and 11.9 percent respectively in 1971.

Since some mechanic's liens losses may still be reported in the "other" category of special risks, we have graphed the "other" category and mechanic's liens together. These two categories together are 675 percent the 1971 level. This is, however, a decrease from the 735 percent above 1971's figure that these two were in 1975. It appears, from the decrease in this dual category and the simultaneous dramatic increase in mechanic's liens, that fewer underwriters are reporting mechanic's liens in the "other" category.

Once again, attorney fees and other outside expenses have increased and they are now 410 percent above the 1971 level. In dollar amounts this classification has risen from about \$1.51 million to \$8.79 million.

From 1971 to 1976, new claims received have increased by 37 percent—a much less violent increase than loss payments.

If we look at losses by claims category as a percentage of total losses we see some interesting

FIGURE 7

NEW CLAIMS INDICES

	Basic Risks	Special Risks	Abstract Procedure
1971	100	100	100
1972	107	97	99
1973	93	107	90
1974	105	188	114
1975	123	210	102
1976	136	158	103

	Examination Error	Description Error	Closing Procedure
1971	100	100	100
1972	107	111	127
1973	63	132	179
1974	56	139	196
1975	46	154	185
1976	50	172	215

	Policy Review	Special Assessment	Other
1971	100	100	—
1972	103	137	100 (1972 = 100)
1973	100	126	—
1974	95	116	—
1975	90	148	—
1976	99	147	—

	Total New Claims
1971	100
1972	123
1973	115
1974	127
1975	113
1976	137



facts. In 1976, special risks authorized by company practice accounted, once again, for more than 47 percent of our total losses as was the case in 1974 and 1975. The figure for 1976 was 48.8 percent as compared with 47.1 percent in 1975 and 46.7 percent in 1974.

Losses due to basic risks are still above the 13 percent level that they rose to in 1975 after falling to 8.6 percent in 1974. However, in 1976, as differentiated from 1975, it is not forgery and competency loss payments that are bolstering this category. It is, instead the "other"

category which now is 8 percent of all losses. In fact, forgery losses fell from 5.1 percent to 3 percent of total losses from 1975 to 1976 and competency losses fell from 1.3 percent to .1 percent of total losses during the same period.

Losses due to examination error decreased for the second year in a row and are now 10.9 percent of total losses as compared to 17.8 percent in 1975 and 13.9 percent in 1974. Losses from closing procedure have fallen below the 12 percent level and are now 7.8 percent of total losses. This is a significant decline from the 23.5 percent reported for this category in 1973. Taxes and policy review climbed to 5.5 percent of total losses in 1976 as compared with 4.2 percent in 1975.

Finally, plant searching and abstract procedure increased from 8.4 to 10.7 percent between 1975 and 1976. Once again, it is special risks and now searching and abstract procedures that maintain our record loss levels.

Figure 6 is a table of loss indices, based on 1971, for the nine claims categories reported in the claims study plus indices for total losses, mechanic's liens, total attorney fees and other outside expenses and mechanic's liens plus "other" authorized special risks loss payments.

In Figure 7 are indices of claims reported for the years 1971-1975 and for the nine claims categories plus total new claims. Both of these tables show the movement of losses and claims reported respectively by claims category.

Complete copies of the claims study, NAIC Form 9 Report and the rate of return analysis may be obtained by writing to the ALTA Research Department.

At this point, I would like to thank the members of the research committee, all of whom have worked especially hard this year. They are J.L. Butler, Lawyers Title Insurance Corp.; Richard A. Cecchetti, Pioneer National Title Insurance Co.; Victor W. Gillett, Stewart Title Guaranty Co. of Houston; LeRoy F. King, Commonwealth Land Title Insurance Co., and M. David Olson, Transamerica Title Insurance Co.

Finally, my special thanks go to all of you who responded to our questionnaire and studies. Without your cooperation, we would have accomplished nothing.

FIGURE 6

LOSS PAYMENT INDICES

	Basic Risks	Special Risks	Abstract Procedures
1971	100	100	100
1972	75	156	83
1973	99	168	110
1974	95	481	125
1975	210	713	160
1976	222	778	213

	Examination Error	Description Error	Closing Procedure
1971	100	100	100
1972	111	100	81
1973	88	211	217
1974	136	127	160
1975	185	105	231
1976	166	159	160

	Policy Review	Special Assessment	Other
1971	100	100	100
1972	18	104	431
1973	-18	149	—
1974	25	181	—
1975	77	248	—
1976	15	340	—

