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TITLE NEWS

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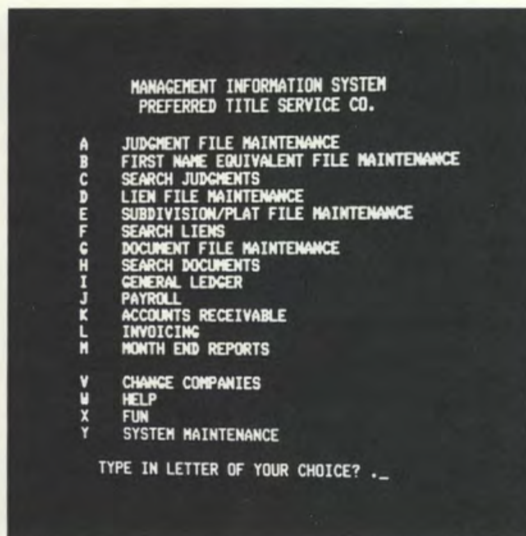

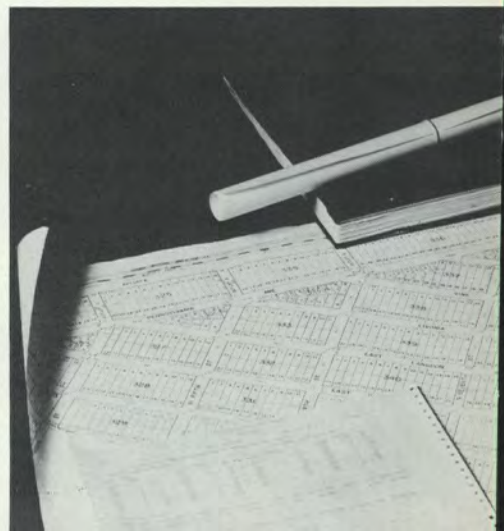

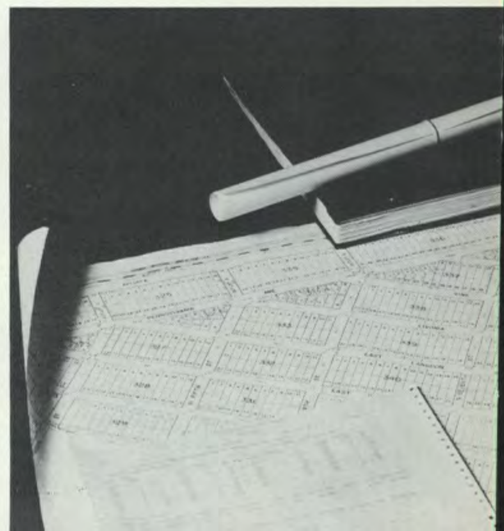

A Message From The Chairman, Title Insurance & Underwriters Section . . .

We are in a period of recession which could well continue into the middle of next year and will undoubtedly have a serious adverse effect on the title insurance industry.

Since it is impossible to influence the economic forces to which our business is captive, many title companies have begun to scrutinize those expenses over which control can be exercised in order to reduce non-productive costs. Competent and responsible management could not do otherwise.

Unfortunately, many tend to overlook the most flagrant example of waste in the title insurance industry—the cost of controlled business. Unless curative action is taken, this expensive form of rebating, which already has reduced profits to unacceptable levels, will threaten the survival of some of its adherents and opponents alike.

The philosophy of controlled business rests on the belief that it is better to make a small profit on some additional business than to forego that business entirely. Proponents of this view seem unaware of the fact that each title insurance market is limited by factors which determine the total number of real estate transactions, and, therefore, their position seems to have the logic of a pyramid scheme. Moreover, it is impossible to prevent existing business relationships from becoming infected with the same greed which was so eagerly spread among new customers.

In general, controlled business operations do not justify their cost either by sales produced or services performed. These arrangements provide a vehicle by which applicants, who often were customers of existing facilities, simply profit from the referral of their own business to the detriment of everyone else.

An underwriter rarely is spared the expense of sales representation and service facilities in a market area by reason of the existence of controlled business agents. In short, controlled business arrangements are an inefficient business practice. It is, therefore, difficult to persuade a regulator that the charge to the consumer must be increased in order to nourish inefficient systems when the means to change are in our own hands. As a result, controlled business stands as an obstacle to much needed rate relief.

HUD and several state insurance departments are considering regulations which would end the victimization of the title insurance industry by controlled business entities. These measures deserve the support of every responsible executive.

Fred B. Fromhold

THE TITLE READER

Editor's note: This is the first of a regularly scheduled review column on books of interest to the title professional.

CALIFORNIA TITLE INSURANCE

By John L. Hosack, 95 pages, $35 (hardcover), published by the California Continuing Education of the Bar, Berkeley, Calif.

This book provides a brief, but thorough, examination of the title insurance industry, title policies, and other title documents, escrow and related services, and claims and litigation related thereto. The book's 95 pages of text are organized into five chapters. In addition, it contains a useful set of forms, tables of statutes, regulations and court decisions, and a table of references.

This book is a refreshing change from the prolixity so common in legal writing. It contains no wasted words and covers a complex subject in a reasonably comprehensive and clear fashion. The book can be read with understanding in a few hours' time by any lawyer or other person with some background in the field of insurance and real estate.

The first chapter contains a survey of the title insurance industry. It traces the historical evolution of title insurance policies as they gradually replaced the work product of title abstracters. The chapter goes on to describe the organization and operation of the title insurance industry and its regulation by governmental authority.

In Chapter Two, the author gives more detail with respect to the methods used by title insurers in searching title and contains a valuable summary of the types of records maintained by title insurers in their plants. Even lawyers who deal with title insurance policies on a fairly regular basis will find some of the mystery of title insurance operations explained and clarified.

The third chapter reviews and analyzes the various forms of title insurance policies, endorsements, and guarantees made available by the industry to the public. Title insurance policies differ from other types of insurance in that they do not insure against the occurrence of any particular future event; rather, a title policy is a form of guaranty that if specified defects exist which cause loss to the insured, the insurer will take steps to cure the problem or pay for the loss.

It is a common feeling among lawyers and other real estate professionals that the standard California Land Title Association owner's policy provides the insured with very little more than protection based upon the contents of the public records. The author points out that additional protection can be purchased by ordering policy endorsements which expand the obligation of the insurer to matters going well beyond the public records.

The text provides a good summary of the types of endorsements which most likely will provide the protection desired. The author also describes the recent development by many title insurance companies of endorsement forms to increase policy limits in order to compensate for the current high rate of inflation. The information in this chapter is most valuable to those attorneys who represent clients in closing real estate transactions because it will provide them with the information they need to better advise their clients as to the nature and extent of insurance coverage suitable to their transactions.

In Chapter Four, Hosack reviews additional services provided by title companies, including escrow services and the functioning of title companies as trustees under deeds of trust.

The final chapter of the book deals with claims and litigation. It is replete with useful information on procedures which should be followed by attorneys who represent claimants *and* title insurers and it also contains a good discussion of substantive theories of liability applicable to claims of various types.

In several places in the book, Hosack discusses problems of classification and interpretation created by court decisions with respect to rights and liabilities arising out of title insurance policies, abstracts of title, and preliminary reports of title. He points out that California courts have treated preliminary title reports as though they were abstracts of title, and by doing so, have confused and expanded the liability intended to be undertaken by title insurers in real estate transactions. In fact, a preliminary title report is not an abstract of title at all, because it is not intended to be a full summary of all matters in the chain of title, but rather a report of the matters affecting title, as of the date of the report, that the issuer is not willing to insure against; in other words, the preliminary report is intended to be replaced by the insurance policy.

As the author points out, some courts have held that such preliminary title reports are the equivalent of abstracts of title, for the purpose of creating tort damage liability based upon alleged errors and omissions in the reports. The result of this reasoning creates an interesting anomaly: While a title insurance policy is limited to a specific dollar amount of insurance coverage, the insurer's liability may be increased to potentially much greater amounts by the addition of tort recoveries based on theories of negligent preparation of preliminary title reports. This book may well serve as an important corrective treatise which will assist in eliminating past confusion respecting the differences between preliminary title reports and abstracts of title.

In the Appendix, the author includes all of the more important title insurance company forms currently in use. Thus, in one convenient location, the attorney or other real estate practitioner can find the precise terms of the policies and endorsements most likely to be of benefit to his clients.

California Title Insurance Practice is a most welcome new book for lawyers and others interested in real estate transactions. At a time when professional people are deluged with a plethora of written material and are hard-pressed to stay abreast of current developments, this book is a refreshingly concise and well-written reference work. It provides an excellent introduction to the subject without unnecessary and turgid explanations which detract from, rather than add to, an understanding of the subject.

The book should be on the library shelf of every person who deals with real estate transactions.

Reviewed by Edmund L. Regalia, Esquire
Miller, Starr & Regalia
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THE TITLE SYSTEMS ADVISER

Editor's note: This is the first of a regularly scheduled question-answer column developed by the ALTA Title Systems Committee.

Dear Mr. Chairman:

I read in the March, 1980 *Title News* that your committee has undertaken to develop a column on title systems.

In New Jersey, which is a "race-notice state," we historically have experienced a problem in trying to narrow the gap between the run down search for closing and the recording of the closing documents. Frequently, the county index is not current and intervening liens and conveyances are not discovered. Not surprisingly, the title companies have been saddled with the responsibility for such intervening liens and conveyances.

In an effort to close the gap, the title industry, with a strong assist from the state bar association, has effected the passage of an act permitting the filing of a notice of settlement which would block such intervenors and postpone their interest. Here is a brief explanation of the notice:

"Effective May 8, 1980, the present system of recording real estate transactions will be improved to protect the buyer or mortgagee from acquiring deficient title resulting from intervening liens and instruments recorded in the gap period between the run down search for closing and the recording of the deed or mortgage. Frequently, the intervening recordings cannot be detected because of indexing delays in the larger county recording offices.

"The new procedure (N.J.S.A. 46:16A-1) provides for the filing of a Notice of Settlement which purports to insulate a proposed conveyance or mortgage, for a 20-day period from the date of filing, against intervening conveyances or liens. The protected conveyance or mortgage must be recorded within the 10-day period.

"The Notice of Settlement should be filed by either party within 20 days prior to the recording of the closing documents."

We wish you good luck on your new venture and we commend you for the time and effort you will be spending on behalf of the title industry.

Walter A. Sprouls, President
New Jersey Realty Title Insurance Co.
Newark, N.J.

A Committee Member Replies

Dear Mr. Sprouls:

You may want to consider maintaining a current forward going index on your own. Then, the need to rely on a county index which may be anywhere from a week to two weeks behind, would no longer exist.

This obviously might be a more costly operation on your part. However, you must weigh the benefits of having your own index against depending on a county index. An added benefit to having your own index might be improved, up-to-date service for your customers.

In the event that the recent legislation passed by the state is found not to be a workable solution to the problem, the above suggestion might be an alternative.

Joseph F. Machacek
Member, ALTA Land Title Systems Committe
Vice President and National Title Plant Analyst
Title Insurance Company of Minnesota
Minneapolis, Minn.

Dear Mr. Chairman:

Does any other company besides 3M market reader-printer paper? I am particularly interested in paper for the electrophotographic (heat) process.

Not so long ago, two firms were known to sell the paper. One west coast company which sold the product at lower prices has withdrawn from the market.

In these inflationary times and in periods of low business volume when title companies are looking for ways to cut costs, this information could be particularly valuable.

Thomas A. Griffin Jr.
Member, ALTA Land Title Systems Committee
Executive Vice President
Mid-South Title Insurance Corp.
Memphis, Tenn.

Members' Help Needed

Dear Mr. Griffin:

I know of no other company that sells that type of paper. Perhaps this is a question that ALTA members can help answer.

Members who can respond to Mr. Griffin's question or who have questions of their own relating to title systems or plants are asked to direct this information to me.

Robert Meckfessel
Chairman, ALTA Land Title Systems Committee
State Manager
St. Paul Title Insurance Corp.
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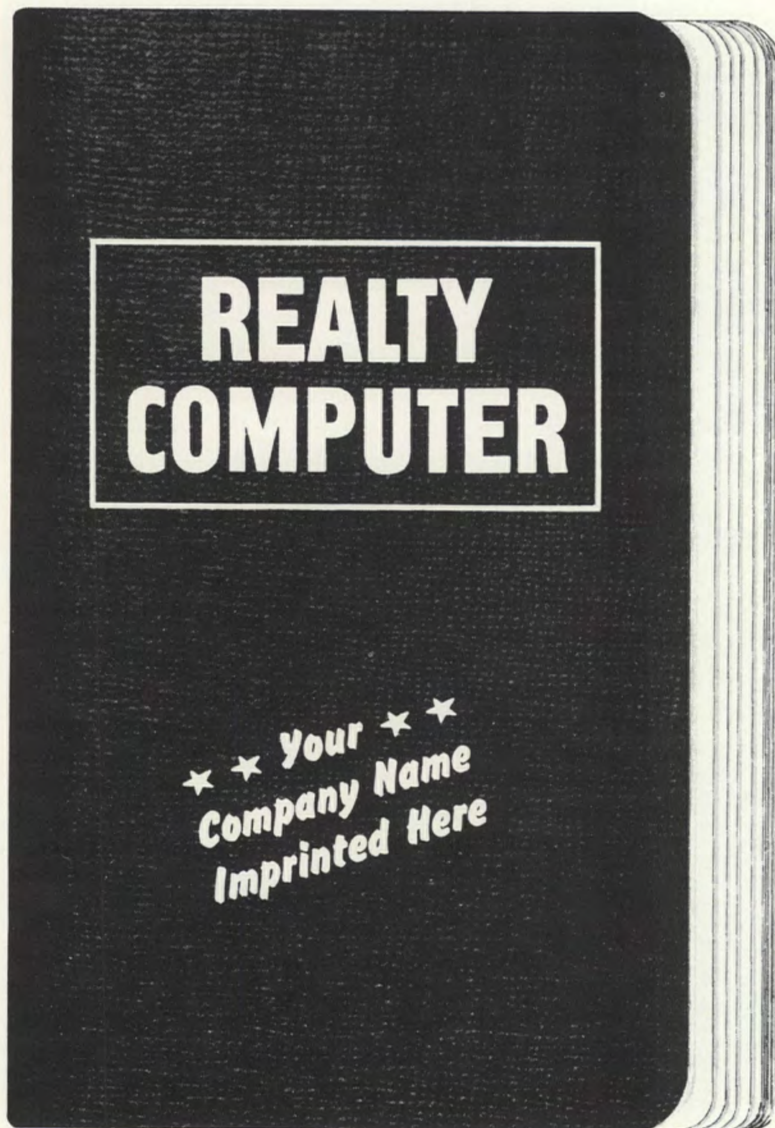

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Claims, Economics, Major Meeting Topics

An array of industry and national issues affecting the day-to-day business of the title professional filled the program at ALTA's 1980 Mid-Winter Conference in Hilton Head, S.C.

Matters before Congress, advice on how to avoid claims, the economic outlook for the savings and loan industry and current developments in title industry rating bureaus were among the broad sweep of information the approximately 575 members in attendance listened to.

The forward-looking, issue-oriented program was consistent with Association goals that ALTA President Robert C. Bates articulated in his opening remarks at the conference. "The mission of our association has been to deal with the important problems as well as opportunities which face the industry and which cannot be dealt with on an individual or local basis," he explained. President Bates said the industry will continue to look ahead for "problems on the horizon" and be prepared to deal effectively with them as they arise.

Focus on the Economy

The economy was one problem area often brought up in discussions and one which was analyzed by two speakers.

James Hollensteiner, staff vice president of the United States League of Savings Associations, Chicago, Ill., spoke about the economic woes of the savings and loan business. He described the difficulties that savings and loan companies currently experience under the scourge of high interest rates and other problems. Hollensteiner predicted that conditions for the mortgage lending business will become worse before they improve.

Among the causes and most likely perpetuators of the present lows of the mortgage lending industry that Hollensteiner noted are money market certificates and reform legislation now before Congress.

Injecting a bright spot in his dark cloud of bad news, Hollensteiner discussed possible solutions to the problems facing mortgage lenders including alternative mortgage lending instruments. (See article on page 36).

A tableau of troubled times requiring decisive action and thoughtful solutions also was the general message from Sen. Ernest F. Hollings (D-S.C.) who discussed issues now before Congress. Hollings is a member of the Senate Appropriations Committee and recently was appointed to succeed Edmund Muskie as chairman of the Senate Budget Committee.

Among national priorities requiring immediate government action the senator stressed the need to balance the budget. He recommends solid cuts in government spending with the exception of defense spending. Defense, on the other hand, Hollings believes should receive increased appropriations. He lamented what he described as the deplorable condition of the U.S. defense system and spoke of a need to build arms in preparation for whatever the future may bring.

The senator said another priority need is to cut back on loans and credit spending to control inflation and to help balance the budget. "The president with the Federal Reserve Board ought to say, categorically, no bank loans except those related to productivity," he said.

Later, in response to a member's question about money market funds, Hollings reiterated the need to cut back on loans, but he added that both the Federal Reserve Board and the private sector need to exert control in order to reduce interest rates.

Other title industry matters the senator discussed were Indian land claims in South Carolina and the Coastal Zone Management Act with reference to Geor-

gia's coastal management program. (See story on page 41.)

Avoiding and Using Claims

At the Title Insurance and Underwriters Section meeting, a panel of three title company counsels discussed how to use claims as a marketing tool. Panelists noted a number of ways in which a title company's claims experience can be used advantageously. They exchanged views on how claims illustrate to potential customers that title companies indeed are active in assuring clear titles and protecting rights of land owners. (The panel discussion appears on page 31)

Meanwhile, members of the Abstracters and Title Agents Section were advised on how to avoid claims.

Walter S. Fortney, an attorney with the Fort Worth, Texas, law firm of Snakard, Brown & Gambill, discussed myriad clues in real estate transactions which can be early tip- offs that a title claim will result. Among the early warnings are what he called "the red flags of forgery." (Article on page 14.)

The topic of education provided yet another dimension in the Abstracters-Agents Section meeting. In an advocacy speech on the importance of education in shaping the future of the industry, Hart McKillop, an attorney, educator and former senior vice president of Lawyers Title Insurance Corp., Winter Haven, Fla., told his title colleagues that "title industry education is part of the real world" and it is "high time" that the industry was "getting with it."