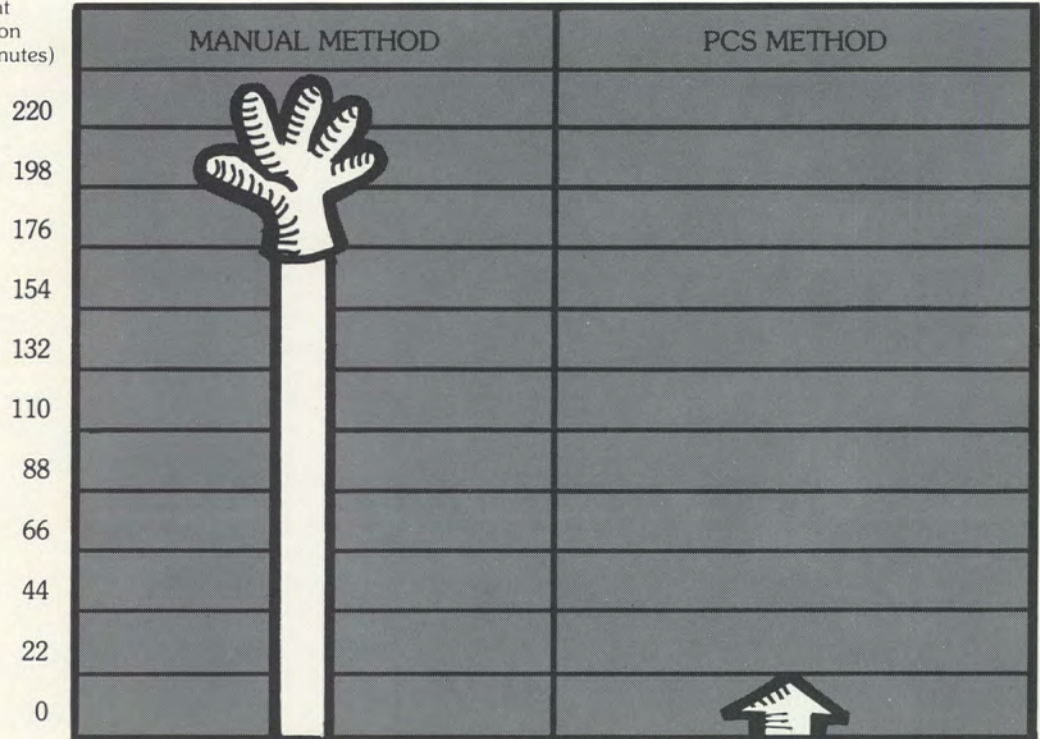
	Total Losses	Mechanic's Liens	Total Attorney Fees & Other Outside Expenses
1971	100	100	100
1972	105	173	122
1973	135	191	141
1974	195	330	227
1975	287	410	391
1976	302	822	510

	Mechanic's Liens Plus "Other" Authorized Special Risks Loss Payments
1971	100
1972	199
1973	182
1974	526
1975	835
1976	775

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The author is executive vice president of Chicago Title Insurance Co. and chairs the ALTA Title Insurance and Underwriters Section.

What do we in the title insurance industry have to sell? Why does the demand for title insurance and title-related services continue to increase? What does the future hold for the title insurance market?

These are always pertinent and reasonable questions for us to ask ourselves. During the current period when our industry has been the object of severe criticism by certain members of Congress, consumer advocates, members of the bar, and, in a limited way, by the Chief Justice of the U.S. Supreme Court, these questions become even more significant.

Actually, the answers are clear and convincing to anyone who is willing to give some serious thought to the real function of title insurance.

One of the most obvious and best-recognized advantages of title insurance is the service feature. In all jurisdictions where title insurance is used, the speed and efficiency by which a real estate transaction can progress from the contract of sale to the payment of the purchase price and possession of the property is unequalled by any other system or procedure. Mortgage loans can be processed and completed far more expeditiously through the use of title insurance, so that all parties to the transaction can be put in their desired position at the earliest possible time with the maximum amount of protection against possible title problems. The United States is the only country in the world where mortgage lending on a nationwide, mass-production scale has become standard operating procedure for institutional lenders. This could not have happened without title insurance.

Even more important, in any country in which the rights of individual ownership of private property are care-

## Perspective on the value of title insurance

fully established and protected by law, and where the economy is sufficiently dynamic to require fast, accurate and reliable determination of the ownership of those rights, title insurance has a natural place. In the United States, where private ownership of rights in land is especially well protected by our laws and our Constitution, and where our economy is the most dynamic of any in the world, title insurance is inevitable.

For years, title insurance has been defined as a service. Clearly, providing title insurance *does include* providing a service. But in fact, title insurance is a great deal more because its *basic function* is to *guarantee the existence or non-existence of rights in land*. It is this basic function that causes title insurance to be especially valuable to its users and which assures title insurance an increasingly important position in the economy of the United States as



Author Bates

well as any country with similar laws and business activity.

In the final analysis, in the United States (as well as any country with similar laws pertaining to private ownership of land) *only a final judgment* of a court of competent jurisdiction can conclusively determine the owner of each, some or all of the many different kinds of rights that can be owned in a specific parcel of land. There is no other way to know with finality who owns such rights, apart from the final decision of an appropriate court. The next most reliable means to establish the ownership of rights in land is through the money-back guarantee of title insurance. The title insurer has special skills to determine in a fast, efficient manner the ownership of the multitude of rights that can be owned in land and then gives a money-back guarantee if the title insurer is later found to have been wrong in its determination.

An abstract of title should show all factual matters located in the public records affecting a specific parcel of land, *but it does not and cannot determine* the owner of the rights in that land. An attorney's opinion can be helpful in determining the owner of those rights but it does not provide a money-back guarantee if it is wrong. If the attorney who provides the opinion makes an error in judgment, he *cannot and should not be held liable* for that error. Title insurance companies *are and should be liable* for errors in judgment in determining the ownership of the land insured. That is one of their many reasons for being.

Since there is no practical way in which the ownership of rights in land can be determined by a court each time the ownership of those rights needs to be known (that is, when the land is being sold, leased, mortgaged, etc.), the most logical and sensible alternative is title insurance with its money-back guarantee if the ownership of the insured parcel is

(Continued on page 12)

later found to be vested other than as it was insured.

In addition to being the best alternative to seeking the final judgment of an appropriate court each time the title to a parcel of land needs to be known, title insurance offers a wide range of special coverages that simply cannot be obtained from any other source—whether it be an attorney, a record search, an abstract, or a registry system such as Torrens.

Coverages such as matters of survey, rights of parties in possession, unfiled mechanic's and materialmen's liens are extremely important to owners and lenders. Other forms of special coverage that cannot be supplied except through title insurance include:

- Guaranteeing lenders that private ownership, use and occupancy restrictions have not been violated and that a future violation will not affect the validity or priority of the lien of their mortgage.
- Giving special affirmative coverage in certain cases where private restrictions have been violated (e.g., a residence built over a building setback line)

- Protection against forced removal or attempted forced removal of improvements which encroach over setback or property lines
- Zoning coverage
- Usury coverage
- Insuring ownership rights in condominiums and the validity of condominium declarations
- Ownership of subsurface when severed from ownership of surface
- Ownership of air rights
- Shared time condominiums
- Insuring against priority of liens of homes association assessments where appropriate
- Insuring the existence of appurtenant easements serving the insured parcel of land
- Insuring the existence of leasehold estates
- Insuring the validity and priority of the liens of mortgages on leasehold estates
- Insuring against effects of bankruptcy acts where appropriate
- Insuring against effects of judgments and federal tax liens where appropriate
- Insuring against loss because of forced removal or attempted forced

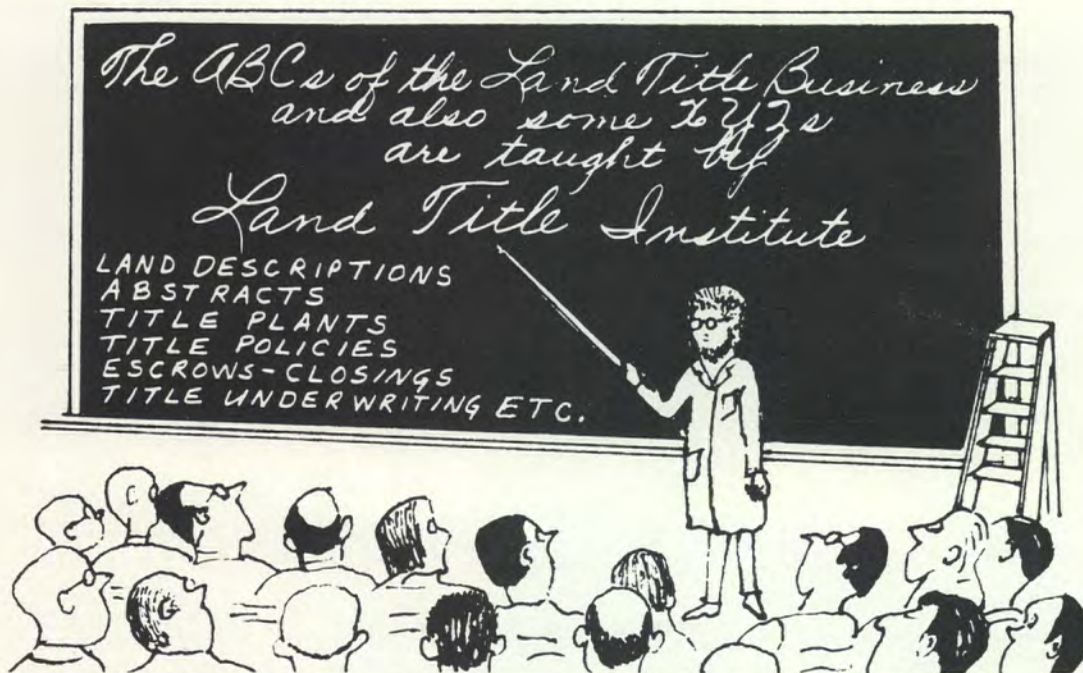
removal without just compensation as to certain improvements located on land subject to the navigation servitude of the U.S. government

- Insuring against the existence of liens for special assessments for public improvements or limiting the amount of such assessments
- Insuring the existence or nonexistence of outstanding mineral rights
- Insuring many kinds of rights with respect to titles owned by or passing through trusts of various kinds
- Insuring the title to land passing through the estate of a decedent before administration of that estate has been completed in the probate court.

These special coverages can only be made a part of title insurance when the facts and the law relating to a particular parcel of land so warrant. But the point to remember is this kind of protection is available only through title insurance.

The foregoing constitutes only a partial list of the kinds of coverages and problems we work with every day of the year. Each one of these coverages is important in its own right in addition to the basic cover-

(continued on page 19)