He cautioned that "those who do not keep pace with the real world and those who don't drink the milk of educational opportunity" may find their business withering away to a skeleton.

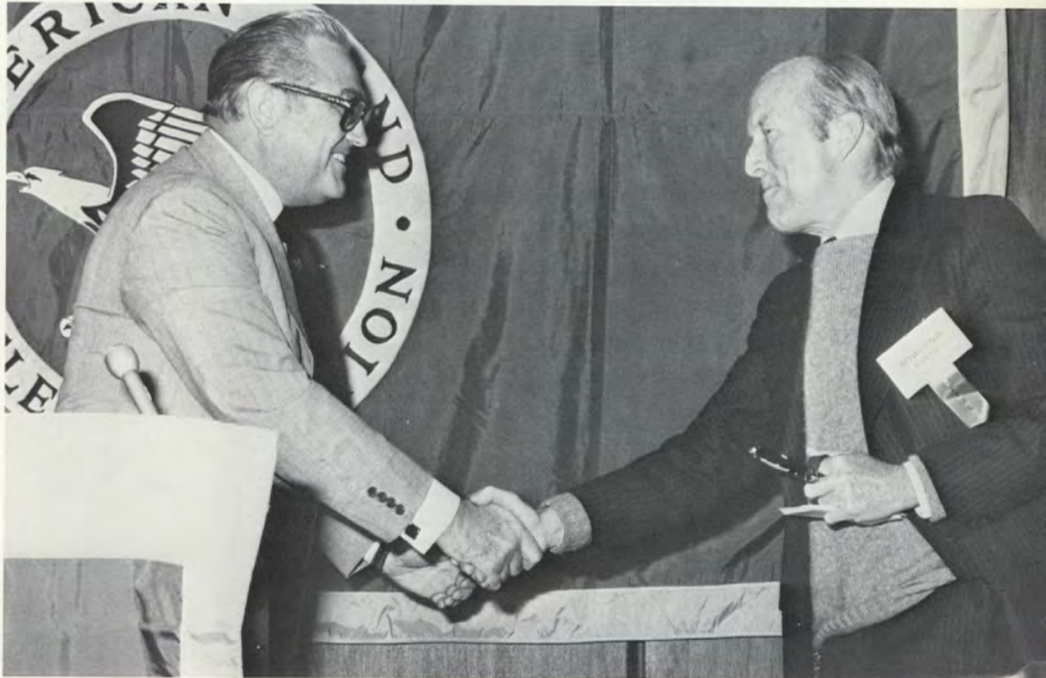
McKillop enthusiastically described a plan for a title industry education department sponsored by ALTA. The education department he proposed would include correspondence courses for title company employees and the development of educational texts, bulletins and slide shows.

He noted that when the topic of industry education is discussed, thoughts immediately turn to employee education. But, he queried, "What about the managers, what about the brass in our organizations? Couldn't they do with a little education, too?"

Rating Bureaus

A significant portion of the Title Insurance and Underwriters Section meeting was devoted to discussion of rating bureaus.

C. J. McConville, president of Title Insurance Company of Minnesota, Minneapolis, Minn., and Moses K. Rosenberg, secretary of the Pennsylvania Title Insurance Rating Bureau and a partner of the Harrisburg, Pa., law firm of McNees, Wallace and Nurick spoke about new developments with title industry rating bureaus.



In the top photo, ALTA President Robert C. Bates (left) welcomes Mid-Winter Conference speaker Rowland Evans Jr., syndicated columnist with the *Chicago Sun-Times*. At right, President and Mrs. Bates listen attentively as they receive guests to an ALTA function.

McConville discussed the NAIC proposed Model Open Competition Law and its potential impact on the title industry.

Rosenberg gave an assessment of the effectiveness of title insurance rating bureaus and analyzed the future roles of rating bureaus. (See articles on page 21 and page 23.)

Local Press Relations

An expert of another sort, Lew Sichelman, real estate editor of the Washington (D.C.) *Star* and vice president of the National Association of Real Estate Editors, advised attending members on how to cultivate effective press relations with their local press. Sichelman said it is important to perceive the relationship as between the title person and the individual reporter, as opposed to with the entire newspaper. "You are working with individuals with different personalities, different standards and different approaches to performing their work. They even have different biases," Sichelman explained.

ALTA committee reports were delivered by chairmen of the Public Relations, Title Industry Political Action, (TIPAC), Forms and Indian Land Claims committees. James W. Robinson gave a presentation on Public Relations Committee accomplishments and Francis E. O'Connor reported TIPAC activities.

Marvin C. Bowling Jr. informed members of the status of Indian claims across the country. (See article on page 39.) Bowling, in his capacity of chairman of the Forms Committee, also delivered a report on the activities of that committee.

Presidential Election

Rounding out the informative business program and appropriate for a 1980 conference, was an election politics report from Rowland Evans Jr. of Washington, D.C. He is a syndicated columnist with the *Chicago Sun-Times.*

Evans speculated on election developments, commenting on the chances of the various candidates. He said that all of the possible candidates have drawbacks which jeopardize their electability.

He criticized what he described as Jimmy Carter's practice of looking at a situation from both sides at the same time and then responding to it by doing diametrically opposed things with his right and left hands. Even many Democrats, Evans said, "would not vote to extend Carter's on-the-job training for another four years." Such voters, Evans said, may turn to John Anderson, another presidential candidate who is now on an independent ticket.

Former California Governor Ronald Reagan has two major problems, in Evans' viewpoint. For one "He is a blooperist of some major proportions," Evans said, meaning that he has been known to say the wrong thing at the wrong time. Secondly, Evans said, the age factor will hinder election prospects for Reagan, who will be 69 by the day the nation chooses its next president. Jesting, Evans described how age actually can be an advantage for Reagan, "It is really a bit unfair to put Ronald Reagan up against all the other Republicans because they can go around quoting Abraham Lincoln, but Reagan knew him."

The political observer also commented on former President Jerry Ford, who at that time was considering announcing himself as a presidential candidate, and Sen. Edward M. Kennedy whose downfall will be the question of his integrity, Evans said.

Dr. Thomas Sowell, professor of economics at University of California at Los Angeles, spoke on poverty and income distribution at one of the meeting general sessions.

Dr. Thomas Sowell, a professor of economics at the University of California at Los Angeles, discussed another issue of national significance, that of poverty and income distribution.

Sowell made an interesting observation on an effect the government's minimum wage law has had on the nation's poor. He said that the minimum wage law causes people on the bottom rung of the economic spectrum to be priced out of the labor market. Therefore, it makes it more difficult for the very poor to acquire the kinds of skills and experience which would enable them to rise out of poverty. People priced out of the market, Sowell said, end up standing on street corners with their hypothetical right to a living wage.

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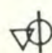
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The Red Flags of Forgery and Other Claims Pitfalls

by Walter S. Fortney

Let's start off with what I refer to as the red flags of forgery. I have handled a number of forgery claims—on average about one a year. That doesn't sound like many, but remember a forgery normally means a total loss. So it's an important matter to you and your underwriter.

You're probably wondering how you can prevent a forgery since you probably aren't a handwriting expert. Well, I've noticed a certain pattern to forgery claims. In fact, this pattern has existed in every forgery claim I've ever seen and recognizing it may help you avoid them.

"It stands to reason if someone has forged a deed to himself, he's going to cut and run, as we say in Texas. He's going to dump that property and get out."

The first red flag is the seller who has a very recent deed to the property. I'm talking about the person who comes to your office who wants to sell his property to someone else—your prospective insured. It stands to reason if someone has forged a deed to himself, he's going to cut and run, as we say in Texas. He's going to dump that property and get out.

The second red flag, which almost always occurs with the first, is that this recent deed the seller has is from a relative, usually his parents. I think the pattern is usually that the young man—I've never had a woman forger yet—has gotten in financial trouble. His parents have helped him out as much as they can and finally they tell him they can't help him anymore. So he takes matters into his own hands and decides to get a little advancement on his inheritance and forges the deed from his parents to himself.

Mr. Fortney is with the Ft. Worth, Texas, law firm of Snakard, Brown & Gambill.

The Cash Deed

The third red flag, which also is almost always present with these first two is that there is no vendor's lien, as we call them in Texas. This is a purchase money mortgage, retained by the seller. It is a cash deed.

The fourth red flag of forgery, and one which is really unrelated to the first three is that some party to the transaction that you're handling wants to take out an instrument, as a convenience to you, to get somebody to sign it. Very often, this person is divorced and promises to get the signature of his ex-spouse. Let me give you some actual examples.

One case involved the Fort Worth Osteopathic Hospital and it cost one underwriter $40,000. Two of the red flags were present. A widow owned a piece of very valuable property next to the hospital. The hospital wanted to buy it but she didn't want to sell it. However, her boyfriend did want to sell it and he forged her name on a deed to himself. Within one week he sold it to the hospital.

As I say, he had a very recent deed, and there was no mortgage on this very valuable property. It was conveyed to him by a cash deed. He was prosecuted, convicted and given a probated sentence. To this day—about eight years later—he still is paying his restitution.

Another recent claim involved a seller with a recent deed from his mother. There was no mortgage on the property. All three of the red flags were present, but the forgery still wasn't recognized. Also, another little clue is that he sold the property real cheap. Of course, forgers are anxious to get rid of the property and consequently they sell it to the first prospect.

That's the only good thing about forgeries. The policy usually is less than the cash value of the property.

This latter case illustrates an interesting point about the recovery-of- loss aspect of claims work. Remember that our insured has a deed from the son, and that we paid off the insured and took a deed from the insured. I've got a tickler file on the case and every year, I have to check the probate records on the mother to see if she's still alive. If she dies intestate or with a will leaving the property to the son, then we've got a chance to acquire the title under the doctrine of after-acquired title.

I had a claim in south Texas for First National Bank of Harlingen. Once again, the seller had a very recent deed to the property. I think he turned it in about two weeks. The deed was from his father and there was no mortgage. That claim cost the underwriter about $2,000 in attorney's fees before we could get the case settled.

The Relative Connection

Another good point about forgery cases is that relatives usually are involved. I always let it be known that if, in fact,

here's a forgery, the district attorney will hear about it. In spite of the fact that the parents are upset with their son for doing this, they don't want to see him go to jail, so they often work out a settlement.

The most amazing and exciting forgery that I ever saw was the Magid claim out of Houston. That's one that many underwriters have heard about. It cost one underwriter $60,000. Most other companies were less fortunate. It cost them anywhere from $100,000 to $500,000. All the red flags were there yet everyone missed them.

Magid had three deeds to three tracts in Houston. It was very expensive property located in what was then the outskirts of Houston. Now it is part of downtown Houston. All three were very recent deeds from his parents. All were cash deeds and there were no mortgages.

Magid, however, wanted to stick around awhile. He didn't want to sell this property and have to leave town, so he began to mortgage it, and he would get a mortgage on the property and then he would forge a release. Then he'd get another mortgage and he stacked these things about five or six deep. The claims ran to about a million dollars.

The "Take Out" Case

The Badwell claim represents the fourth clue I talked about. That clue is when someone wants to take an instrument out of your office to be signed. In this case the husband and wife had been divorced a few years earlier and the house had been awarded to the wife. The husband had been awarded a lien on the home to be paid when the home was sold in the future.

So the wife came to the title company and wanted to sell. She told the agent that she had paid her husband the money she owed him but that he wouldn't come to the title office to sign a release. Therefore, she had to take it to him. It turned out that she forged his name to that release. Once again, that case was settled, simply because he didn't want to send the mother of his children to jail.

The Kirby claim was another "take out" case. The husband was in prison. The wife forged his name to a power of attorney and brought it to the title company. She said he was out of town and couldn't come in to sign the papers. She kept the money but he later found out about it and brought suit. That one cost us a little money to settle. Of course, we couldn't rely on the old game of them not wanting somebody to go to jail because he was already in jail and still is.

Kithas v. Union Bank is another example of people taking instruments out. This one had a good ending, although it cost a lot of money in attorney's fees and court costs.

The approved attorney in *Kithas* sent the note and deed of trust down to the bank, and they in turn were going to get Mr. and Mrs. Kithas to sign it. This was a loan on their business homestead. It was a renewal and extension. The husband came into the bank and signed it and said that his wife was ill and could not come in, but he would take it out to her.

The truth was that Mrs. Kithas had objected to her husband borrowing money all these years and she wasn't going to have anymore of it. She wasn't going to sign anything and he knew it, so he forged her name. Fortunately, Mr. Kithas didn't know that he also needed an acknowledgment, so he failed to forge that too. He brought the instrument back into the bank.

Mrs. Murray who worked there at the bank didn't do what a lot of people would have done and just filled out the acknowledgment. She insisted that someone from the bank go to Mrs. Kithas and ask her if she would acknowledge signing that instrument. Sure enough they showed it to her and she knew what had happened but she didn't want to admit it. So she acknowledged it as her signature. We won that case on a little known theory of ratification. You can actually ratify a forged signature.

"Be suspicious if you see someone with a recent deed from his parents with no mortgage. Or be suspicious if someone wants to take an instrument out and have it signed."

I'll give you one more case. It's not one that I handled, but it's a reported case in Texas called *Southwest Title v. Northland.* There, the agent was insuring a second lien and the closing instructions called for an estoppel letter from the first lienholder specifying the amount due on the first lien. Since the first lien had a dragnet clause for future advances, they also wanted a subordination agreement from the first lienholder, subordinating any future advances.

The owner of the property probably knew the first lienholder wouldn't do that so he offered to help out and take the estoppel letter and subordination agree-

Chairman of the ALTA Abstracters and Title Insurance Agents Section Thomas S. McDonald (center) discusses the section program with speakers Hart McKillop (left) and Walter S. Fortney. McKillop, who is an attorney, educator and former Lawyers Title Insurance Corp. senior vice president, discussed the importance of education in the title industry. Ft. Worth, Texas, lawyer Fortney spoke on how to avoid claims.

ment out for signature. He took them out and forged them. That cost Southwest Title some money.

There are many more forgeries. I could go on for some time. Perhaps I've given you too many examples, but I wanted to demonstrate that they all follow one of these two patterns. Chances are that when that first forger comes into your office some day, as he may, perhaps you'll be able to spot him and stop it. So be suspicious if you see someone with a recent deed from his parents with no mortgage. Or be suspicious if someone wants to take an instrument out and have it signed.

Powers of Attorney

Watch out for powers of attorney. They are real troublemakers. I'm always suspicious of someone who can't come sign something. I'm always suspicious of someone who brings us a power of attorney.

A related area which causes some claims is that situation, which varies from state to state, where we rely on information supplied to us by some party to the transaction.

In Texas, it's quite common for title companies and lawyers to rely on affidavits of heirship to show intestate succession of land. Somebody dies without a will and they don't have an administration. It's a mistake to rely on one of the heirs. You should always look for someone who knows the family but who is not involved financially. Chances are good that they are not going to stick their neck out and lie to you. The interested heir may do so.

> "You should always look for someone who knows the family but who is not involved financially. Chances are good that they are not going to stick their neck out and lie to you. The interested heir may do so."

In the Atamanczek case, the wife swore that she was the only surviving heir. She failed to tell us about the husband's first marriage and child, and, of course, that child sued our insured for her half interest in the land, which we had to purchase.

The Puyear case down near Jasper in east Texas is another example where a less than honest person approached our agent, who is also an attorney, and asked him to file a suit to partition his property. He explained that he had acquired deeds from five heirs, but there were five more heirs who were unknown and nobody knew where they were. He asked the attorney to file a suit for him against unknown heirs so he could partition out his half interest in this property. Our agent relied on that and the fellow was lying to him.

The truth was that he had talked to all those "unknown heirs" and they wouldn't sell him the property. Of course, our agent should have gotten an affidavit from someone else, particularly one of the known heirs.

> "We also should try to educate lenders to police their projects and try to see that the draws bear some relationship to the completion of the work."

Mechanic's Liens

Let's move on to another and perhaps more familiar-type claim—the mechanic's lien. This is a difficult subject to talk about to a national audience because our laws differ from state to state. What you can do on your title policies differs from state to state. However, I'll try.

Remember though, we should not curse mechanic's liens too much. As my late uncle and partner, Richard Owens, used to say, "If it were not for mechanic's liens, there wouldn't be any title insurance."

Nevertheless, we ought to try to reduce mechanic's lien claims. But the question is how. Basically, I think all we can talk about in general terms is that it's an educational process. Of course, you should always try to get affidavits from all builders that all bills are paid and the like, but that doesn't help you if they lie. In fact, that's when we have our troubles. We also should try to educate lenders to police their projects and try to see that the draws bear some relationship to the completion of the work.

If you live in a small town, I think you have an excellent opportunity because you generally have a good relationship with all the contractors, subcontractors and suppliers. You can let them know that you need to know when projects are in trouble or when people aren't getting paid. Because of your own selfish interest, you're in a position to try to get those people paid. Let them know that if they come to you perhaps you can help them—not directly, but indirectly.

In Texas it's certainly a problem if any work starts on the project before a deed of trust or mortgage is filed or if any materials are delivered which are going to be incorporated into the work. So I think it's always good to ask people at closings, when they are going to start construction. They may volunteer information that they started last week. If they do, then you've saved yourself a lot of trouble because you've just learned about the problem before it's your problem.

You also can ask owners at the closing of a permanent loan whether they know of anybody who is not paid. Often someone who's constructing a building or a home spends a lot ot time there looking around. If there are dissatisfied workmen on the job, the owner may have heard about it. So ask them if they've heard of any such thing.

I think we should get sworn statements from owners, lenders and contractors and anyone else we can get to sign them. I realize sometimes it's a problem with your competition about what you can force people to do, but if you can get them to sign statements, get them to sign an affidavit that no materials have been delivered, that no work commenced prior to the recordation of the mortgage, and that they know of no unpaid bills. Sometimes such an affidavit gives your underwriter a policy defense.

When I'm speaking in Texas, I usually spend the entire second day of my speech talking about the homestead law of Texas. You can't borrow money on a homestead in Texas unless it's for purchase price, improvements or taxes. Owners are always trying to do it, however, and lenders are always trying to get liens for preexisting debts. But since that's not a problem for most of you, I'm going to skip over it.