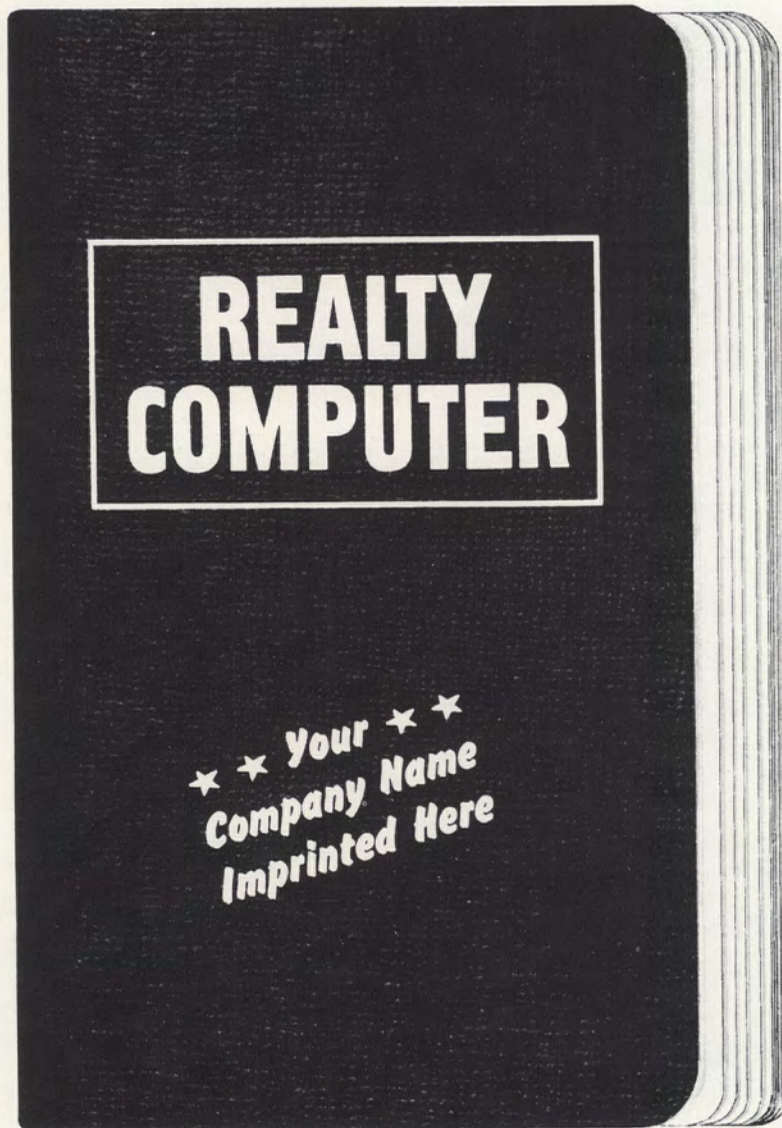
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# Names in the News...

Four former senior vice presidents of Chicago Title and Trust Co. recently were elected executive vice presidents. They are **Wesley E. Bass Jr.**, **Robert C. Bates**, **John E. Jensen** and **Francis E. O'Connor**. In addition, **Robert B. Scherer** was named vice president of the company.

Also announced were the names of five regional vice presidents recently promoted to senior vice president of Chicago Title and Trust's subsidiary Chicago Title Insurance Co. They are **Richard L. Martin** and **James E. Tyson**, headquartered in Chicago; **Alvah Rogers Jr.**, New York; **Richard J. Shramm**, Los Angeles, and **LeRoy D. Sanders**, Atlanta.

In addition, the following were promoted to the level of vice president, Chicago Title Insurance Co.: **Anthony S. Burek**, associate general counsel; **Richard J. Pozdol**, regional counsel; **Paul J. Colletti**, regional counsel (New York); **William J. Wirt** (Sacramento), and **Frank R. DeNiro** (Orlando).

In the Wisconsin division of Chicago Title Insurance Co., **Raymond J. Burger** was appointed assistant vice president and **Charles B. Schiereck Jr.** was named title operations officer.

**William N. Hannah Jr.**, vice president of Lawyers Title Insurance Corp., Richmond, Va., was appointed liaison officer with insurance companies, major lenders and major commercial accounts throughout the company's operating territory. He joined Lawyers Title as sales representative in 1947.

In the Lawyers Title Chicago office, **Robert J. Sponder** was elected assistant vice president, agencies. Sponder has been in the title insurance business nearly 20 years.

**Russell W. Jordan III** and **Joseph J. Beck** were elected to the positions of associate counsel and assistant counsel, reinsurance, respectively. Both are assigned to Lawyers Title's home office in Richmond, Va.



Wesley E. Bass



Robert C. Bates



John E. Jensen



Francis E. O'Connor



Richard L. Martin



James E. Tyson



Alvah Rogers Jr.



Richard Shramm



LeRoy D. Sanders



William Hannah Jr.

**Haskell Shapiro** of Boston was appointed recently to New England states counsel for Lawyers Title. In New York City, **Max Hahn** was promoted to the position of New York state counsel. **Saul W. Goldberg** of Pittsburgh was elected assistant branch counsel.

Lawyers Title of Colorado Springs, Inc., a Lawyers Title subsidiary, has been designated a branch office. **Ronald J. Cecil**, subsidiary president, will manage the new branch.



Robert Sponder



Russell Jordan III



Joseph Beck



Max Hahn



Saul Goldberg



Ronald Cecil



Donald Crossley



Robert Good



Thomas Jones



George Shave



Edward Lack



Richard Burroughs

Berks Title Insurance Co., Reading, Pa., has announced the promotion of **John L. Schilling III** of Harrisburg to the position of title officer.

(Continued on page 15)

Names—(concluded)

**George M. Donhauser** has joined the Title Guarantee Co., Baltimore, as assistant treasurer. Formerly he was an insurance examiner with the Maryland Insurance Department.

**Donald E. Crossley** has been named vice president and county manager for Santa Clara, Calif., operations of Title Insurance and Trust Co. He joined the company in 1959 and comes to his new position from a previous post as Santa Cruz County manager.