Direct Payment

Another situation to watch for is when someone comes into your office and wants a title policy, and the purchase money in the case of a sale, or the loan proceeds in the case of a loan don't pass through your accounts. Or, if the attorney is closing it, those proceeds don't pass through his trust accounts.

In other words, if the people tell you that the money's been paid direct you'd better grab what's dear to you because you're about to lose it. This has been a common pattern in claims. When people allegedly pay money direct there's often something wrong with the transaction.

The Citizens National Bank case is a good example. This was a simulated sale of a homestead in Texas. Once again, this

involved a woman trying to get around our homestead laws by selling to her buddy who takes a loan and gives her the proceeds. This lady sold her homestead to her business partner. He got a loan at closing, but none of the proceeds of the alleged sale passed through the title company. That should have caused some concern on our agent's part.

In the Whitehead case there were two con men. The first con man had bilked someone out of a deed to some land. Both con men came running into the title company and said, "We want a mortgage policy because my friend here is lending me $10,000."

The agent said, "Okay, where's the money? "

They said, "It's already been paid. It was paid direct."

So the agent went ahead and issued. Of course, it wasn't long until the original grantor in this deal came in and said he'd been defrauded. It turned out, in my opinion, that the $10,000 loan had never been made and that this was just a scheme to try to set up an innocent mortgagee and to bilk the title company. Fortunately, the whole thing fell apart for these fellows. The interesting part was that one of them was already in jail at the time this claim came up, and I got to take his deposition in the federal pen, which was an interesting experience.

Another example is the McDonald claim. There, a father-in-law took a deed from his son-in-law. The only consideration which passed through the title company was enough money to pay off an existing debt on the property, which was in default. There was a good bit of equity in the property. Once again the agent did not catch this as a fishy deal. Sure enough, the son-in-law went into bankruptcy. The trustee in bankruptcy attacked this sale, and it was going to be set aside, but fortunately it was worked out.

As I say, the lesson to be learned from these cases is that you should be suspicious when the money's not on the table. If the people are not willing to show you the money and let it pass through your hands or the attorney's trust account, then require some proof of payment if they claim they paid it outside of closing.

Judgment Liens

Another bad practice is writing around judgment liens. I've seen a lot of this and it causes real misery. I think the confusion arises because in Texas and many other states, we are accustomed to writing around mechanic's liens. With the proper money being held and the proper indemnity agreement, that could be pretty safe because they have to sue you to foreclose that lien. They have to sue the insured and your underwriter will get notice. You can defend it or he can defend it under his indemnity agreement.

But with judgment liens in Texas and many states, it's quite different. With a judgment lien, all the creditor has to do is get out a writ of execution and have the sheriff levy on the property. In Texas it's really bad because they just give a notice to the debtor and not to the present property owner who is the insured. The next thing you know, you've lost the property.

> "If people tell you that the money's been paid direct, you'd better grab what's dear to you because you're about to lose it."

Here are some examples. An agent writes around a judgment lien because the seller says it's his homestead. The agent believes him. The seller says he doesn't want to pay it because it's his homestead and the judgment lien doesn't attach to his homestead. That might make good sense to a lot of people, but the trouble is that it's very dangerous because, once again, whether it's homestead or not, that judgment creditor may get a writ of execution, levy on the property and become the owner of it, depending on the law of your state, and the next thing we know is we've got somebody claiming title to the property you insured. And then we have to go to court and prove what you were willing to assume—that it's homestead. If I'm handling it, I've got to go find this seller to try to prove it was his homestead, and he may be in Oregon, or what's worse, he may be dead. What's even worse, he may have lied about it. Perhaps he abandoned his homestead sometime prior to the sale, and perhaps the judgment lien attached to the property during that period.

The point is it's easy to talk about such things as homesteads, but it's very difficult to prove them. You always should require releases of judgment liens and never write around them. You could require a suit to remove cloud from title.

Another situation I've seen where agents write around judgment liens, and the situation which has caused us the most grief is where the agent holds money because a seller has some excuse for not paying the judgment lien. An actual claim was the case *Pantaze v. Slocum*, which went to the Texas Supreme Court. We finally were able to win on a legal technicality.

In that case, the seller had a very recent abstract of judgment filed against him. In fact, the judgment was no more than a couple of months old. His story to our approved attorney was that he was appealing the case. He told our approved attorney that because he was appealing the case that he didn't want to pay the judgment. Instead, he agreed to give our approved attorney the money to hold.

So our approved attorney held $850. It wasn't a big deal. Well, the truth was, there was no appeal and whether there had been an appeal or not, our agent did not check to see if there was a supersedeas bond on file. The judgment became final and nothing happened for two or three years. In fact, our approved attorney forgot that he even had the money. It was sitting in an escrow account.

Finally, two years later, the judgment creditor decided to get out a writ of execution. He had the sheriff levy on the property. There was no notice to our insured. The debtor got notice, but he didn't care. He didn't tell us about it.

There was a sheriff sale. The next thing we knew, this fellow Pantaze owned the property and sued our insured in what we Texans call trespass to try title. That's how we learned about it. We apparently had lost title to a $40,000 house, or what was then a $40,000 house. We were lucky to win that one on a legal technicality.

Another one I saw not long ago was where an approved attorney held $17,500 to pay off a judgment. He overlooked the fact, however, that the judgment also called for $7,500 in attorney's fees, court costs and interest. The creditor levied on the property. Fortunately, the lawyer on the other side knew that Chicago Title was involved and gave me the courtesy of a call. We were able to talk the judgment debtor into paying that additional amount. Otherwise, once again, we would have been in big trouble and would have had to pick up the check.

> "You always should require releases of judgment liens and never write around them."

The point is, you should never write around judgment liens. You always should require that they be paid or you shouldn't insure the title.

Indemnity Agreements

While we're talking about holding money, let's look at a situation which is common in many states. In order to insure a piece of property and write around or insure a mechanic's lien, we sometimes hold

up some money and get indemnity agreements and escrow agreements. The first problem I see is that generally the agent is not holding enough money. Certainly you need to hold the amount of a lien, but don't forget interest because interest is running on that lien and it may, as you know, take two years to get something like that settled in court.

"It's very easy to get an indemnity agreement. Collecting on an indemnity agreement is not easy. People will sign indemnity agreements like they were affidavits, but they will react with horror if you try to enforce them."

There also are court costs and attorney's fees, and when I say attorney's fees, I'm talking about your underwriter's attorney's fees. Your underwriter may get dragged into this dispute despite the fact that you tried to prevent it. Even when agents hold cash, I'm finding that they don't get a written escrow agreement or a written indemnity agreement. That is very important. These agreements need to spell out the obligations of the parties. For example, your right or your underwriter's right to pay that mechanic's lien after it is reduced to judgment, must be included in the written agreements. In other words, don't operate on oral agreements.

When the agent obtains written indemnity agreements and escrow agreements, they are generally inadequate and really need to be much more comprehensive. It's very easy to get an indemnity agreement. Collecting on an indemnity agreement is not so easy. People will sign indemnity agreements like they were affidavits, but they will react with horror if you try to enforce them.

What you want to be sure to do is get that indemnity agreement in favor of both the agent and the underwriter. You want to clearly specify the loss to be covered (not just the lien amount) and include all possible costs and attorney's fees which you or your underwriter may suffer.

Also, you need to spell out what rights you and your underwriter have if the indemnitor defaults. In other words, you may need to step in and take over the fight on this mechanic's lien case that's being tried.

The greatest weakness that I see in many indemnity agreements and one which has caused several losses and a lot of bad arguments, is that the indemnity agreement does not run to other policies which your underwriter may be issuing simultaneously or subsequently. In other words, it does not cover the underwriter's duty to defend.

Let me give you an example. I hope it applies in your state. Let's say an owner is building a home and gets into a dispute with his builder. A lien is filed and the owner doesn't want to pay it. He wants to fight it in court. He's about to lose his permanent loan and he begs you to go ahead and close the deal. He tells you that you can hold the money and assures you that everything will be all right. He says he will fight the matter. So you comply.

The next thing you know, this mechanic's lienholder finally files his suit. The owner writes to your underwriter and asks to be defended. Maybe we have to, if we don't have a real good agreement that spells out the fact that he's taken over that duty. What's worse is that the mortgagee gets sued. Maybe there's a priority of lien question. The mortgagee is brought into the case. Maybe he didn't know much about this deal. And the mortgagee says "Defend me." In a case like that, the underwriter has a non-delegable duty to defend the mortgagee. I don't think you can turn to the mortgagee and say, "Hey, this guy indemnified us, so we'll let him do it."

So the next thing you know we're filing answers. We're being noticed for depositions, interrogatories, and we're running up costs. And if you really want to hear somebody scream, wait until we send a bill for attorney's fees to the indemnitor. They won't pay it unless it's very clearly spelled out in that indemnity agreement.

"You should be careful when an owner comes in and wants an owner's policy after he has owned the property for some time."

What I recommend is an indemnity agreement that contains a clause something like this: "It's understood and agreed that the title companies (defined as both agent and underwriter) have or will issue a policy of title insurance to (the mortgagee's name) and may issue subsequent policies to other insureds, and the title companies are obligated to protect said insureds under the terms of said policy, and that said obligations cannot be delegated to the indemnitor herein, and in the event any claim or demand is made by said insured or suit is filed against said insured, or by said insured, title companies may have to perform under the terms of said policy and indemnitor hereby agrees to reimburse title companies for any and all expenses arising out of said claim, demand or suit, including, but not limited to expenses of investigation, court costs and attorney's fees, which may be expended by said company in connection with any claim, demand or suit in any way connected with or rising out of the subject matter of this indemnity agreement."

The point is, if we're going to do somebody a favor, neither you nor your underwriter should be out one dime for it. What I see all to often is that the underwriter ends up spending hundreds, sometimes thousands, of dollars on attorney's fees and expenses getting involved in a deal where somebody has agreed to indemnify, simply because the agreement is not air tight.

Owner's Policy

Let me go to another subject now, and it's another red flag to watch for. You should be careful when an owner comes in and wants an owner's policy after he has owned the property for some time.

The same applies where a mortgagee is seeking a mortgage policy for a previously unsecured debt, or an antecedent debt, as they call it in bankruptcy court.

The chances are good in such a case that the owner knows something is wrong with the title. Perhaps he knows that it's about to be attacked. Chances are almost 100 percent certain that the mortgagee who wants that policy for the antecedent debt is trying to strengthen his position and knows that the debtor isn't solvent and is about to go into bankruptcy. So if we issue a policy in that case, we literally are buying trouble.

Let me give you examples of two very substantial claims. One was the *City of Pasadena v. The Pasadena Police Officers Association.* In this case, we had issued a $200,000 policy. The facts were that the city of Pasadena had given a valuable piece of property to the Police Officers Association with the understanding that the police would run a boys' club. They did just that for many years. Then they decided to change locations and sell the property which had become even more valuable at that time. There were rumblings around city hall. City council took exception to the proposed sale and had the city attorney looking into it. About this time is when the police officers came to us and got a policy. Well, sure enough, the policy was still warm, when the lawsuit was filed.

It was very difficult to prove the knowledge of the Police. In fact, we didn't even try at first. We didn't deny liability. We defended under a reservation of rights and lost the case because the state constitution prohibits a city from giving away something of value. Then, of course, we faced a dangerous suit from the Police Officers Association which wanted its $200,000 on that policy. That was the second case on the same transaction which went up through the appellate courts. We won the second case. I hate to think what was spent on those two cases.

Mortgage Policies

Another case which was very dangerous and cost a lot of money involved two lenders who wanted mortgage policies—one for $100,000 and one for $650,000. One of them was a second lien. These were previously unsecured debts. The lenders knew of the insolvency of the debtor. Our agent went ahead and issued, and, of course, there was a bankruptcy in a matter of days. The $100,000 lien was set aside as a preference. We had all kinds of litigation and problems. My partner, Kent Kibbie, finally won that one on appeal to the District Court, and then it was settled cheaply while on appeal to the Fifth Circuit.

All you can do in a situation like that is be suspicious. If people want policies and they're not buying the land or they're not making a new loan, think about it and ask about it and try to find out what's going on.

As you know, most of our policy forms throughout the country have provisions that the underwriter is not liable if the owner or mortgagee has some knowledge of the defect. Therefore, in a situation like that, I'd ask them to sign a sworn statement that they know of no insolvency and of no defects in the title. If they tell us the truth, we should be safe. If they lie to us, we've got written proof of it. Of course you can always except to a possible bankruptcy if you can get away with that.

Surveys

Another problem I've seen arises from deleting the "survey exception," as it was formerly called in Texas. It's an exception as to areas and boundaries. I don't know if you can do that in your state, but whether you can or not, I know that you're often faced with looking at a survey and making your determination about how you're going to insure the property. The problem is that we're getting those surveys and we're putting them in a file and not looking at them. That's causing problems.

The McCoy case is an unusual and humorous example of this. In this case, the surveyor sent his survey in but there was no certificate telling us what he really did. It did show, of all things, what he had labelled as a "grandstand" encroaching on the subject property. Our agent didn't notice that. The surveyor failed to show that there also was a football field encroaching on the subject property. Our insured went in possession and began to scout around for his boundaries and discovered all of this. He negotiated with the school board in the town of Walnut Springs for some time. He got nowhere. He finally took matters into his own hands and went out one Sunday and constructed a three-strand barbed wire fence which intersected the sidelines of the football field at the 17-yard line and cut down to the end zone.

I found myself in Meridian in the next few days defending McCoy in an injunction suit in which the school board was trying to get him to remove that fence. In this case, practical considerations outweighed legal considerations. The judge said, and I'm quoting from the record, "I'm going to sit here and think a long time before I break up a football game here." Football's pretty big in Texas and this one was tough to defend.

The team was the Walnut Springs Hornets. It's a very small town. It's so small that they played six-man football. The Fort Worth *Star-Telegram* picked up on this, and I'll read some of it to you. They wrote a little article with this headline: "Protest Stirs Up Hornet's Nest—Football Field Feud Fizzles."

". . . this could have been prevented by an examination of the survey by the agent and also by the agent requiring something more of surveyors than they often give us."

The articles read, "When the mighty Walnut Springs Hornets were stopped cold at the 17-yard line by a barbed wire fence, it was a man on the bench who saved the game here yesterday. On fourth down, with the whole season in jeopardy, Judge Byron McClellan of the 53rd District Court punted the case into the laps of offensive and defensive attorneys who carried the ball to a settlement that will enable the Hornets to play six-man football against Cranfills Gap on Sept. 3.

"Before the legal touchdown, school board President Charles Richardson testified the Hornets would have had to forfeit to the Gap on account of barbed wire. The Hornets have already been at some disadvantage, holding training on the shortened field and practicing 83-yard dashes."

At least there's some fun to all this. However, all of this could have been prevented by an examination of the survey by the agent and also by the agent requiring something more of surveyors than they often give us.

"Having the agent deny a claim was bad enough, but he . . . insured another part of the same tract which was later sold. He did so knowing that somebody was claiming the property."

Corporate Conveyances

Let me make a quick point on corporate conveyances. The largest claim I've ever handled involved several million dollars. It was highly dangerous. We finally won it in the fifth circuit. It involved conveyance of some Texas land by an Indiana corporation. Under both Indiana law and Texas law, and I think the law of most states, special notice to the stockholders and a special vote of more than a majority is required of a corporation selling all or substantially all of its assets.

Goodness knows how many times you have handled corporate conveyances and hadn't thought of that. I don't think I would have ever thought of it until I had this case. How many times is the corporation you are dealing with selling all or substantially all of its assets? Well, that was the problem we had here, because the piece of land, a very valuable tract on the freeway, was the only thing that this little Indiana corporation had. The president had taken the minority stockholders to the cleaners. There was just a small meeting. He didn't give a special notice. The property was sold and several million dollars worth of improvements went on it. Then down came the stockholders from Indiana and filed a class action lawsuit.

As I say, we were very fortunate. We won that case by relying on an Oregon case which interpreted Illinois law. Watch out for those corporate conveyances.

Restrictions

Restrictive covenants are a source of trouble. Even though you excepted to restrictive covenants (it's a printed exception in Texas policies) very often the guy can't understand it when he gets out

there and starts to build his commercial building and learns the land is restricted to residential. He thinks that you should have told him that or you should have done something about that. He sues the agent and the underwriter. He says they knew or should have known what he was going to build and should have told him about the restrictions.

I know that problem has been solved at Rattikin Title Co. and Gracy Title Co. where everyone who closes a deal is required to sign a statement that he has received a copy of the restrictions and understands what they are excepted to in the policy. The form doesn't go so far as to say this, but, technically, what we're saying is the title company can't give you legal advice on what you can build out there and here are these restrictions and excepting to them, and you had better read them.

It's amazing to me how many times I get a claim when the agent knew or should have known that something was wrong with the transaction. So don't just rely on what the record title shows. If you have personal knowledge of something that's wrong or if you just have a gut feeling that something's wrong with the deal or if you have heard about something, pass it on to your underwriters so they can make a judgement about it. I don't know how many times I've gone to the agent about a claim that's been reported, and the agent says, "I knew there was something fishy about that deal. I just knew that would end up in a lawsuit." Well, the best time to talk about that was back before the deal was closed.

Let me give you some examples. One was the DeMateo claim. DeMateo wanted to buy a piece of lake property, and he went out and looked at it. The seller said, "The neighbor over here has a right to use this dock in front of the property." So DeMateo told the closer about that and the closer shook his head and said, "I don't see how. There's nothing of record. That dock is part of the realty and that can't be right." So the deal was closed and the policy issued. A suit followed shortly thereafter when DeMateo denied the neighbor access to the dock.

It turned out to be a very serious matter because the neighbor had, in fact, paid for the entire dock. The previous owner had agreed the neighbor could put the dock over there on his land because it was a convenient place for it to be. It looked to me like the court would probably hold this was personalty; that the people had segregated it from the realty by agreement, which they may do. If so, it was not covered by the statute of frauds, and the oral agreement would prevail. We settled.

The Puyear case is an example I mentioned earlier. It was about the fellow who told us he had bought the land from the five heirs and couldn't find the others. After our lawyer-agent cleared the "missing" heirs in the partition suit, he issued a policy to this man named Puyear. Puyear went out there and started cutting some trees and this lady came trotting across the field and said, "What are you doing out here? This is my property."