Assistant vice presidents of three separate Commonwealth Land Title Insurance Co. offices recently were named. They are **Robert E. Good** of the Jeannette, Pa., office; **William K. Dickenson** of the Freehold, N.J. office, and **Thomas C. Jones** of the Norristown, Pa., office.

**George W. Shave**, vice president of American Title Insurance Co., Miami, has assumed the position of director of both the company's lawyers division and agency division. His appointment consolidates the two divisions into one unit.

Former Director of the company's lawyers division **Edward I. Lack** has been appointed vice president, administration. Included in his new responsibilities will be the installation and improvement of systems and procedures throughout the company with special emphasis on the effective use of computers.

**Richard Burroughs**, senior vice president of the American Title subsidiary, Title Insurance Corporation of Pennsylvania, was elected vice president of the National Title Underwriters Association and member-at-large of the Louisiana Title Rating Bureau Executive Committee.



Final tabulations show that the award-winning ALTA film, *1429 Maple Street*, reached a cumulative

national audience of more than 14 million during its three-year television public service distribution cycle ending in 1977. Air time for the showings was donated free by stations in the public interest. If the same air time were purchased for the 14-minute film, the total cost would be in the neighborhood of \$50,000.

Prints of *1429 Maple Street* still are available for purchase by ALTA members at \$104 each plus postage. Orders should be addressed to the business manager in the ALTA Washington, D.C., office.

The film was produced as an activity of the ALTA Public Relations Committee.

*Marvin C. Bowling Jr. of Lawyers Title Insurance Corp. and ALTA Executive Vice President William J. McAuliffe Jr. attended a meeting of the American Bar Association Special Committee on Residential Real Estate Transactions Feb. 9 at the ABA convention in New Orleans, La.*

*On the agenda was a discussion of the committee's proposed Model Buyer's Title Protection Notice Act.*

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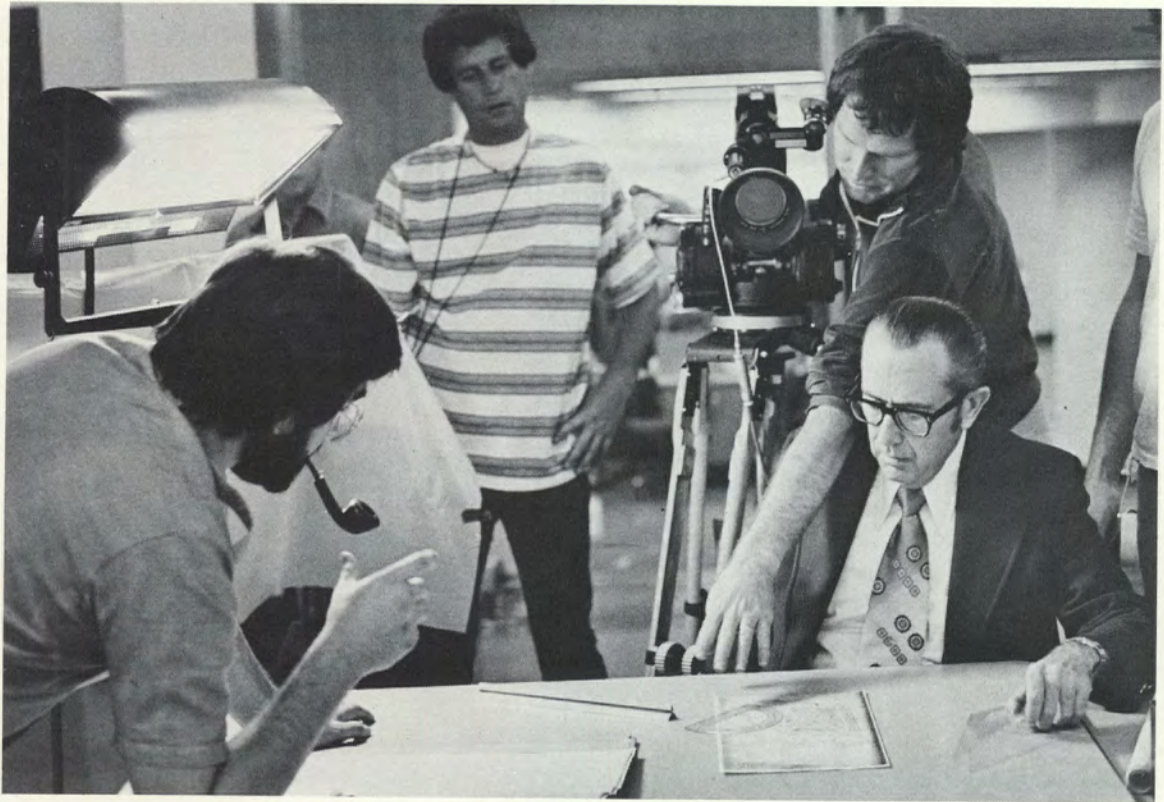
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**Editor's Note:** The following is a reprint of Chapter One of *The Title Industry: White Papers*, Volume II, now in its second printing. More than 10,000 copies are in circulation. The remaining three chapters also will appear in *Title News* and are entitled: RESPA Section 13—ALTA's Recommendations; Title Insurance Profitability—Some Observations, and Abstracting in the Real Estate Conveyancing Process.

## Summary

An important and urgent problem currently facing the federal government is the resolution of claims made by various Indian tribes to huge amounts of land located in various parts of the United States. These claims, which seek the return of land that has not been occupied by the tribes for almost two centuries and the recovery of billions of dollars in trespass damages, have created severe economic and social problems in a number of areas—problems that only can become more severe as litigation of these claims proceeds. All of the parties to these disputes—including the Department of Justice, the Department of the Interior and the special representative appointed by President Carter to deal with the claims that have arisen in Maine and Massachusetts—recognize that the problems presented by these claims in the last analysis are essentially political in nature and must ultimately be resolved by Congress. Because of the threat of severe economic and political disruption in the communities that are affected by the claims, Congress should address and remedy this problem as quickly as possible.

## Nature of the claims

Unlike most of the Indian tribal claims that have been adjudicated in the past and that have involved claims against the federal government for breaches of treaties or other fiduciary responsibilities\* or

\*Many of these claims were brought before the Indian Claims Commission which was established in 1946 to consider certain types of Indian claims against the federal government since the commission did not have jurisdiction to adjudicate claims against third parties, the present claims could not have been heard by the commission, which, in any event, will cease to exist in 1978.

# Indian land claims: A profile

claims against third parties for trespasses on reservation lands currently occupied by the particular tribe, the present claims involve lands that the tribes have not occupied for almost 200 years and are directed against innocent landowners who are in possession of the land under ostensibly valid deeds of title. Basically these claims allege that:

- The affected tribes occupied the land at the time of the founding of the nation.
- The Indian Non-Intercourse Act of 1790 provided that no transfer of tribal lands was valid unless the transfer was approved by Congress.
- Subsequent to 1790, certain tribal lands were conveyed to third parties or to state governments without specific congressional approval, thereby rendering these conveyances invalid.
- The affected tribes are now entitled, despite the passage of time, to return of the land and to damages for trespasses committed by past and present landowners.

The adjudication of these claims will involve many new and complex questions of fact and law such as:

- Whether the claimants constituted in the past and still constitute today a tribe within the meaning of the Non-Intercourse Act.
- What lands the tribe occupied (in the case of claims based on so-called aboriginal title the resolution of this question involves the attempt to determine over what lands the tribe historically hunted, fished and picked berries).
- Whether the Non-Intercourse Act was intended to apply to tribes in the original 13 colonies.
- Whether the federal government has ever consented to the conveyances.
- Whether, if a trust relationship ever existed between the federal government and the particular tribe, that relationship has been terminated or abandoned.
- Whether the defenses that would otherwise be available to a landowner against ancient defects in title (e.g., laches, adverse possession and statutes of limitation) are available against the tribal claims.

## Areas affected by the claims.

At the present time, lawsuits have either been instituted or announced affecting townships, counties or individual landowners in Connecticut, Louisiana, Maine, Massachusetts, New York, Rhode Island and South Carolina. Press reports have indicated that further claims also may exist in other states, such as Tennessee, New Hampshire, New Jersey and Virginia. In some cases, such as in Connecticut, Massachusetts, New York and Rhode Island, litigation has gone beyond the initial stage. With respect to other claims, such as the claims in Maine of the Penobscot and Passamaquoddy tribes to over 12 million acres of land; the claims in New York of the Oneida nation to 200,000 acres, the Cayuga tribe to 62,000 acres and the St. Regis Mohawk tribe to 10,500 acres, and the claim in South Carolina of the Catawba tribe to 144,000 acres, the Bureau of Indian Affairs of the Department of the Interior has recommended to the Department of Justice that litigation be instituted by the federal government on behalf of the tribes, but actual complaints against individual landowners have not yet been filed.

There is no way to tell how many other areas may be subject to similar claims in the future. (For example, the Sioux tribe has recently announced that it intends to institute litigation involving the states of North Dakota, South Dakota, Montana, Wyoming and Nebraska. Little information is available at the present time about this claim.)

## Impact of the claims

The full social and economic impact of these tribal claims has yet to be felt, in part because suits against individual landowners have not yet been filed regarding those claims (such as the claims in Maine, New York and South Carolina) involving the most substantial land areas and the greatest amount of money damages. Nevertheless, the disruption and dislocation caused in those areas of Massachusetts, Connecticut and New York where relatively small claims are already in the process of litigation demonstrates clearly the catastrophic economic and social problems that lie ahead if these claims are not resolved in a timely and satisfactory manner.

(Continued on page 18)

In areas, such as Mashpee, Mass., or Montville, Conn., where claims are presently being litigated, land transactions and development have been brought to a virtual halt because of the cloud that has been placed on titles to the land within the claims area. Mortgage loans have become difficult to obtain because of the concern of lenders that they may not obtain a valid first lien on the mortgaged property if a loan is given. The security and alienability of real property that has been owned for years, if not decades, has been destroyed. Families, whose single largest asset has been their homes, have been forced to sell their property at substantial discounts from market value, if indeed they have been able to sell at all. Moreover, the costs of defending against the claims have imposed an immense hardship on the individuals and townships involved. (In the case of those property owners covered by a policy of title insurance, the costs of defending the insured title are being borne by the title insurance company. However, most of the landowners involved are not covered by title insurance policies.)

The adverse social impact caused by the filing of these suits has also been severe. The threat to individuals and local businesses caused by the litigation, the potential loss of property and the possible imposition of trespass damage judgments, combined with the problems and uncertainties the claims have posed to local governments, has frequently created a most unfortunate climate of apprehension and distrust between the defendant landowners and the Indian plaintiffs.

Moreover, these hardships will be suffered not only by those who own land in the areas subject to the claims but by the general citizenry as well, as local governments discover that their tax bases and ability to borrow money have been placed in jeopardy.