Puyear said, "I don't know how that could be. I just bought it and I have a title policy."

The public thinks that if one has a title policy it means one owns the land. That is not always true.

Nevertheless, Puyear went to our agent and said, "Hey, this lady's out here claiming that she owns this property. What's the deal? "

And the agent said, "I don't see how that could be."

Having the agent deny a claim was bad enough, but he also insured another part of the same tract which was later sold. He did so knowing that somebody was claiming the property.

I'm sure none of you do that sort of thing, but if you hear of potential problems, be suspicious. Immediately report it to your underwriter when somebody even mentions the idea of a claim and, of course, don't be in the business of denying claims. I've seen that happen before. By the time the insured gets to me, I'm dealing with somebody who's as mad as a wet hen because the agent denied the claim.

The Unpreventable

Of course, sometimes, no matter what you do or how careful you are, there is nothing you can do to prevent a claim.

The old Blackstone Hotel claim in Fort Worth is a good example. It was insured by Jack Rattikin several times and the title was good. To my knowledge, the Blackstone is not named after anyone. But, at any rate, one day Mr. Hopkins, the manager of the hotel, received a letter. It read: "It has come to my attention that you, along with Mr. Blackstone, who received his 25-year award with Gulf Oil Corp. in 1946, Macon, Ga., have really helped yourselves to my estate. It is requested that you contact me at your earliest convenience for an appointment to discuss the matter. I request Mr. Blackstone to be there in person.

"You see my father, William Henry Bauer, joined Gulf in 1919. One-half of that Blackstone estate belonged to me. But now since I have been embezzled of my share, I expect immediate action. Skipping town is not the answer for you or him as I traced all the properties.

"Mr. Hopkins, you are guilty of conspiracy behind my back, indulging in oil wells on the Hopkins County school land."

She added postscript: "I also understand that you allowed a foreclosure on the Blackstone in June of this year, and sold to the Republic National Life Insurance Co. These papers are not valid. Please draw up necessary papers transferring all titles to me. This also includes the town of Blackstone, Va."

That could have been the worst claim we've ever had. We were convinced the lady was in need of professional care and we didn't even respond to that letter. Fortunately, we never heard from her again.

As I said earlier, the problem in preventing a claim is one of recognition. I hope that what I have said to you today may help you recognize claims coming down the road before they get to you and bite you.

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The NAIC Proposed Model Open Competition Law

by C.J. McConville

Until fairly recently, insurance departments paid little attention to the title insurance industry. We were small in comparison with the other lines of insurance and there were few complaints about how we conducted our business. All that has changed perhaps because the federal government started making noises about regulating any line of insurance that was not being properly regulated at the state level, which prompted the state insurance departments to take an increased interest in us.

"Out of these changes came new types of rating systems and a new role for rating bureaus."

We now are required by insurance departments to collect statistical data in 12 states. We expect that number to increase. Insurance departments do not approve automatically title company rate filings as they did in the past. The regulator now pays more attention to us.

In order to assess the direction our industry should take in this environment and what the impact on us might be by virtue of the model rating law that the National Association of Insurance Commissioners (NAIC) is considering, I would like to review very briefly the history of state regulation and rating methods used around the country.

Mr. McConville is the ALTA representative to the NAIC Advisory Committee on its proposed Model Open Competition Law. He is an ALTA past president and president of Title Insurance Company of Minnesota, Minneapolis, Minn.

Two Major Events

The two most significant events that triggered some of the changes in the historic method of setting rates were the South-Eastern Underwriters case decided by the U. S. Supreme Court in 1944 and the subsequent passage of the McCarran-Ferguson Act. There were significant debates at the state level as to what type and quantity of regulation would satisfy McCarran. By March of 1951, every state had adopted fire and casualty rating laws that, for the first time, brought the pricing practices of the property and liability insurance business under regulatory control nationwide.

Many thought that this would maintain the status quo which had been for rates to be set by rating bureaus, based on statistical data supplied to them by their members. Instead, it caused unparalleled growth by companies wishing to pursue independent courses through deviations. Insurance departments saw this activity as wholesome competition which benefitted the consumer. As a result, statutes were amended to accommodate this new phenomenon. Out of these changes came new types of rating systems and a new role for rating bureaus. There now are nine basic types of rate regulation in the United States.

Major Types of Regulation

There are two states—and now I am referring to all lines of insurance, not only

Chairman of the ALTA Title Insurance and Underwriters Section Fred B. Fromhold (left) and section program speakers C.J. McConville (center) and Moses K. Rosenberg share a joke just prior to their reports on developments in the area of rating.

title insurance—that mandate rates, such as we are familiar with in Texas and to some degree in Florida. This practice is at one end of the spectrum of the rating system.

The most popular type of rating is the prior approval system, used by 29 states. This system requires a company to file its rates but, until something happens, it cannot use them. That "something" is either the actual approval of the rate by the insurance department or the department allowing a specified time period to pass and if no disapproval arises during that time, then the rate can be used.

"The NAIC has opted for a variation of the Illinois approach, which they call open competition system."

Another is the file and use system, through which a company files its rates with the department and can immediately use them. This is sometimes called the subsequent disapproval system, because the department can say the particular rates are not reasonable, or excessive, or unduly discriminating or it may reject the rates for some other reasons.

The flip side of that method is the use and file system. A company can start charging what it wants to today and then, in a time frame specified by statute, it must file with the department.

The latest development, and the most liberal approach, is the one that Illinois uses, which is kind of a "no holds barred." There is no filing. There are no rating bureaus. In fact insurers cannot be members of a rating bureau. Instead, the system uses advisory bureaus that collect statistical data. But again insurers are not members. They are subscribers. The insurance department has no jurisdiction over rates.

The NAIC has opted for a variation of the Illinois approach, which they call the open competition system. The theory is that rates will find their proper level through supply and demand forces and through competition.

The Task Force

The NAIC established a task force of insurance commissioners, to author a model rating law that would take this approach. In order to give some input to this task force, the then-president of the NAIC, Commissioner Pete Hudson of Indiana appointed an advisory committee of people in the insurance industry. There are underwriters, agent representatives, consumer groups and a professor of insurance on the committee. There are 23 people, plus about an equal number of staff people, who attend meetings.

When our Washington office heard of the creation of this committee, the ALTA president wrote to Commissioner Hudson and asked that a member of our industry be placed on the committee. I serve in that capacity.

The first draft of the model bill was ambiguous in regard to title insurance. Although it wasn't mentioned, it wasn't excluded. One of the sections, however, entitled Scope of Application, stated that *all* lines of insurance licensed in this particular state would be covered by the law, unless excluded. It then excluded certain lines, such as life insurance, annuities and reinsurance. But title insurance was not excluded.

Under the first draft of the model bill, a company would file rates with the department, but not for any approval purpose. The filing was merely for consumer use so that consumers could compare what the various companies were charging.

There were only three ways that the rate would be rejected or cut back by the department. One was if a company was in financial difficulty. After a hearing, the commissioner could refuse to accept the rate filed.

Second, if after the filing the commissioner determined that the rates were excessive—and that is the only test, excessiveness—then he could refuse to permit those rates to continue. And third, if the commissioner determines that rates for this segment of the insurance business do not respond to competition, that line could be excluded from the law after hearing.

"The filing was merely for consumer use so that consumers could compare what the various companies were charging."

In order to get input from the industry on the model bill, questionnaires were prepared that focused on five issues. These questionnaires were sent to everyone we could think of who might provide insight on the subject—including all ALTA members of this section. The two issues of most concern to our members were to what extent competition should be the primary rate regulating mechanism and what types of information should be provided to consumers and how it should be disseminated.

Questionnaire Responses

There were 39 responses to the questionnaires—three of them from the title insurance industry. The title insurance companies for once showed agreement. They said that title insurance should be excluded from the model bill because of the fundamental differences between title insurance and property-casualty insurance. In title insurance, the buying decision is made by a lender, lawyer, developer or Realtor rather than by the consumer. Thus the phenomenon of reverse competition could exist, *i.e.*, an increase in price to consumers because of commissions to the middle man. As far as information to consumers is concerned, this is desirable but is already being handled through the requirements of RESPA.

"As far as information to consumers is concerned, this is desirable but is already being handled through the requirements of RESPA."

Some advisory committee members questioned why title insurance should be excluded. They asked whether there are other lines with similar characteristics that should be excluded from the bill also . If there are, a good case therefore would have to be made or we would be included just to prevent other lines from also asking for exclusion. Exclusion of a number of lines would make the law meaningless.

At this point I sought help from two sources. First, I personally believed title insurance should be excluded from the bill—but I wasn't sure that my opinion was shared by the industry. So I asked the ALTA Executive Committee if they felt my position represented what was best for the industry. At their January meeting they concluded it was. I then called on Irving Plotkin of Arthur D. Little, Inc., to furnish me with material to prove on an economic basis that title insurance should be excluded from the bill and not be lumped together with property and casualty companies. He responded magnificently and supplied the committee with books, articles, Justice Department studies and insurance department reports that were most convincing. The committee, at this point, agrees that title insurance should be excluded from the model bill.

If we are excluded—where does that put us? It does not necessarily mean that rates must be set by rating bureaus. Each state adopting the model bill would probably continue its current rating method for the excluded lines. However, I believe we are unrealistic if we do not recognize that

(continued on page 46)

Title Industry Rating Bureaus

by Moses K. Rosenberg

There seems to be abroad a school of deregulators whose theories are given credence because, in many respects, the American economy has suffered from excessive regulation. Strangely enough, some of the deregulation proposals involve establishing additional regulations. Such is the case with at least one of the proposals to which I will allude later, establishing a federal-state regulatory scheme in certain aspects of insurance.

"No one has proved that rate-fixing is evil and 'anti-competitive,' but the canard has been repeated so often that too many people are starting to believe it."

The ills, real or imaginary, of the insurance industry are being attacked on many different fronts, most of which claim that a more competitive market will be created by doing away with the rate establishment activities of rating organizations.

The essence of these attacks is that all rate establishment is evil, rating organizations fix rates, therefore rating organizations are evil. That is a fractured syllogism.

No one has proved that rate-fixing is evil and "anti-competitive" but the canard has been repeated so often that too many people are starting to believe it.

Rating bureaus in the title insurance industry are uniquely different in historical development from those in other lines of insurance. Unfortunately, title insurance rating bureaus are being lumped together with all other rating bureaus in current proposals.

In many states the title insurance industry has felt and enjoyed the protection against insolvency that rating bureaus provide. This protection is no less needed today than at any time in the past. Through rating bureaus in the title insurance industry and the accumulation and use of statistics, the theory of rate of return on total capital was developed as the proper method of establishing rates.[1*] Rates established in this way not only provided for cross-subsidization that permitted higher insurances to support issuance of lower insurances, but also enabled the industry to spread its risks among insureds.

In title insurance, not only is the risk of loss spread equitably across all policy purchasers, but, more importantly, the cost of loss avoidance and loss prevention activities—*i.e.,* the search and examination of public records, the maintenance of title plants, etc.—is equitably spread as well.[2] Rate competition has been viewed by many as disastrous to and destructive of the solvency of the insurers.

Definition of Rates and Rating Bureaus

Rate has been defined as the premium charge per unit of insurance, a charge or price established in accordance with a scale or standard, and the amount of a charge or payment with reference to some basis of calculation.[3]

A rating bureau is an organization of insurance companies or insurance agents for the purpose of promoting the business, welfare, and convenience of the parties thereto and to secure uniformity in the business, particularly in reference to premium rates.[4]

Where authorized or not prohibited by state law, rating organizations generally may cooperate with other rating organizations and title companies in rate making or other matters in the same manner as if they were individual title insurance companies so acting.[5]

The statutes of the 50 states deal with rating organizations of title insurers in different ways. They can be categorized as follows:

- States specifically authorizing title insurance companies to form and use rating organizations[6]
- States specifically authorizing casualty companies to form and use rating organizations which include title insurance by no language of exclusion[7]
- States specifically authorizing casualty companies to form and use rating organizations which exclude title insurance by specific language[8]
- States specifically prohibiting title insurance companies from forming or using rating organizations[9]
- States in which no specific provision is made for allowing or disallowing formation and use of rating organizations in title insurance[10]

(continued on page 26)

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Footnotes for this article appear on page 30.

- States which prohibit title insurance companies from forming rating organizations within their respective states, but permit use of outside rating organizations[11]

From an examination of the summary of this range of practices throughout the United States it is obvious that opinions as to the validity of rate-making organizations in title insurance is wide and diverse. If it were not, I would not be appearing here discussing this topic.

Different Identities

Rating bureaus in the title insurance industry could take many identities. The first of those would be organizations that develop forms, collect data and file for rates to be used by their constituents having some degree of control over the activities of the constituent insurers. The second, while it also develops forms, is a pure information- and statistical-gathering organization. The third is an organization that develops forms, collects data and files for rates for its assenting members.

> "A number of the proposals to 'deregulate' and therefore make the title insurance business 'more competitive' involve repealing the McCarran-Ferguson Act exemption."

Few title insurers quarrel with the propriety of rating organizations in the second category, which are the information-gathering agencies that collate statistics and make them available to their constituents in order to enable individual companies to file their own rates. The third category, the data-collecting agencies that file with adherence to or compliance with the rates as optional with the constituents, has proved in practice to be totally ineffective—an exercise in futility.

The first category is really the type of rating organization addressed in this paper, full service rating organizations which develop forms, collect data, collate statistics, report experiences and file rates for their member companies, to be adhered to by them.

Such activity by a rating bureau, where not authorized by state law and not regulated by a state agency, such as the department of insurance, could be in violation of the federal antitrust laws.

McCarran-Ferguson

"Price fixing," to use the term of the consumer activists, by a rate-making organization, is presently protected from the federal antitrust laws by the McCarran-Ferguson Act.[12] The antitrust laws are applicable only to the extent that the "business of insurance" is "not regulated by state laws."[13] Under the McCarran Act, the relevant conduct, such as formation of a rating bureau, need not be specifically approved by the state in order to be protected, so long as the state comprehensively regulates insurance, including anti-competitive practices.

The crucial factor for the application of the McCarran Act exemption is not an actual regulation of the specific conduct, but the existence of a mechanism for its regulation.[14] Since almost all insurance commissioners or departments have regulatory authority over anti-competitive conduct, the McCarran Act serves to insulate rating bureaus from federal antitrust attack in almost every state—Not just those which specifically authorize their use.

A number of the proposals to "deregulate" and therefore make the title insurance business "more competitive" involve repealing the McCarran-Ferguson Act exemption. Prior to 1976, it was commonly thought that the "so-called state action exemption"[15] to the federal antitrust laws would still be applicable, despite repeal, to exempt the operation of rating bureaus in those states specifically authorizing them. Indeed, before the McCarran Act was adopted, the U.S. Department of Justice contended that it was unnecessary since the state action exemption would provide the same protection in those states which specifically authorized conduct in conflict with the federal antitrust laws.[16]

Recent events in the evolution of the state action doctrine, however, have made the McCarran Act exemption much more crucial to the survival of rating bureaus than the Justice Department thought in 1949.

In 1976, the U.S. Supreme Court handed down its plurality decision in *Cantor v. Detroit Edison.*[17] Since *Cantor*, no one has been able to say anything certain about anything in connection with the state action defense. In that case, four justices implied that the state action exemption protects from federal antitrust liability only the states themselves and state officials, while complying with state regulatory laws, but not private persons or businesses. This view, as was noted by the three dissenting justices, could place any private business subject to state regulatory laws in the impossible situation of either violating the state laws or possibly violating the federal antitrust laws.

> "Recent events in the evolution of the state action doctrine, however, have made the McCarran Act exemption much more crucial to the survival of rating bureaus than the Justice Department thought in 1949."

The three dissenting justices would have immunized from the antitrust laws any action which a state regulatory board could be persuaded to "order." Two justices, concurring with the first four, adopted their own unique approaches which permitted some limited degree of protection for private businesses, depending on the court's decision as to the importance and reasonableness of the state law.

Subsequent cases[18] have failed to resolve the confusion except, perhaps, to indicate that a majority of the court may be willing to up-hold private anti-competitive conduct required, and not just authorized, by a state. I use the word "may" because they have not yet done so.

Since none of the six types of the state statutes which I have mentioned require, rather than authorize, the use of rating bureaus, this approach, if adopted by the court, could still render rating bureaus subject to antitrust attack if the McCarran Act were eliminated. While we cannot rule out a "zag" by our increasingly fractionalized and opinionated brethren toward deference to state regulation, the prospects for the existence of rating bureaus under the "so-called state action exemption," in the event of repeal of the McCarran Act, are less than certain.

With the growth of the so-called consumer movement and the outrageously unjustified and unjustifiable credence given to it (which, in my opinion, has created a tremendous negative impact on the position of consumers and the structure of society), there has been a stampede to eliminate the machinery or at least the legitimacy of the functioning of rating bureaus in the title insurance industry and in any area where there is even a hint of price establishment. The term "price fixing" has been used *ad nauseam* to denote a practice that is evil *per se* and must be eliminated. This criticism falsely assumes that if prices of services or commodities were deregulated and left to the open market they would come down.

That is a dangerous generalization which we know is false in many important respects. Where it does bring the prices down, the reductions are often accompanied by an erosion of the service, deterioration of the quality of the product, and impairment of solvency of the insurer.

Attack Sources

Now that you know my philosophical predilections as to the Naders of society, I will discuss the sources of the attacks on the continuance of rating bureaus.

One source is Congress. A bill entitled the "Insurance Competition Improvement Act of 1979" was prepared by the staff of the Senate Subcommittee on Antitrust during the first session of the 96th Congress. The bill has three primary purposes:

- Limit the antitrust immunity granted the business of insurance by the McCarran-Ferguson Act
- Establish competition in the pricing of auto and homeowner's insurance on an average rate level basis, and
- Provide minimum standards to ensure nondiscrimination in insurance pricing, full availability of property/casualty coverage and the elimination of unfair and excessive rate differentials between insureds.

The bill fails to mention reverse competition or controlled business or any protection for lines suffering from those phenomena. Nor does it mention title insurance. By failing to exclude it, the bill certainly covers title insurance in its provisions. The bill's stated purpose is "to amend the McCarran-Ferguson Act to limit the antitrust immunity of insurance companies, to improve the operation of competition in the business of insurance, and for other purposes."[19]

"The bill fails to mention reverse competition or controlled business or any protection for lines suffering from those phenomena."

This assumes the very point that never has been proved—that competition will be improved and the consumer's interest served by removing the antitrust immunity of the McCarran-Ferguson Act.

This bill states that the Sherman Act,[20] the Clayton Act,[21] the Federal Trade Commission Act,[22] and the Robinson-Patman Anti-Discrimination Act[23] are fully applicable to the business of insurance. In repealing, in part, and amending, in part, the McCarran-Ferguson Act, this bill would prohibit rating organizations from gathering information on expenses incurred in the sale or underwriting of insurance.[24] The bill would allow joint gathering of loss data by insurers or rating bureaus but it limits the use of such data to instances where it is essential to an insurer's business and the insurer's own data are not sufficient to establish a reasonable degree of actuarial credibility.[25]

This ignores one of the basic differences between title and other lines of insurance—the very magnitude of the cost of underwriting which includes the mandatory (in most states) provision for a thorough search of the public records prior to the issuance of any policy. The monitoring of this expense item is of critical importance to the establishment of rates.

The bill would preempt the business of insurance to the federal goverment as to individual states only in the event any of them failed to adopt satisfactory regulatory plans, the criteria for such plans being set forth.[26]

To let you in on one of the goodies that must be included in an acceptable state plan, I cite the following example I read from §5(j) (3): "In any case where an insurer fails to make payment within 15 days of receipt of written notice of a claim, the claimant may commence a civil action in an appropriate state court for payments claimed to be due."

Is anyone within the hearing of my voice able to make a valid determination, within 15 days, of the validity of a claim and that the only alternative is the payment of a dollar amount rather than curative action that could take myriad forms? Do I have to tell you what it costs to defend any claim, albeit spurious?

The bill continues that if the court determines that the insurer did not pay the claim promptly and fairly, the claimant shall be entitled to recover three times the amount of damage and, in addition, litigation costs to the plaintiff including reasonable attorney's fees. I don't want to denigrate my profession but how long ago has it been since you considered your attorney's fees reasonable?

The Justice Department

Another source of attack is the U.S. Department of Justice. While the department is not prepared at this time to state that price competition will prevent excessive rates, it is leaning heavily toward removal of the insulation of the McCarran-Ferguson Act from the pricing activities in the title insurance industry.[27] As if there wasn't enough regulation, one of the possible solutions advanced in this report is a dual federal-state system.

When the Department of Justice evaluated controlled business and its results,[28] it could well have translated those concerns to removal of rating organization authorization in the establishment of rates and creation of an open price competition situation. Artificially competitive rates, that is, rates established purely on the basis of how low I have to go to attract business, or the corollary to induce controlled business, what I have to give away to attract business, comes out with the same results. The report reads, ". . . the purchaser is likely to end up paying unreasonably high premiums, accepting unusually poor service, or accepting faulty title examinations and policies from the controlled title company."

"Under the model law, a company can put new rates into effect without prior or subsequent approval by an insurance department."

The Justice Department report points with pride to the unregulated California experience. Is any company doing business happy with its return on capital in California? Can any of you really make an adequate return on capital in California without escrow fees? Does the purchaser end up paying more than he would in a structured regulation? The Justice Department shrugs off the impairment of solvency problem that emanates from an artificially competitive rate situation. This is a real problem and must be given serious consideration. While the Justice Department recognizes that "a purely competitive system may tend to impose high costs on individuals who are unable to pay,"[29] the antitrust division "strongly believes that the current system is outmoded and that the blanket antitrust immunity is no longer justified." They have nonetheless "made no final decision whether to support a different form of regulation."

A Third Attack Source

The Federal Trade Commission (FTC) was unable to come up with anything hard with which to attack the insulation of title insurance from the antitrust laws by McCarran-Ferguson but in an oblique way did just that. The FTC raised questions whether title insurance was insurance at all and therefore not subject to McCarran-Ferguson protection. In doing so, they have ignored the many court decisions which decided otherwise.

They did not raise the question of cross-subsidy within the title insurance rating

structure and how title insurance in a completely competitive market could be delivered to consumer/purchasers of lower-priced properties.

They did not face the fact that rates would be wide open for and subject to the continuing greed of controllers of business.

NAIC Disagrees

The National Association of Insurance Commissioners (NAIC) is among those who disagree with the continuance of rating bureaus. The NAIC is working on a draft of the NAIC Model Open Competition Rating Law. This proposed law would apply to personal lines in the property and casualty field. "Personal" means insurance issued to a private party in a personal, as distinguished from a commercial or business-related, transaction.

While title insurance is not specifically mentioned in the model law it is, unlike life insurance, annuities, accident and health insurance, ocean and marine insurance and reinsurance other than lines covered by the bill, not excluded.

Under the model law, a company can put new rates into effect without prior or subsequent approval by an insurance department. The commissioner, however, is required to monitor the degree of competition in his state. If the open competition in rates does not assure competition—which means in the goal of the drafters, lower rates—the commissioner can determine that administered rating should be imposed. This would be in the form of individual company filings prior to use, rating bureau filings, use and file, file and use, or any variations of rate-making.

The drafters of the model law ascribe as its purposes a catalogue of panaceas which are not necessarily mutually exclusive and some of which assume very essential elements to be true which have not been proved and some of which are not susceptible of proof.

"The provision which recognizes profit, however, has no relationship to the title insurance business."

According to the model law, "the purposes of the act were:

- To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates
- To prohibit price-fixing agreements and other anticompetitive behavior by insurers
- To promote price competition among insurers so as to provide rates that are responsive to competitive market conditions
- To provide regulatory controls for use if price competition fails
- To approve availability, fairness and reliability of insurance
- To authorize specifically delineated essential cooperative action among insurers in the rate-making process and to regulate such activity to prevent practices that tend to substantially lessen competition or create a monopoly
- To encourage the most efficient and economic marketing practices, and
- To cause the provision of meaningful price information to the consumer"[30]

We see the repetition of the litany that assumes the points to be proved. Who has proved that in title insurance "price-fixing agreements" are "anticompetitive"? What are competitive market conditions? Who determines if they are valuable or detrimental to the industry, the insurer and, of course, to the public? Who determines if price competition fails? Will regulators await the insolvency of companies to determine failure of price competition? What are the regulators to do about the most anticompetitive activity in the industry, namely, reverse competition?

There are, however, rate-making features of the Model Law that some companies find acceptable:

- A use and file system where competition has been found to exist in a particular line of insurance
- The finding by the commissioner that a competitive market exists would preclude a finding that any rate employed by an insurer could be deemed excessive
- Prefiling (with a 30-day waiting period) where the market is determined to be non-competitive.

The provision which recognizes profit, however, has no relationship to the title insurance business. It reads: "The rates may contain an allowance permitting a profit that is not unreasonable in relation to the riskiness of the class of business. In determining the reasonableness of profit, income from all sources, including investment income, shall be considered."[31]

Nor does the provision for profit reflect the right of an insurer to receive a reasonable return, as do other industries, on its total capital.

Whether you like the bill or not, it seems obvious to me that title insurance should be excluded from the bill. I say this because title insurance is not a line whose rates are responsive to open competition,

"Firstly, it illustrates an abysmal lack of knowledge as to the differences in title insurance from other insurance and the difference in proper rate-making methodology in title insurance compared with other insurance."

and even if title insurance were such a line, the provisions of the bill are not relevant to title insurance's peculiarities and special problems.

The attacks on the propriety of rate-making by rating organizations is by no means limited to governmental agencies, regulatory bodies or consumer advocates—the self- appointed arbiters of what is good and right in society. The title insurance industry provides some advocates within its own house who would do away with the rate-making ability of rating bureaus. We can best illustrate what I mean by a brief reference to what is happening and what has happened recently in a few states.

Some Examples

In Arizona, an open competition system prevailed which was characterized by rate-cutting, particularly in escrow fees. The rating bureau now provides statistics which are used by the insurance department on escrow fees and charges. A bill was introduced in the Arizona Legislature that would deprive title insurers of the right to use rating bureaus. You will be interested to know that within the past week, the antitrust division of the U.S. Department of Justice issued a notice of a civil investigation of the rating bureau and some of its members targeted toward the control of escrow fees.

In Colorado, the rating bureau filed a schedule of rates in 1979 which represented a significant increase. One of the members abstained from the vote but registered no objection to its being filed on behalf of all the members of the bureau. Upon the grant of the increase, the abstaining member notified the department that the authority of the bureau to file on its behalf was revoked and requested the department to treat the previous rates as still current after the effective date of the new rates. Litigation ensued which attempted to enjoin the abstainer from using other than the new rates and compel the commissioner to recognize only the new rates. The litigation is still pending. The second highest volume company followed

the abstainer, as did other companies. The rating bureau in Colorado is virtually powerless.

In Idaho, a bill was introduced in the legislature that would deprive title insurers of the right to use rating bureaus.

The rating bureau in Louisiana, organized in 1958, established two geographical divisions: A. New Orleans, B. the balance of the state. In 1972, after an attempt to go statewide with Rate B (risk rate or underwriting fee only), one of the major insurers withdrew from the bureau. Extensive litigation ensued and the state ended up with the single lower rate. The activist company in the area rates withdrew and the withdrawing insurer returned. The bureau is functioning currently. This experience proved that the rating bureau could and should not be used to defeat the forces of competition.

In Michigan, there was activity toward organization of a rating bureau in an attempt to stop some underwriters from failure to follow filed rates. The insurance department wants the bureau to enforce the rates filed by its members. The bureau is powerless to do so. One major insurer refused to participate in the process of organization of the bureau. It, however, still has a chance to survive.

The commissioner in Oregon seemed delighted with the activities of the rating bureau and even requested the Oregon Land Title Association to study market practices. Upon the association's refusal, the commissioner appointed an advisory committee, composed mostly of title people, to conduct such a study. On Jan. 21, 1980, however, the advisory committee was abolished and the commissioner declared all of its advisory opinions invalid. The bright light all of a sudden has a cloud obscuring part of it.

In Pennsylvania, a title insurer, a non-rating bureau member, called on the insurance department to issue a regulation prohibiting any title insurer with 20 percent or more of the market from belonging to a rating bureau, and limiting membership in any rating bureau to companies who comprise no more than 40 percent of the market.[32]

Texas is unique. Companies don't make rates so they may talk about them with each other with impunity. Kansas and Maryland are in the midst of legislative proposals which would be similar to the Texas type mechanism to deal with basic issues of rates and practices.

Utah is unique in a different way. Utah does not require title examination and insurance can be issued on a casualty basis. The state maintains some excellent geographical title indices. This is the easiest entry market in the whole country. You don't need a plant. All an agent needs is an underwriter. The existing companies were losing their market share. The insurance department claimed they should have decreased their rates to keep out the fly-by-nighters. Some agents were engaging in business-inducing giveaways. As a result, some bureau members voted to support legislation proposed by the department which would have eliminated the bureau. The legislation will probably be reintroduced. The bureau, however, is still alive, but its future is certainly in doubt, regardless of the fate of the legislation.

The bureau in Wyoming began functioning in 1978. In 1979, the bureau made its first filing, which was disapproved prior to its effective date. Litigation ensued over the ability of the department to preclude implementation of filings prior to hearing. The company with the largest market share made its own filing, undercutting the bureau rate. There was an attempt by the bureau to refile to meet the new, lower rate. Some companies withdrew from the bureau and made their own filings. Although the bureau has not been dissolved it is not functioning. While initially the department actively encouraged the formation of the bureau, it was later unable or unwilling to accept or acknowledge the role of the bureau, seeking arbitrarily to force modifications or abandonment of the filing.

The five-pronged attack that has been recited above on the continued function of rating bureaus in the title insurance industry shows several things. Firstly, it illustrates an abysmal lack of knoweldge as to the differences in title insurance from other insurance and the difference in proper rate-making methodology in title insurance compared with other insurance. Secondly, it points out the necessity of combating anticompetitive and anti-consumer practices characterized by reverse competition and controlled business peculiar to title insurance through the activities of rating bureaus. Thirdly, it shows the failure to accomplish the purposes for which decontrols are made by implementation of decontrols.

Title Insurance Is Different

Title insurance is unlike any other form of insurance. It is so unlike other insurance that, as indicated above, the FTC questioned its being insurance at all. Some of the basic differences between title insurance and other insurance are quite obvious and are illustrated in Figure 1.

Figure 1

TITLE INSURANCE	OTHER INSURANCE
One-Time Premium	Annual Premium
Premium Used On Payment	Premium Reserved (And Invested Until/For) Future Losses
No Financial Flexibility With Premiums	Highly Leveraged
Liability Forever	Liability While Policy In Force
Insures Past Occurrences	Insures Future Happenings
Liability open: 1) Contract-Under Policy 2) Tort-Negligence In Abstract	Liability Limited To Policy Limits
Cross-Subsidization Of Lower Insurances	Actuarily Determined
Rate Of Return On Capital Pricing	Actuarily Determined
Plant Maintenance	No Comparable
Necessity Of Capitalization To Function	No Comparable
Reverse Competition	No Comparable
Controlled Business	No Comparable
Marketed Through Producers	Marketed To Insureds

What could well be the most significant difference between title insurance and other lines of insurance is the lower capital base of title insurance. The very size of title insurance makes it impracticable for individual companies to handle rate justifications themselves. Title insurance does not have effective price competition because of the thinness of the market. Its customers are business producers who in effect set the rates. This is possible because the business produces are stronger than the insurers. So, in effect, rating bureaus insulate the public and the industry against the demands and activities of the business producers who are really the customers.

Decontrol Example

In the decontrol of airlines, where the pressure for reform came from academics rather than from the consuming public,[33] we have seen some immediate effects. While Marvin S. Cohen, chairman of the Civil Aeronautics Board, cautiously is claiming success in airline deregulation,[34] the jury is still out[35] as to the long-range effects of deregulation. It is obvious that service to many areas has deteriorated and prices have increased almost 100 percent since 1978. Many areas of the country are now without regularly scheduled flights while few have increased the service.[36] Neither the price rises nor the discontinuance of service can be attributed totally to the increased cost of fuel, grounding of the DC-10, the United Airlines strike, or other external factors. The cross-subsidization of marginal flights has been eliminated since there is an ease of entry and withdrawal from the market.

As Henzey stated, "If they (Cohen, the Department of Transportation and the Carter administration) were not out on a limb, however, they could just as easily admit that: communities throughout the U.S. are complaining about lost airline service; industry profits are plummeting; fares and rates are rising at a rapid clip; large markets are gaining benefits that are being denied to small markets; the liability of the taxpayers is rising and will go higher; financiers are growing skeptical of the airline industry's future; international aviation relations are worsening; safety has become an acute problem, and the industry is in a state of disarray."[37]

What do we have to do to let regulators know that the same thing ultimately would occur in the title insurance industry? Only the giants could afford to wait out a few years at marginal prices in order to beat competition and establish market share. Then, when the less capitalized companies would either have to go out of business, sell out to a giant or merge to create a giant, the rates would go back up. And what would happen during this period to the concept of cross-subsidization that currently enables companies to deliver title insurance to lower insurances at the expense of the higher? What would happen to the maintenance of title plants, to the solvency of the underwriters, and the protection of the insureds? Because of the losses suffered in the period of jockeying for position, the survivors would lose little time in increasing rates greatly to improve their rates of return and solvency.

As stated by Charles Butler of Air New England, "There will be no true price competition; the giants will set the price regardless of supply and demand, and the customers will have to take it or leave it."[38]

In the long run, the prices established by the survivors would be the same, like those of Kansas wheat. The most efficient would make the largest profit; the least efficient would get by.

None of the solutions offered for the alleged, albeit non-existent, problem resulting from the utilization of rating bureaus in the title insurance industry offers anything but worse problems. The way of the future is continuance of legislative authority for the preservation of the current legality of the activities of rating bureaus in the title insurance industry and the responsible regulation by the states of the activities of rating bureaus and independent filers.

Footnotes

[1]Moses K. Rosenberg, "Historical Perspective of the Development of Rate Regulations of Title Insurance," *The Journal of Risk and Insurance*, June, 1977, Volume XLIV, No. 2

[2]Erich E. Everbach, Letter to Mr. Philip H. Dutter, project director, Competitive Rating Study, NAIC Competition (B-3), Subcommittee, Advisory Committee Issue No. 3, Comments dated November 13, 1979

[3]The Random House Dictionary of the English language, Unabridged Edition, 1966, p. 1192

[4]Ballentine's Law Dictionary, Third Edition, Lawyers Co-operative Publishing Co., 1969, p. 1056. See also 43 Am. Jur. 2d, Insurance, §92, pp. 155-156

[5]Pennsylvania, Act of 1963, August 14, P.L. 922.§3, 40 P.S. 910-41(c)

[6]Arizona, Colorado, Idaho, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Wisconsin and Wyoming

[7]Alabama, Alaska, Connecticut, New Hampshire, New York, North Dakota, Puerto Rico, Rhode Island, Tennessee, Utah and Vermont

[8]District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Mississippi, Nebraska, Ohio, Oklahoma and Texas

[9]Arkansas, California, Delaware, Kentucky, Montana, North Carolina, Virginia, Washington and West Virginia

[10]Virgin Islands

[11]Maryland and South Dakota

[12]15 U.S.C. §1011-1015

[13]15 U.S.C. §1011(b)

[14]*Schwartz v. Commonwealth Land Title Company*, 374 F. Supp. 564, 575-6 (ED. Pa. 1974)

[15]*Goldfarb v. Virginia State Bar*, 955 S. Ct. 2004, 2014 (1975)

[16]*Cantor v. Detroit Edison Company*, 96 S. Ct. 3110, 3126 n4 (1976) (concurring opinion of Justice Blackman)

[17]96 S. Ct. 3110 (1976)

[18]*City of Lafayette v. Louisiana Power & Light Co.*, 98 S. Ct. 1123 (1978); *Bates v. State Bar of Arizona*, 97 S. Ct. 209 (1977)

[19]cite

[20]Act of July 2, 1890

[21]Act of Oct. 15, 1914

[22]Act of Sept. 26, 1914

[23]Act of June 19, 1936

[24]§3(c)(2)(A)

[25]§3(c)(2)(B)

[26]§2(b)

[27]The Pricing and Marketing of Insurance, a report of the U.S. Department of Justice to the Task Group on Antitrust Immunities, January 1977

[28]Id. p. 273

[29]Antitrust Immunity Under the McCarran-Ferguson Act: Should It Be Retained? Remarks by Melanie Stewart Cutler, special assistant to the assistant attorney general, Antitrust Division, before the National Association of Insurance Commissioners, Zone I Conference, Newport, R.I., April 30, 1979

[30]NAIC Model Open Competition Rating Law. First Draft, May 9, 1979, §1

[31]Id. §5(5)(d)

[32]Robert C. Dean, Testimony before the Insurance Department of the Commonwealth of Pennsylvania, re Chapter 125 Title Insurance Rebates Prohibited, Title 31 of Pennsylvania Code, Dealing with Rebates, Feb. 10, 1977, p. 70.