These existing economic and social problems will be magnified many times if lawsuits are actually instituted by the Department of Justice to pursue the very sizable Maine, New York and South Carolina claims.

### **Efforts of President Carter's special representative**

In an attempt to resolve the problems posed by the tribal claims in Maine and in Mashpee, President

Carter, in March 1977, appointed former Georgia Supreme Court Judge William B. Gunter as his special representative to develop recommendations on how to resolve these claims. After examining the relevant law and facts, and numerous meetings with all concerned parties, Judge Gunter submitted his report on the Maine claims to the president on July 15. His report on the claims in Mashpee is expected shortly.

Judge Gunter concluded that because of the "adverse economic consequences that have developed to date and that will increase with intensity in the near future," a solution to the problem could not await judicial determination, and that it was necessary for President Carter to recommend a legislative solution to Congress.

Judge Gunter found that the private landowners who own property within the claims area did not bear any responsibility for the creation of the problem and, as innocent parties, should not have to bear any financial burden that might be required to resolve the problem. It was his conclusion that the "federal government is primarily responsible for the creation of this problem" because of its failure since 1790 to recognize its trust responsibilities to the tribes and its failure to approve the conveyances of land by the tribes in the 18th and 19th centuries. He noted that an unusual and unfortunate situation had arisen whereby the federal government, although primarily responsible for the creation of the problem, was now compounding the problem by threatening to bring suit (on behalf of the Indian tribes) against innocent private landowners to recover their land.

Judge Gunter's proposed solution for the Maine claims involves:

- The appropriation of \$25 million by the federal government for the two Maine tribes.
- The conveyance of 100,000 acres of land by the state of Maine to the two tribes.
- The extinguishment by Congress of all tribal claims to land in Maine or for trespass damages.

In the event that the tribes do not consent to the proposal, Judge Gunter recommended that their claims against private landowners be extinguished by Congress and that the lawsuit seeking to recover state-owned land proceed. If the state of Maine does not consent, the \$25 million would be appropriated by Con-

gress for the benefit of the tribes, tribal claims against private landowners would be extinguished, and the lawsuit against the state-owned land would proceed.

It is unclear at the present time whether either the state of Maine or the affected tribes will accept Judge Gunter's recommendations (both sides have expressed unhappiness with his recommendations) or what action President Carter will take on the basis of these recommendations. In any event, Judge Gunter's recognition of:

- The need for a legislative resolution of the tribal claims.
- The responsibility of the federal government for the creation and resolution of the problem.
- The need for extinguishment of all claims against private landowners represents major steps forward in the development of a satisfactory solution to all of the Non-Intercourse Act claims.

### **Need for a legislative solution**

While virtually all of the issues involved in the Non-Intercourse Act claims have been the subject of much dispute, there is near unanimous agreement that these claims raise political, economic and social questions and problems that can only be resolved satisfactorily by Congress. As the Department of Justice has noted in connection with the tribal claims in Maine, such litigation "is potentially the most complex litigation ever brought in the federal courts with social and economic impacts without precedent and incredible potential litigation costs to all parties," and "only a congressional resolution of the Indian tribal claims can correct the injustice to the tribes in question without committing new hardships on other citizens of the state of Maine."

It is clear that federal legislation would be warranted solely on the grounds of avoiding the severe economic and social hardships to so large a number of individuals, companies, townships, counties and states. But there is another equally compelling reason for a federal resolution of this problem: The injustice of forcing innocent landowners to defend themselves against ancient claims (and to bear the economic costs of such litigation and any judgment that might be awarded to the tribes) that are in no way based on

(Continued on page 19)

Perspective—(concluded)

age furnished by title insurance. I say again that except for title insurance there is no other source from which this valuable money-back guarantee can be obtained. Many regulators, legislators, congressmen and even many competent lawyers have not taken time to recognize the essential part that title insurance plays in providing the lubrication which causes much of our entire economy—mortgage lending, home-building, real estate sales, corporate sales and mergers, municipal bonding—to run smoothly while growing and prospering.

On the other hand, many people and organizations *have recognized* the real value and essential nature of title insurance. The Federal National Mortgage Association (FNMA) requires title insurance on every loan it buys. So does the Federal Home Loan Mortgage Corporation (FREDDIE MAC).

Most life insurance companies now require title insurance and frequently agencies of the federal government do also, such as the Department of the Interior (National Parks), Corps of Engineers and even the Justice Department.

Many large corporations such as Ford, General Motors and Chrysler (who could afford some title losses) always use title insurance when they buy as well as when they sell. Other major entities known to require title insurance include McDonald's System, Sears Roebuck, Pillsbury Co., Ramada Inns, Ralston Purina, Jack-In-The-Box, Pizza Hut, Exxon and U.S. Steel.

Why do all of these organizations require title insurance? Very simple—it doesn't make any sense to own, mortgage, buy, sell or lease any, some or all rights in land without having the protection afforded by title insurance. The real tragedy is that even today there are some people who have been involved in the title insurance business for many years who have not stopped to analyze and understand its importance to individual owners of rights in land as well as to the economy in general.

Be that as it may, each year there are more people, and each year there is an increase in the value of each and all of the multitude of rights that can exist as to a parcel of land. Title insurance has become an essential element in the American

way of life. We are all a part of a young industry that is keyed to a basic concept upon which this country was founded: The right of all of us to enjoy the private ownership of land. Our industry is on the threshold of becoming great. To understand title insurance is to believe in it. Believing in it will make it even greater.