[33]Deregulation of the Airlines: a case study, Hon. Elizabeth E. Bailey, Member, Civil Aeronautics Board, Presented at the ITT Key Issues Lectures, New York University, Dec. 5, 1979

[34]Airline Deregulation: A Model for the Eighties, presented to the New York Society of Security Analysts, New York City, Jan. 25, 1980

[35]William V. Henzey, The U.S. Deregulation Experiment: After Nine Months, An Evaluation, Air Transport World, August, 1979, p. 17

[36]"Since October, 1978, airlines have proposed dropping service to 170 cities, 79 of which had no other scheduled service." "One Year After Deregulation: The Airlines Hit a Downdraft," *Business Week*, Nov. 5, 1979, p. 110

[37]*Air Transport World*, August 1979, p. 17

[38]*Air Transport World*, August 1979, p. 20

Claims As A Marketing Tool

Editor's note: Participants in this panel discussion during the Title Insurance and Underwriters Section meeting at the ALTA Mid-Winter Conference were Irving Morgenroth, senior vice president and chief counsel, Commonwealth Land Title Insurance Co., Philadelphia; Donald Memmer, vice president and associate general counsel, Chicago Title Insurance Co., Chicago, Ill., and Frederick D. Price, assistant vice president—claims, Lawyers Title Insurance Corp., Richmond, Va.

Mr. Morgenroth: One of the opinions that I have held for many years is that this industry believes in avoiding a public or a private claims image. We've kept claims as the armpit of our corporate organizations.

How about you, Mr. Price, do you view this as an industry-wide phenomenon?

Mr. Price: Yes, I do. But I think that recently, claims are coming more into the forefront. I think primarily because we're paying larger claims now. Our policies are written on larger amounts.

Mr. Morgenroth: Mr. Memmer, what do you think? Is your company treating you like a stepchild? Do you think that other companies are taking the same view over the years? Do you see a change in that?

Mr. Memmer: I do see a change. I think that my company is putting a great deal of emphasis on the claims aspects of the industry as a whole as it relates to what we do. I think that we are prepared to hire better people, spend more money on claims, to get more involved in the litigation aspect of the situation and to recognize that insureds buy our policies and our services because we respond when there is a problem. This is true whether it is due to a mistake that we made or whether it's because of the basic risks that we can't do anything about.

Mr. Morgenroth: I think that we agree that the days of avoidance are over. So before we continue, my advice is that if you want to know how to avoid claims, go next door to the abstracters and agents meeting because they're going to talk about that. This discussion is intended to eliminate the question of avoidance and consider how we can utilize our claims experience for our benefit.

So let's spend some time on some of the reasons why claims may have been swept under the rug in the past, what we see as changes in our industry growth and what recommendations we can make.

Mr. Memmer: We have, in the past, perhaps overemphasized that we're a service industry and that we do not do anything other than obtain a description of the object involved. We spend a lot of time describing the correct property and

Participants on the panel entitled "How to Use Claims As a Marketing Tool" are from left, Donald Memmer, vice president and associate general counsel, Chicago Title Insurance Co.; Frederick D. Price, assistant vice president—claims, Lawyers Title Insurance Corp., and Irving Morgenroth, senior vice president and chief counsel, Commonwealth Land Title Insurance Co.

that sort of thing. When compared, for example, with automobile insurance, maybe five minutes is spent, and the information is taken from the insured to describe an automobile rather than from the public record.

"We have, in the past, perhaps overemphasized that we're a service industry and that we do not do anything other than obtain a description of the object involved."—Memmer

I suppose that auto insurers make very few mistakes. They don't get the incorrect motor number. Yet, they probably do. Maybe that causes problems. But in our case, we run public records. We're running records that are diverse. And the chances for mistakes are very great. And we make mistakes. All people do—be they experts, professionals or whoever.

It seems to me that we shouldn't hide that. We shouldn't say we're ashamed that we made a mistake. We should capitalize on it because lawyers, abstracters, the Torrens system or other means of protecting the insured, it seems to me, have the same kind of possibilities for error—maybe even greater. But, they don't have the reserves to respond to a mistake and many times they don't have the special defense characteristics of our title insurance policies.

We do respond quite quickly. We respond with a lot of dollars and we know, simply by comparison, that many of the law firms and many of the errors and omissions carriers behind them, simply do not and cannot respond as we do.

Mr. Morgenroth: Do you feel, Mr. Memmer, that we should stop worrying about the problem? Do you think that we're somewhat concerned about advertising to the public in the sense that what we are often protecting the insured against is our own errors in terms of negligent searches and examinations?

Mr. Memmer: Yes. I think we should be prepared to advertise that we do have claims and that we do pay claims. During the last year, I have read a number of periodicals and discovered that not a single advertisement seems to talk about title insurance as protecting somebody and paying claims.

We talk about how fast we perform our services. We talk about the fact that we're national organizations and coordinate closings all over the place. We talk about our ability through periodicals to educate other lawyers and other people. But we really don't talk about our insurance aspect—and that is claims. I think we should.

Mr. Morgenroth: Mr. Price, do you share the view that if it were not for the title insurance industry, somebody else would make the mistake, so there's no sense in our trying to pretend that there will not be negligence in connection with examinations and other services performed?

Mr. Price: I think you're right. Approved attorneys or other attorneys in the field independent of title insurance make mistakes, and if they make a mistake, they may even charge to correct it. They don't have the responsibility that title companies have. So even when our own employees make a mistake, it's no more or less than the examining attorneys would do.

Also, I would point out that our industry is getting older and we are moving into an area where we have claims that formerly we didn't categorize. For instance, we have a category of claims called adverse claims of title. It can be a record overlap, a conflict in deed or closing service claims of various types. Also, we now have claims that arise by reason of a conveyance which was not overlooked, but which occurred further back than an approved attorney ordinarily is asked to search.

For instance, from 1900 to 1925 the gasoline engine became a decided factor in our economy. During that period, many oil drilling rights were acquired around the country because oil was very important. Such easements may go back beyond an ordinary search period. If they subsequently come to light, they can cause a severe problem in marketability, even though there may not be any oil there. The drilling right is still outstanding and today a drilling right is like gold in your pocket. The title companies have to respond to that.

Mr. Morgenroth: What about the bad decisions that aren't mistakes—underwriting that goes astray, Mr. Price? I think we all have to admit that sometimes we're a little overzealous in the issuance of a policy and we do some pretty dumb things. Is that something we want people to know about?

Mr. Price: I don't think that we should beat our chest in public. The policy generally sets out the conditions of insurance. But each of these policies has to be fine tuned, as it were, with a set of specific exceptions, and those exceptions are a real service, particularly in a commitment to a purchaser. They may cause him not to go through with a deal. I think it's incumbent on us to be very careful in our exceptions. We have to tell it all so that they can make an intelligent business decision.

Mr. Morgenroth: Mr. Memmer, do you find that your judgment errors rise to haunt you?

Mr. Memmer: Yes, they do. There isn't any doubt about it. On the other hand, I think that our company and most companies operate in such a manner that, very frequently, the last decision to be made is the business decision, because we are in business. I also believe that our people attempt to use their best judgment. Certainly that judgment is impacted upon by customers who rush the situation—customers who want their answer yesterday. Again, I think we shouldn't be hiding this. We're forced to do this.

Prior to this panel we heard a talk on the impact of federal and state regulations—something over which we have little control. However, we do have control over our own advertising, our own marketing and our own business decisions. At times, they are horrendous problems. Again, I don't think we should hide them. I think we should indicate how tough it sometimes is to make these decisions.

It is not very easy to say no, but many times, I think that our customers believe that we always say no. The underwriters are forced to say no many times because they aren't given enough time to do these things. However, when they say yes, many times problems arise because they didn't have time to review the situation.

Mr. Morgenroth: It sounds like we really are in the insurance business, which raises another common fallacy that, in my opinion, we ought to talk about. We compare ourselves with other insurance lines. We're concerned, for example, that if the truth be known, our claims ratios are so low it would be insignificant as a determining factor in a public relations effort.

"I don't think that we should beat our chest in public. The policy generally sets out the conditions of insurance."—Price

I think this is another common misconception. I don't think our losses are low at all. I think our premium structure, which is not similar to the kind of premium structure created for other lines of insurance, does not lend itself to the kinds of interpretation common to insurance and other actuarial studies. Perhaps there ought to be something we can do about the statistics that we use. Why don't we relate the

losses to something else? Losses per transaction, for example. What do you think of this, Mr. Memmer?

Mr. Memmer: I do think that there is a lot of difficulty in trying to determine statistically, and from an experience standpoint, how we talk about claims and dollars spent for indemnification and defense costs in relation to premiums. Yet I don't think it should be an insurmountable problem. But, I think if we don't come up with correect results and exposures, federal and state governments and consumers will.

Mr. Morgenroth: I think that's true. For example, if we were to just take a look at a policy year. Take the policy year 1974, for example. Relate the losses for that year to the income for that year. Then look at those ratios now. Our problem is that we're using current income to discuss current claims payments which are irrelevant. So we have ridiculous ratios that are foisted upon us by someone else.

"As an industry, I think we have been guilty of supporting outside counsel in a style to which they should never have become accustomed."—Morgenroth

Mr. Price: I'd like to add to that. It seems that our claims fluctuate with the economy. There are some claims which we experience when money is tight, and some claims which ordinarily would not be a problem in better times. Mechanic's lien claims come to mind immediately. You have FHA insured loans and when money is tight, FHA might choose to keep a tighter rein on the money.

Mr. Morgenroth: Do bad times really make substantial claims years as opposed to good times?

Mr. Price: I think again it relates to the types of claims. Some claims are fairly constant. I think that business decision claims are fairly constant. And on that business decision matter, I would like to add something to what Mr. Memmer said.

Years ago in the industry the person who had charge of the underwriting also handled the claims. Ordinarily, he would base his decisions with respect to risks on business considerations.

Now, the underwriting department is separate. So is the claims department. Often the person who makes the business decision to insure over certain risks may not communicate with the claims department to find out what the claims experience is respecting such risk.

Mr. Morgenroth: Mr. Price, isn't one of the problems a difficulty in getting a handle on claims or on statistics on causation? Do you know what causes claims?

Mr. Price: If I did I probably would be worth more than what Lawyers Title presently pays me.

Mr. Morgenroth: We do have a problem with that issue and I suspect it's because we all recognize that our statistics are somewhat inadequate. I think there's a need for the development of new categories. We know that some committees of ALTA are involved in that, working on new claims coding mechanisms for statistical data and dissemination and accumulation of the data. I think that we need to get better on causation so that we can have more impact on the kinds of things we're doing.

Mr. Price: I agree with you. In recent months, Lawyers Title has been working up a program to computerize claims along with its other computer services.

Mr. Morgenroth: I think that's right. Predictability is also one of our serious problems. The industry suffers from a lack of statistics and finds itself at the mercy of alchemists in determining what reserves to maintain. What about incurred or unreported claims? We really have a problem with predictability in that area. Mr. Memmer, what do you think?

Mr. Memmer: I'm not sure I agree with either one of you that we can't say what causes the claims. I think that we can, provided that we handle our investigations properly and have time to do them. Maybe we don't want to take the time. Maybe we don't even want to find out. But, I think we can and I think we should be identifying them.

Maybe statistically it is impossible or we can't because of expense, have 1,000 different categories and code them so that we can truly tell what each cause is, but I think we're coming close to what we have to show. Maybe there should be more subcategories. But those statistics really often do not disclose the cause. They might say what kind of claim we have. But I think that, by and large, we insurance people can determine the causes. This would be true of everybody that we have involved whether it be underwriting, claims or business.

Mr. Morgenroth: Well, do you think that our sales people know what a claim is? Is one of our problems that we don't tell them?

Mr. Memmer: I think that is one of the problems. Perhaps our sales people don't know how we identify a claim or perhaps how a claim should be defined. Perhaps they aren't aware of how they can use our claims experience to make sales—to convince customers that we are an insurance company and that they are buying insurance.

"I think we should be prepared to advertise that we do have claims and that we do pay claims." —Memmer

Many times sales people are left to their own devices and consequently have to utilize golf outings or perhaps free messenger service as we're accused of, at times—that sort of thing.

I also think that the marketing and sales people aren't just those labelled persons. I think we're all sales people, be we in claims, underwriting or business. We should keep that in mind. I think the marketing people, as labelled such, must keep that in mind also, that there are other sales people within the organization.

Mr. Morgenroth: What do you think of that, Mr. Price? Do you think we could do more than giving out rain hats, in terms of persuading our real customers—the people whom we serve in the community, that there are losses out there that we protect them against?

Mr. Price: I agree with you. Again, I'm talking about matters which are fairly recent in the claims field. Fast food businesses provide a good example. I think they're entitled to know that there's an area of concern which affects their business, which probably affects no other. This area of concern is ancient restrictions and the question of who has the right to enforce those restrictions. Fast food business, as a rule, are often situated on residential neighborhood corners, which are subject to such restrictions regardless of the zoning which may have been changed to business use.

Condominiums are another problem. I've made the remark, and not altogether in jest, that we should refuse to insure a condominium unit if an attorney buys it. I mean he'll get a hold of the 50-page condo declaration on a rainy day and start picking at it and before you know it, you receive a claim letter from him.

Mr. Morgenroth: Let's talk a little bit about claims handling itself. Our critics, and several judges say we don't pay. And I'd like to know if we ourselves are guilty to some extent of fostering that attitude? Mr. Price, what do you think?

Mr. Price: Personally I'm not guilty of it, but we certainly have been the victim of such thinking. In federal court two

"It seems that our claims fluctuate with the economy. There are some claims which we experience when money is tight, and some claims which ordinarily would not be a problem in better times."—Price

years ago, I was forced to appeal a decision at a cost of many thousand dollars because the trial judge said that he had never heard of a title company paying a claim. So he gave lien claimants a judgment of several thousand dollars even though the liens were lacking priority. I'm pleased to say that we won upstairs. But because of the judge's misconception about the title company claims, we had to spend a great deal of money.

Mr. Morgenroth: Do you have any horror stories you'd like to tell us, Mr. Memmer?

Mr. Memmer: I think we all have those kind of stories. I agree with Mr. Price that many times judges and, for that matter, lawyers don't exactly understand what we're about and what our policy is.

I think through the claims handling aspects, we ourselves bring about part of that confusion. Many times that occurs because perhaps we have inadequate staffs; or we don't have people who know what they're about; or we turn them over to outside law firms—lawyers who do the best job they can, but whom we don't monitor. We don't discuss title policies. There aren't many lawyers who understand what title policies are when they defend us. It takes a tremendous amount of education on our part to prepare them and educate them about what we do.

Many of them approach it simply from the standpoint of representing XYZ Surety Co. or XYZ Casualty Co., and then sit back and let the other fellow take the laboring oar, leaving the burden of proof on him.

We're not in that business. We have repeat customers. We have different aspects of our policy coverage, as well as I think just a philosophy. This has to come across to those outside counsel. We can't do it if we don't have adequate staff and if we don't have people already trained to do that.

Mr. Morgenroth: I have to echo that. As an industry, I think we have been guilty of supporting outside counsel in a style to which they should never have become accustomed. To a greater extent, we have to start looking at ways to pay the same money to the insured or, in his behalf, rather than that other category of defense.

We spend so much time talking about our obligations to defend, it almost sounds as if we have no other obligation. And, I think, very clearly we have a primary obligation to make the insured whole. And I think that's even a greater responsibility than simply to defend. I admit, however, that sometimes it's very hard to do that.

I recall the case of a little old lady who lost three feet of her property. She so admired the flower beds, she insisted on litigation, although we were willing to give her almost any amount of money to resolve the problem.

But aside from that sort of thing, I think we create our own *Jarchows*, don't we?

Mr. Price: I would say in some instances we do. The *Jarchow* case, after all, stands for two things. It stands for the fact that an insured is entitled to a defense—I almost added right or wrong. But also sometimes the policy coverage is not fully understood by an insured and *Jarchow* holds that if he "reasonably expected" that he was covered, then it is the duty of the title company to defend the title regardless of policy exceptions.

"I think we're all sales people, be we in claims, underwriting or business. We should keep that in mind."—Memmer

Mr. Morgenroth: So far we've been talking about some of the reasons why our claims give us more trouble in reality than the dollars we pay out for them. Let's see if we can make some recommendations. Mr. Memmer, do you really think we should advertise our horrendous claims?

Mr. Memmer: I think we should advertise. When you say our horrendous claims, I don't know how we describe those adequately and not have to pay too much for advertisement space. But certainly we should talk about the fact that we do pay claims. We should certainly, on occasion when it's meaningful, refer to claims that cost tremendous amounts of money. I don't think there's any doubt about it. We certainly advertise this willingly or unwillingly to many insurance departments. We have to. We may have to make our books and records available to both inside and outside auditors. So why keep it a secret from the public?

It seems to me that the media and others get a lead on a situation that exists and they distort it or blow it out of proportion. We are the best people to describe what is going on. If we don't, somebody else will and it will be to our detriment.

Mr. Morgenroth: What about our public image in that regard? I mean, Senator Proxmire, for example, is certainly representative of the uneducated view.

Mr. Price: It was my company which was involved in the transaction for Senator Proxmire's aide. It turned out that his aide did not have a policy of title insurance. He had assumed an existing loan and he had a certificate that we had searched the title. He construed the certificate to be a title policy.

Mr. Memmer: But again, isn't that perhaps because neither Senator Proxmire nor his aide understood what the title search was?

Mr. Price: I expect you're right.

Mr. Memmer: Isn't it true that they probably thought that they were getting some kind of protection, and if we gave it, or were dumb enough to give it for free, why shouldn't they expect to be protected anyway?

Mr. Price: You could be right. I do know that our personnel—particularly in the national division—really clamor for claims knowledge, because they would like very much to use it as a sales tool. I think we have to use some caution in what we do impart to them because we don't want it advertised that someone in our own organization may have done something that caused a loss. But on the other hand, there are many claims about which we can tell our sales personnel and which they should use as a tool.

Mr. Morgenroth: It sounds as if you also are talking about developing a more scientific approach to some of the data analysis. Do you think we spend enough time and money in this area now?

"I don't think our losses are low at all. I think our premium structure, which is not similar to the kind of premium structure created for other lines of insurance, does not lend itself to the kinds of interpretation common to insurance and other actuarial studies."—Morgenroth

Mr. Price: I think that the reporting system that ALTA and our internal audits call for, trap us somewhat. I think we've got to expand the categories so it can be more meaningful in present day claims.

Mr. Morgenroth: I think that's right too. I'm also concerned about the extent to which our claims experience really impacts upon underwriting. Do the claims and underwriting people talk to each other really? One of the famous statements which I also used to make, is that claims people really make terrible underwriters because they're inhibited. Don't we like to see our underwriters out on the street swinging freely? What do you think of that, Mr. Memmer?

Mr. Memmer: That probably was the attitude in the past and it may be the attitude today, although I'm not sure how widespread it is. Again, I would hope that the company has intelligent people overall who are professionals and who are equipped to deal honestly with the situation and not hide their heads in the sand.

Mr. Morgenroth: In order to make our underwriting more accountable it is important that we develop a little more intelligence in the way in which we apply ourselves to claims classification. I think it probably would make some sense sometime in the future if we could sit down and admit that we have some areas of business risk that we're willing to assume.

Instead of pretending that those risks don't exist or that they're in effect underwritten on the basis of some really clever look on our part, we should confess that they are assumed risks, much like the basic coverages that we have talked about before, and apply those losses against the income generated in those lines. Maybe we ought to be splintering out some of our special lines of coverage, like the mechanic's liens. Maybe it should not be part of the all-inclusive policy coverage and perhaps we could learn a little more about the nature of the underwriters.

"Most title companies have periodic meetings of their personnel, underwriting seminars and things of that nature. I think it might be a good idea to put a greater emphasis on claims in those meetings."—Price

If we were to make some kind of consideration of the kinds of problems that we have, I think uppermost probably would be mechanic's lien risks, and there are certainly other risks of a similar nature that we might want to scrutinize more carefully.

Mr. Memmer, what do you think of the idea of trying to separate some of the experience on the market impacted risks, like mechanic's liens, from the basic risks and traditional risks? Do you think that would tell us anything that would help us in that regard?

Mr. Memmer: It might. Companies probably have worked more on the mechanic's lien risk than almost any other area. I think we've got to recognize that with respect to mechanic's liens, we do insure into the future. We are talking about a future risk. We have other areas like that. Some companies are talking about gap insurance. There are other areas where we do go into the future and I think that that should be emphasized. Perhaps those should be separated from the others and treated differently.

Clearly, this is a new area and a lot of work must be done on how we can use claims as a marketing tool.

Mr. Morgenroth: Finally, isn't our major problem in this area one of attitude? We have to learn to accept claims and recognize we're in business to pay them so that we can hold our heads up in that regard.

Mr. Price: Most title companies have periodic meetings of their personnel, underwriting seminars and things of that nature. I think it might be a good idea to put a greater emphasis on claims in those meetings. Every time I have appeared on a panel in a company discussion on claims, they're fascinated by the topic. They truly want to know more about it. I think it's because people like to know about the troubles of others. As the late Alice Roosevelt Longworth said, "If you have nothing good to say about anybody, come and sit by me." Well, a lot of people like to hear about the troubles of others. I think maybe we ought to talk more about claims in these home office meetings.

Mr. Morgenroth: Do you believe that attitudinal changes are necessary in this industry in order to improve our posture of using claims as a marketing tool, Mr. Memmer?

Mr. Memmer: Yes. But I think it's coming about.

Terrell Chosen N.M. President

The New Mexico Land Title Association elected new officers for the 1980-81 term at the association's annual convention held in Mescalero in early May. NMLTA's new president is Dan Terrell, executive vice president of Territorial Abstract & Title Company of Santa Fe.

Terrell succeeds Janie Gragg, president during the 1979-80 term, who was the second woman to fill the association's presidency since its creation. During the past year, the New Mexico association put its efforts behind enhancing public awareness of the land title industry through a public education program. Also, this past year was the first time NMLTA held a mid-winter conference. The mid-year event was termed a success.

With plans for another successful year, the other elected officers for the 1980-81 term are Mike Currier of Carlsbad as president-elect, Sally Trigg of Mosquero as first vice president and J. R. Allison of Clovis, Charlene Ward of Alamogordo, Jete Voss of Carrizozo and Mike Smith of Farmington as directors.

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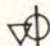
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The Savings and Loan Business: What The Decade Will Bring

by James Hollenstein er

It is hard for the savings and loan business to pay the kinds of rates you see in your newspapers, which are now at 13, 14, 15 and 16 percent for money to savers, while living on an income received from loans that you people insured up to five years ago carrying mortgage interest rates of six, seven, eight and 10 percent. We simply do not have in our portfolios mortgages carrying 12, 13, 14, 15 and 16 percent. They are not there. Most mortgages in our portfolios are at rates of eight, nine and 10.

> "The money market certificate is the worst thing that has happened to the savings and loan business, to financial institutions generally and to housing."

There is a good deal of short term money in this business. Money market mutual funds are killing us. They are killing housing. The money market certificate was a brilliant creation by some great financial minds in Washington two years ago. They began to see the economy having some problems and feared the housing industry might have some problems. So they created the money market instrument to keep housing in business.

At that point in time, those money market rates were around seven percent. We would have been much better off if we had experienced some disintermediation, some slow downs in housing or had a recession. I think these things would have happened were it not for the introduction of the money market certificate which kept housing going strong. The money market certificate is the worst thing that has happened to the savings and loan business, to financial institutions generally and to housing. It also has affected the title business.

What does this mean to you? It essentially means that the home mortgage lending business in this country is zilch, as you probably know. But at least you folks have the option of receiving business from the commercial industrial sector which, as far as I can see, is reasonably strong thus far. The savings and loans folks are strongly oriented toward housing. The mortgage markets are as dead now as I have seen them in my 26 years. I am afraid they will become worse.

As you see in the newspapers, mortgage rates are going up a half a point or a point a day. Some of them are 16 and 17 percent. Some institutions are not making loans. For institutions that still are making loans, it's difficult to find borrowers who can qualify. Incomes are not able to carry the kind of monthly payment necessarily involved with loans carrying those kinds of rates.

The few sales and few mortgage transactions that there are basically are contract sales. As a professional, I become concerned about how people do their own contracts, carry their own paper, whether they really have bought a house, what is the role of the attorney and the title company and whether the lender knows what is going on.

I don't predict this situation will improve very much during 1980. It takes a long time to turn these kinds of cycles around. Even if something does happen, I would say housing for 1980 is in the doldrums and will stay there.

Legislation

What happens? As usual, we get Congress into the act. Congress has been into the act off and on, but they certainly have been in the act recently. Congress is concerned about the viability of a specialized financial institution, so some major financial reform legislation is in the process of being signed and sealed.

The thrust of that legislation is that the savings and loans won't make it as savings and loans. So it tries to make savings and loans look more like banks and therefore, by definition, viable. The legislation provides that we have NOW accounts, which is a form of transaction or checking account, as well as consumer loans, corporate bonds and trust powers.

Savings and loan people don't want to be banks. We want to be good savings and loan associations. We want to continue doing essentially the same kind of business in thrift and home financing we always have done. Yes, we will offer NOW accounts and consumer loans. Those are small markets and highly competitive markets. Consequently, they are not very profitable. But, they are markets in which almost every customer is involved at all times, as with a checking account or a consumer loan.

As for corporate bonds, I don't see very much savings and loan money going into those markets. We have income tax problems which basically preclude us from entering that kind of a market. The cash flow is not there, as savings banks have learned.

The trust business is not the savings and loan association's cup of tea. A few savings and loan associations will be interested in doing some investment management, but when they understand what running a trust company is really about—

Mr. Hollensteiner is staff vice president, United States League of Savings Associations, Chicago, Ill.

managing my farm up in Montana and taking care of me in a nursing home when I grow old—they are going to take a great step back.

We think the real estate mortgage market is the best market. If you stop and consider what are the alternatives, what are the various sectors of the market place, with a look at federal debt, state and local government debt and consumer debt, you will see that by far the biggest and fastest growing sector is the real estate mortgage market. That's where we are, in the best market, not all these other peripheral activities. We are in the best market, and that is where I think we ought to stay.

Alternative Mortgage Instruments

The problems with the instrument that we have been using to finance real estate have created a problem for our business. The savings and loan business, despite new powers coming out of Washington, will continue to stay in the real estate mortgage lending business. We will continue to need your services to look at the titles and the properties that we are financing. Our diversion will be one, two and three percent. Certainly not much more than that.

As a lawyer, a student of finance and economics, and one who likes to fiddle around with numbers, I can't think of any subject that has presented more challenges, more fun and more frustration and disappointment than alternative mortgage instruments.

I have looked at alternative mortgage instruments from the viewpoint of trying to

"Savings and loan people don't want to be banks. We want to be good savings and loan associations. We want to continue doing essentially the same kind of business in thrift and home financing we always have done."

find something that accommodates the needs of the borrower. The aim is to make it work for him in the context of using the home mortgage as the umbrella for all kinds of things, whether it be college tuitions, buying a car or open end advances.

We have looked at alternative mortgage instruments so that we could share some of the interest rate risk. We haven't charged enough to cover ourselves on the interest rate risk.

I look at this as, frankly, an alternative to financial reform. If we can get a better mortgage instrument, we can eliminate the pressure to be bank-type institutions. Then we can stay in business, which is obviously what we all want to do.

Many of my ideas and many of the ideas of others directed at creating a new instrument represent a lot of time and money. The bottom line is a great idea that doesn't work. That comes as somewhat of a shock to some people.

Many years of case and statute law have built up concerning real estate transactions, lien law, usury law, recording statutes, rights of the borrower, rights of the lender and how interest is charged or computed. All these laws relate to the standardized fixed payments, long term, equal monthly payments and monthly amortized loans. These are the traditional mortgage loans represented in many cases and laws.

The FHA-GPM law which appeared with all kinds of fanfare is a good example. Everybody was excited about it. Hardly a loan was made, however, because it was illegal under the laws of most states in regard to negative amortization and interest on interest. You guys were the culprits. You said it was a great idea but that you were not going to insure them, and you didn't.

A year later, Congress changed the law. Congress had to come to the rescue.

I found some believers in Illinois, from Chicago Title and Trust Co. who helped me convince some folks. Illinois has an anti-VRM statute which prohibits raising the rates on a loan during the term of a loan. Well, that works with a state-chartered association, but we are federal and, therefore, subject only to laws from Washington. We don't pay any attention to state laws.

Some title companies say that though the Federal Home Bank Board may say something, that doesn't make it so. They were not sure that they really believed this and were consequently unwilling to take the risk, because a loss in one case would mean a loss on every loan on the books. That is a big, big risk for you to undertake.

A Supreme Court case may come up in the next few months on the issue of federal preemption which we hope will satisfy this. The law in this area is unsettled, as you know.

Renegotiable Mortgages

The item now on the front burner is the renegotiable mortgage, in which you and I and a lot of other people have considerable interest. This concept is to follow the Canadian pattern in many respects. The so-called rollover renegotiable mortgage in Canada has worked extremely well. It has worked well from the point of view of the lender, of the borrower and, equally important, of the saver.

The savers get a good deal. It is possible for the lenders and the savers to match their assets and their liabilities which eliminates the syndrome of borrowing short and lending long. Instead they are lending short and borrowing short.

However, as with any mortgage instrument, we do have some problems. The first problem that came up was the first

James Hollensteiner

lien problem. How can I protect the dignity of my lien? The Federal Home Bank Board said in their proposal that they will solve it, starting out with a long term mortgage. Every three to five years, the note will be rolled over or renegotiated—whatever you want to call it. But, the first lien mortgage will be on the books in order to protect that first lien for the term of the loan.

"We will continue to need your services to look at the titles and properties that we are financing."

Another problem is anti-VRM statutes. About half a dozen states, including Illinois and South Carolina, have anti-VRM statutes. These laws prohibit changing the rate on the loan during the term of the loan or the mortgage. That's a problem because those states will need to change their law, at least for state chartered institutions. We hope to beef up the federal preemption and maybe put a Supreme Court case on the books which will say federal law in fact preempts state law and title people will be willing to rely on that.

Some time in the future, we will have the problem of the optional increase in interest rate. We do not know whether or not that will be a first lien, or whether there will be some intervening liens with that increase, in fact, for that additional amount of interest, which would be a second or junior lien.

We also had some major questions and problems in regard to usury. Assuming usury in effect, the question basically boils down to, if the maximum rate today in a state is 13 percent and I make a loan at 12 percent, whether I can at some point in the 30-year term of that loan charge a rate in excess of the maximum rate permissible at the time the loan was originated. Can that loan ever go over 13 percent? That usury rate may get changed to 13 or 15 or 18 percent. We've got a bunch of floaters out there that are tied to different indexes. That was a question of great concern to you people academically, but you say we have an exclusion in our title policies we don't insure, so you throw that into the lap of the association counsel. Presumably that question is now resolved, for the most part, by federal preemption.

Mandatory or Optional Increases

The first lien problem, at the time of a renewal, may require some minimum title questions and research. One of the possible solutions is to make that increase in interest rates mandatory rather than optional.

There is strong support in the secondary market for making those interest rate increases mandatory. They say, "If I buy this loan, I want to be certain that you are forced to raise the interest rate when the index goes up. I don't want to be concerned that maybe you are going to take a good guy approach, Mr. Lender, and say that these people are all your good friends and that you're not going to raise the interest rate unless you have to." That may be one solution to the intervening lien question and to keeping that increase in interest rates into a first lien category.

Another way that the intervening lien question and interest rate increases may be solved is through the fact that savings and loan associations now have more authority to lend on less than first liens. We will not need to be 100 percent concerned that, at all points in time, we have 100 percent first lien. If there is a second out there, so be it. It will be a management

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An Indian Claims Update

by Marvin C. Bowling Jr.

It appears that the Indian wars—the plethora of Indian land claims—will perhaps parallel the Hundred Years' War. There seems to be no end to it. There seems to be more dust on the horizon every day and the tribes seem to be gathering for attack.

It is important for you to know what is going on so that you may react accordingly in your particular areas where tribal claims may be filed.

"In fact, the congressional committee investigation discovered that 9,500 claims already have been made by Indians and Indian tribes across the country. They suspect that as they continue to investigate, they will uncover that many again."

The statute of limitations, which is the period during which the United States may bring action on behalf of Indian tribes for money damages, is to expire on April 1, 1980. Many fear that if the statute expires by then, as it apparently will, many Indian tribes which are considering bringing suit and thus affecting the marketability of title to many thousands or millions of acres of land, may feel that they better get that suit in the hopper before April 1.

Mr. Bowling chairs the ALTA Committee on Indian Land Claims and is senior vice president and general counsel, Lawyers Title Insurance Corp., Richmond, Va.

In fact, the congressional committee investigation discovered that 9,500 claims already have been made by Indians and Indian tribes across the country. They suspect that as they continue to investigate, they will uncover that many again.

Certainly the possibility of another 9,500 Indian tribal suits or individual Indian suits claiming title to land filed within the next few weeks is not what the title industry needs. Partly in order to avoid this potential situation, Congress decided to extend that statute of limitations. Expiration dates being considered are Dec. 31, 1984 and April 1, 1982. We have mixed reactions. Certainly some of the suits will be postponed if the statute is extended, but the extension will allow more time for uncovering more claims. Maybe another 9,500 claims will develop between now and the year to which the statute is extended.

The paradoxical pros and cons of extending the statute of limitations are only consistent with other developments in this area. There is always some good and bad news in this Indian claim situation. Some suits have been settled but some new suits have arisen. Some suits appear to be serious and other claims frivolous. But, they continue to come and in the years and months ahead, they will cost title insurance companies substantial sums of money.

Let's summarize the claims action around the country. The Maine claim appears headed for settlement. This is our earliest and largest claim. About $72 million total will be given to the tribe through various types of federal and state participation. Your committee, through its counsel, helped work out that agreement and will help draft federal legislation which will settle, hopefully for all time, the Indian claim. It will be expensive to the taxpayer. Nevertheless, it appears that this legislation will settle the suit within the next six months.

A partial decision was reached in the Connecticut case. The Mohegans claim part of Montville, Conn., where they filed suit in the district court. The other day, the judge held that it does not make any difference under the Indian Non-Intercourse Act whether Connecticut is Indian country or not. In fact, he said, it probably was not Indian country when the act was passed in 1790. Also, the Non-Intercourse Act does not apply only to Indian country. Apparently, it now will apply, as we were afraid, to all of the states, even though a state may or may not have been among the original 13. It appears we will have Non-Intercourse Act problems all over our country.

"But, on the other hand, how many dollars can the U.S. Congress appropriate to take care of the Indian tribes?"

The most serious case now faced by land owners and by the title insurance industry was filed in New York by the Oneidas. You will recall that a year or so ago I spoke to you about this case. The Oneidas claimed a 50-mile swath of land which extends through New York from Canada to Pennsylvania. They brought suit against the state and against the New

York Thruway, asking for all the tolls collected.

We also have a suit against approximately 60,000 private land owners, within that same area but filed by different Indians. These are the Wisconsin and Canadian Oneidas. They brought suit against named defendants on the basis that they are a class able to represent the owners of all land within that area. Needless to say, there are many insured properties. We, through our branches and agents, have done our job. We have sold title insurance in that area and now we must defend.

The title companies, through the New York Land Title Association, hired our best and most experienced Indian fighter to date, Allen van Gestel and Don Quinn of the Boston law firm of Goodwin, Procter & Hoar. Van Gestel won the Mashpee case and helped with the Narragansett settlement.