Indians—(concluded)

any wrongdoing or improper or negligent action on their part.

To the extent that there may be any legal or moral basis to the claims that are now being made by the various tribes, those claims properly and as a matter of fairness and justice deserve to be addressed and remedied by the federal government. Present day landowners cannot in fairness be asked to bear the consequences of Congress' failure to review transfers of Indian lands in the 18th and 19th centuries, or to be responsible to the affected tribes for facts or events that took place almost 200 years ago. No possible interpretation of the federal government's trust responsibilities to the Indian tribes can or should require that such potentially devastating consequences be imposed on innocent third parties solely because they are unfortunate enough to be the present owners of the land subject to the tribal claims.

Since the federal government's failure to fulfill its trust responsibilities to these tribes is the primary reason why hundreds of thousands of innocent landowners are now being subjected to the risks of the loss of their property and to substantial damage claims, it is incumbent upon the federal government to address and remedy this problem as quickly as possible.

## Harvard to hold computer meeting

Harvard University's Laboratory for Computer Graphics and Spatial Analysis will conduct a computer mapping software and data bases conference July 23-28 at the university.

Registration information may be obtained by contacting Peggy Kilburn at the Center for Management Research, 850 Boylston St., Chestnut Hill, Mass. 02167.

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**April 16-18, 1978**

North Carolina Land Title Association  
Quality Inn—Fort Magruder  
Williamsburg, Virginia

**April 20-22, 1978**

Oklahoma Land Title Association  
Hilton Inn West  
Oklahoma City, Oklahoma

**April 27-28, 1978**

California Land Title Association  
Islandia Hyatt House  
San Diego, California

**April 27-29, 1978**

Arkansas Land Title Association  
DeGray Lodge  
Arkadelphia, Arkansas

**April 27-29, 1978**

Texas Land Title Association  
Houston Oaks  
Houston, Texas

**April 30-May 2, 1978**

Iowa Land Title Association  
Roosevelt Royale  
Cedar Rapids, Iowa

**May 12-13, 1978**

New Mexico Land Title Association  
Inn of the Mountain Gods  
Mescalero, New Mexico

**June 4-6, 1978**

Pennsylvania Land Title Association  
Pocono Hershey Resort  
White Haven, Pennsylvania

**June 11-13, 1978**

New Jersey Land Title Insurance Association  
Seaview Country Club  
Absecon, New Jersey

**June 15-17, 1978**

Land Title Association of Colorado  
The Inn at Estes  
Estes Park, Colorado

**June 15-17, 1978**

Utah Land Title Association  
Sweatwater Hotel  
Sweatwater, Utah

**June 15-18, 1978**

New England Land Title Association  
Granite Hotel and Country Club  
Kerhonkson, New York



# Calendar of Meetings

**June 16-17, 1978**

South Dakota Land Title Association  
Holiday Inn  
Aberdeen, South Dakota

**June 18-20, 1978**

Michigan Land Title Association  
Grand Hotel  
Mackinac Island, Michigan

**June 22-24, 1978**

Oregon and Washington  
Land Title Associations  
Thunderbird Inn at Jantzen Beach  
Portland, Oregon

**June 23-25, 1978**

Illinois Land Title Association  
Breckenridge Pavilion Hotel  
St. Louis, Missouri

**July 13-15, 1978**

Idaho Land Title Association  
Sun Valley Lodge  
Sun Valley, Idaho

**August 3-10, 1978**

American Bar Association  
Annual Convention  
New York, New York

**August 17-19, 1978**

Minnesota Land Title Association  
Normandy Hotel  
Duluth, Minnesota

**August 25-26, 1978**

Kansas Land Title Association  
Holiday Inn & Holidome  
Hutchinson, Kansas

**September 9-12, 1978**

Indiana Land Title Association  
Indianapolis Hilton—Downtown  
Indianapolis, Indiana

**September 10-12, 1978**

Ohio Land Title Association  
Stouffer's Dayton Plaza Hotel  
Dayton, Ohio

**September 10-13, 1978**

New York State Land Title Association  
Buck Hill Inn  
Buck Hill Farms, Pennsylvania

**September 14-15, 1978**

Wisconsin Land Title Association  
Midway Motor Lodge  
Green Bay, Wisconsin

**September 14-16, 1978**

North Dakota Title Association  
Williston, North Dakota

**September 15-18, 1978**

Missouri Land Title Association  
Tan-Tara Resort  
Lake of the Ozarks  
Osage Beach, Missouri

**September 20-22, 1978**

Nebraska Land Title Association  
Lincoln Hilton  
Lincoln, Nebraska

**September 24-28, 1978**

ALTA Annual Convention  
Boca Raton Hotel & Club  
Boca Raton, Florida

**October 13-15, 1978**

Palmetto Land Title Association  
Palmetto Dunes Hyatt  
Hilton Head Island, South Carolina

**October 21-25, 1978**

American Bankers Association  
Annual Convention  
Honolulu, Hawaii

**October 29-November 2, 1978**

U.S. League of Savings Associations  
Annual Convention  
Dallas, Texas

**October 30-November 1, 1978**

Mortgage Bankers Association  
Annual Convention  
Atlanta, Georgia

**November 10-16, 1978**

National Association of Realtors  
Annual Convention  
Honolulu, Hawaii

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