I do not need to tell you that if that suit is tried in several courts, as I think it will be, before the federal government and the state of New York step in to settle it, title insurance companies with business in that area will spend quite a bit of money in court cases and defense fees. Historians must be hired to look into the history of that tribe, the history of the treaties and how Congress dealt with the Indians. What did George Washington promise when he made a speech saying the land would be theirs as long as rivers flow and grass is green? That is a large area of land and it is a very important case.

The Catawba tribe that Senator Hollings just mentioned in his speech is expected to start its suit within the next few weeks or months in York County, S.C. That is a heavily insured area. York County is a bedroom community for Charlotte, N.C. Many of us have large policies there. If the Catawbas do start a suit, those titles may become unmarketable and loans may not be granted. We may have a situation similar to Mashpee with a southern flavor.

We certainly hope the senator was correct in saying there will be some settlement negotiations, agreement and federal legislation. We might question how long we can continue to have titles tied up but, on the other hand, how many dollars can the U.S. Congress appropriate to take care of the Indian tribes?

We settled with the Cayuga tribe in New York. The court awarded the Cayugas a state park. The United States will give them $8 million and they will have some tribal land of their own. But these things tend to proliferate and may be substantial in the aggregate, as the years and months go on.

". . . the ALTA Indian Claims Committee is in the saddle, we have drawn our sabres and your captain is riding the point in the finest tradition of Jeb Stewart."

The Seminoles and Miccosukees in Florida seem to be arriving at a settlement with the state of Florida, which will involve state money. In Louisiana, the Chitamacha suit over a number of oil fields in St. Mary Parish, is just getting off the ground.

The Pechanga Indians are claiming Riverside, Calif. This suit is in progress. You may have read that extraordinary fishing rights have been given the tribes for Lake Michigan and several rivers in Washington and Oregon.

I'm happy to report that finally the Alaskan Native Claim Settlement Act has been interpreted by federal courts to say that the act settled the land claims. I believe the largest amount of congressional money ever awarded for an Indian land claim was appropriated through this act. The Indians said that all the money the United States gave, which was put into Indian corporations with each Indian owning so many shares of the stock, was paid merely for damages, without a decision on who owned the land. So, I'm happy to say that the court responded that the act settled the land claim. Hopefully that particular suit is over.

A suit was filed in December which I believe may represent a new breed of Indian claims. Most of the suits which I have discussed involve the Indian Non-Intercourse Act of 1790. They arise from the fact that a tribe transferred its land to a state or to an individual without congressional consent, thus transacting a non-federal transfer.

The new breed of Indian suit may well be based on violations of federal treaties. Many such suits already exist. In other words, after negotiation on the bluffs of Kansas or under the cottonwood trees in Texas during which the chiefs passed the peace pipe and names were put on parchment, the Indians generally gave up millions of acres of land but received in exchange an area of perhaps several thousand acres. In such negotiations, the great white father promised that they could live without being molested by the people who were hunting or gold searching and that this would be their land forever. As the years passed, these lands were lost through illegal means, according to these suits.

According to the Indians, they are not trying to get the land back in rejection of these treaties. Rather, what they want is the land that they say the U.S. government promised them and which federal laws say belong to them.

In 1825, the Kaw Indians, who at that time were called the Kansa Indians, traded millions of acres in what is now Kansas for land that would belong to them. One of the chiefs, named Chief White Plume, reserved in the treaty 23 square miles for each of his 23 half-breed grandchildren. These 23 square miles are found around northern Topeka, Kan. In fact, I believe that area is called North Topeka. It amounts to 23 sections, each a square mile. For many years, these sections were called by the names of the grandchildren.

Since 1825, the titles to these lands gradually have passed to others. The suit arises out of a provision in the federal treaty which reads that no transfer of an interest in the land shall be made by these half-breed grandchildren or their heirs without the consent of Congress.

The suit was filed in Federal District Court by 400 alleged descendents of these 23 half-breed grandchildren against some named defendants. It is a class action suit, naming all the owners of the properties within that 23 square miles. Again, our people have done their jobs. We have insured light industry, we have insured heavy industry and we have insured homes. We must now provide defense for those insureds.

John Christie who worked with the ALTA Indian Claims Committee and who spoke to this group a year or so ago has been retained by seven or eight title companies that do business in Kansas. He is busily engaged preparing a detailed history of the Kansa Indians.

This Kansas suit is another in which title companies will pay attorney fees for a very expensive type of defense.

This completes my litany of bad news about the Indian claims. We hope Congress will begin to realize that these problems cannot be handled on a piecemeal, case-by-case, basis and that a process solution is needed by which Indian tribes who claim to have been bilked out of their treaty land or land that belonged to their tribe can be provided for and compensated for their past mistreatment. A process solution by Congress could provide money in lieu of land in some proper way.

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Congress: Today's Problems, Tomorrow's Answers

by The Honorable Ernest F. Hollings

I think that the Indian claims situation is settled. However, it could be that it is not—at least the Supreme Court would indicate that there is a question. So, we have tried to negotiate a financial settlement.

We got the Department of Interior, as you well know, to commit to some $7 million, but we haven't been able to get the attention of the state of South Carolina. There is a special committee but they haven't really taken it too seriously. We have talked with the governor. But we will have to bring the situation here to a head very shortly for the simple reason that we can't travel with the indecision of a 15-square-mile area, with Rock Hill as a center, being under Title 12.

Before I left Washington yesterday, they were supposed to have voted in the House to extend the statute of limitations to April 1, 1982 but they have not acted. They are going to act on it Tuesday.

The reason we would go along with that is that otherwise we would force a law suit by April 1 if we didn't extend that time. We think we are really too near a settlement and this is what we really hope for by our land claims in South Carolina.

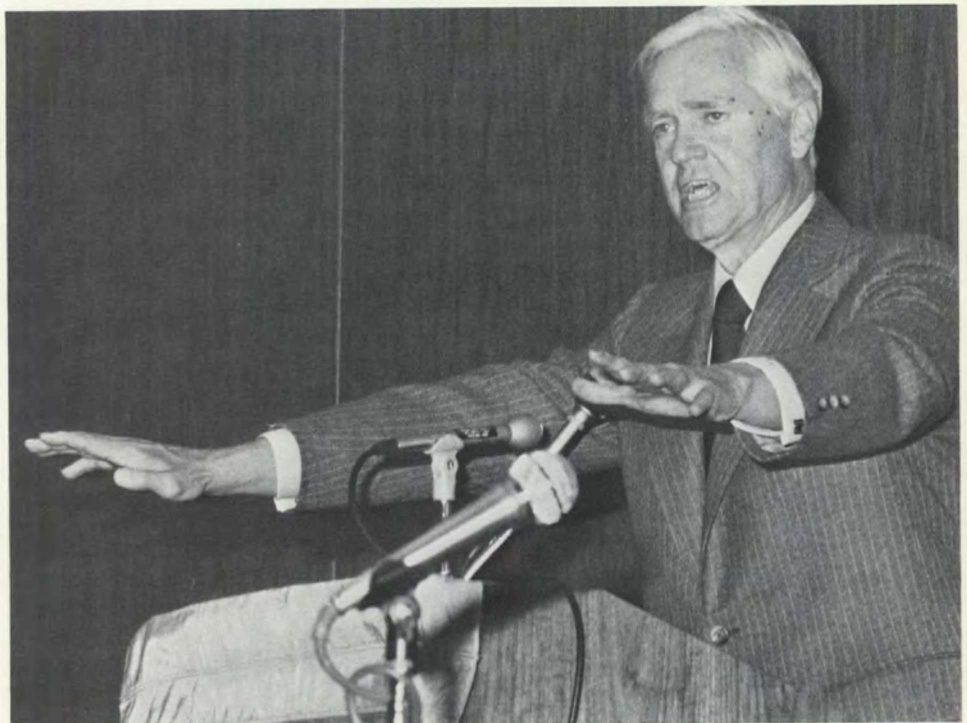
So, I think it will be extended. I think this spring we can get something out of the state and I think we can dispose of it. I don't have that in mind and neither does Kenny Holland (D-S.C.), who is a congressman from that particular area, and all those who have been working on this problem.

Sen. Hollings (D-S.C.) is a member of the Senate Appropriations Committee. Recently he was appointed to succeed Sen. Edmund Muskie as chairman of the Senate Budget Committee.

Now, right to the mean problem of the budget. I was invited over to the White House this afternoon to hear exactly what the president was going to say.

There is no better way to get a fix in your own mind relative to balancing budgets and paying bills than to have a look at today's Savannah *Morning News.* You will see on the front page that federal officials Thursday turned down Georgia's request for $1.8 million in coastal energy impact program funds. The article went on to report that Tardy Island will lose $35,000 intended for a boat launch and $65,000 for a bath house at the north end of the beach there. Brunswick would have used its portion of federal funds—$785,000—to renovate and beautify its downtown and waterfront.

Federal officials said they denied Georgia the funds mainly because the coastal zone management program worked out by the state could not be enforced. The article further reported that the governor was disappointed and disgusted and that the commissioner of natural resources said that the state of Georgia is entitled to this money. At some point in time you've got to decide if you want to sell your soul for a bowl of soup



Sen. Hollings

and federal government wrapped in a bunch of red tape. I don't believe that the people on the coast are ready for that.

"At some point in time you've got to decide if you want to sell your soul for a bowl of soup and the federal government wrapped in a bunch of red tape."

Some ten years ago we learned that by the year 2000, 85 percent of the population of the United States would live within 50 miles of the coast and of the Great Lakes. Everyone has gone down to the sea and the impact is tremendous. Questions have arisen such as where port development is going, what about the urbanization and spoil, the fishing facilities, the recreational facilities, the water consuming industry, and so on. With the development of all these problems cities, counties and municipal associations teamed together in consummate fashion and finally helped us enact what we call the Coastal Zone Management Act.

It has had tremendous impact in South Carolina. You can see it.

In Bluffton, right by the Savannah River, Chevron has optioned thousands of acres to build a refinery should any oil be discovered in the Blake Plateau, or the South Georgia Embayment between the Georgia and the Florida state lines.

If they build that refinery it will take 6,000 persons four and one-half years to complete. After they have constructed it, only about 300 to 400 persons will be required to operate it. During construction time, with the influx of 6,000 people, we will have to have a place for the children to go to school; we will have to have water lines; we will have to have sewer lines; and we'll have to have all the facilities—police protection and everything else. In that particular area you could levy a tax of 100 mills and still not gain much. The nearest and largest industry they have down there is a liver pudding factory.

So, who will come and build for this national need? There is a nationwide energy crisis. So, it was well conceived that what you ought to do is have some kind of coastal impact on water lines, sewer lines, schools, additives and everything else to ameliorate, if you please, a coastal impact for energy development.

Each state was supposed to submit a plan. Accordingly, 29 states have done so, but Georgia has dragged its feet. We can see by the headline that they want boardwalks; they want a bath house, and they want to start renovating Brunswick. Well, that isn't the intent of the program and I can guess with a glance why they have ended it, but there you go.

Now, what is the senator from Georgia going to do? His governor is going to call and he is going to jump on the federal officials and they will probably get to—well, I started to say Ham Jordan but I don't believe they could find him right now. They might get Jody Powell anyway. Incidentally, if I get opposition this fall, I'm going to buy me a rose garden, and constantly say I am unavailable. Every so often I'll invite the Clemson Nine in and have my picture taken, all the time showing I am working very hard in getting this government straightened away.

In any event, they will be on it in the Georgia crowd and they might even get those funds. But, therein—multiplied over thousands and thousands of times—is the question: Should Washington build bath houses and beautify towns and boardwalks, and those kinds of things?

"Now, I have been to the top of the mountain and I have seen, as Martin Luther King Jr. said, the other side—a balanced budget."

In essence, what you really have in the past 30-year period is a cumulative deficit impact of billions and billions of dollars. The Europeans and everyone else think we have an affirmative action program to export our inflation around the world and never pull in our belts and pay any bills at all.

Now, I have been to the top of the mountain and I have seen, as Martin Luther King, Jr., said, the other side—a balanced budget. In Washington, the fact of the matter is that we have had eight balanced budgets since World War II. We had them in 1947, 1948 and 1949. But between 1951 and 1960, we had a cumulative deficit of $14.3 billion. Between 1961 and 1970 it started going up, and we had then a cumulative deficit of $60.1 billion. Between 1971 and 1980 what occurred was a $334.8 billion add-on to the deficit.

Mind you me, when I refer to President Nixon, I don't speak politically. To paraphrase a French philosopher who traveled here over 100 years ago, "There are many men of integrity in both political parties." But, he said, "In America, there is no party of integrity." And that hasn't changed much in 100 years. So, it is not my purpose to speak politically but I can remember that President Nixon was given a balanced budget in 1969. George Mahon and a group of us from Appropriations Committee went into the back room and we cut $5 billion. We gave a balanced budget in the first year of Richard Nixon's tenure and even a $3.2 billion surplus.

President Nixon was making a list of grant and aid programs that could be eliminated but one day he picked up a morning paper and saw that Ed Muskie was in the lead in the polls. He panicked and started spreading poison—breaking into headquarters, organizing the plumber units. He went in every direction. Particularly with respect to the Congress at that time, all abandon was thrown aside. It became "Anything you can do we can do better. If that Democratic congress thinks it can spend and get elected, I'm going to show them."

So he then gave us revenue sharing and categorical grants, and where you had a $262 billion budget at the beginning of the last decade, right now, in 1980, it has jumped to $600 billion. By the time Ford took over, it had almost doubled and stood at the $500 billion mark.

Incidentally, President Ford had a $45.2 billion deficit and $66 billion deficit. I am rather amused to hear of the great job that he did on inflation. One would learn as an ordinary legislator like myself, and say, my heavens, let's look and see what Ford did with the deficit, he got it up to $66 billion, I'd better hurry up and get mine higher, because he left office with that 4.8 percent inflation rate.

The secret lies in the proposition that when he was coming out for "whip inflation now," he just went over a precipice into a recession. So we had deficits of $45.2 billion and $66 billion. Jimmy Carter never in the last four years approximated that. We are talking in terms of about $30 billion and I think we could get a balanced budget.

"I don't believe this recession will be that deep, but we will have one come September and October. It is starting right now."

In any event, we went into a deep recession. I don't believe this one will be that deep, but we will have one come September and October. It is starting right now. And, perhaps then could be done what

should be done immediately this afternoon, you cannot whip inflation just with high interest rates.

We must start to really control bank loans. The president together with the Federal Reserve ought to categorically say, "No bank loans except those related to productivity. There will be nothing for mergers, acquisitions and the like." The Fed has got to slowly constrict the liquidity, but it can't do it too rapidly because there are a lot of small banks that would fall right over, but if they slowly start a restricting—requiring greater reserves—those two alone would do more than any nine congresses could do. I could tell you that now.

"Many members of Congress act like the budget is now sort of like the community chest and everybody has got to give their fair share."

In addition, we should cut that budget the first ten percent across the board on the controllables and get into some of the uncontrollables to some extent. It can be done.

But let's talk about the private sector too. In 1960 the private sector had a cumulative debt of $750 billion. By 1970, it had $1.5 trillion. By 1980, it had reached $4.5 trillion. So, you can understand that the talk this afternoon should be taken seriously but no one should really believe that it can be done just by balancing budgets. Everything has got to be done that possibly can be. It also must be understood what the real trouble is with respect to balancing budgets. Many members of Congress act like the budget is now sort of like the community chest and everybody has got to give their fair share. That is a very appealing approach. This means, "If you are going to take so much from social programs, then what are you going to take from defense programs?"

Incidentally, I have been caught—willingly or unwillingly—to do some cuts in the defense budget. A friend of mine, Pete Gasata, an Air Force lieutenant, came to Washington. He hadn't seen the Pentagon—that mammoth, largest office building in the world. As he drove away from National Airport he turned to the taxi driver, and asked, "My heavens, how many people work in a building like that?" Without batting an eye, the driver said, "About half."

Over a ten-year period, we have systematically cut the defense budgets. But, they still appeal on the fair share argument, as did Rep. David Obey (D-Wis.), who is very brilliant and very articulate. David was saying, "First, we have cut $16 billion off of the social programs and everything else of that kind. What about you, what are you going to give on defense?"

I said, "We have already given, like at the office, long, long ago, David. You have been making and winning that argument for five years and I have been losing. As a result now, our defenses are in a very, very feeble state."

"It isn't a question of giving and paring off or starting off at the same starting line, if that's the kind of approach you want to use." He replied, "You don't understand, we have been working and you have won."

I reminded him that in January, if we just took this year, the president put out a budget for $68 million additional spending. He increased the budget $68 billion over what it is this present year. And, of that $68 billion, $18 billion was earmarked for defense and $50 billion for social programs.

So, when my friend David Obey takes off $16 billion, he is down to $34 billion. So, I'm still with the $18 billion and he, with $16 billion more than I. So, don't tell me I have won anything.

If you can look in constant dollars since 1960, you will see that it has been a straight line in constant 1980 dollars, and it would be about $160 billion in 1960 and it is $160 billion in 1980. On the other hand, the social programs have gone right up to $440 billion. The fact of the matter is, our defense budget today is less than what it was in 1962. How could we have let that happen?

"I think you will find it somewhat interesting that the best of minds have had the idea that arms cause war and all we really need to do with the Soviets is to achieve detente and set the example."

I think you will find it somewhat interesting that the best of minds have had the idea that arms cause war and all we really need to do with the Soviets is to achieve detente and set the example. The moralist Carter believes in it very strongly.

It really started back in the mid-1960's with Bob McNamara in the theory of Mutually Assured Destruction (MAD). At that particular time he reasoned that we all face a nuclear holocaust in view of the weaponry of both sides. It, therefore, becomes a question not of who wins but who survives. He was very right about that. But he was wrong when he said all we needed was retaliatory capability.

"America has too much power, they said. America has abused her powers, said Fulbright. America must disarm. We were the culprit."

This theory holds that if you strike first and if I have some B-52s left, or some Poseidon missiles under the sea on the Poseidon sub, or a few fixed intercontinental ballistic missiles so that I can strike back and destroy your cities, then your destruction is mutually assured. That will make you resist from making any kind of first strike.

Along with the theory of mutually assured destruction came the concept of minimum deterrence. This meant that we ought to build up retaliatory capability—offensive weaponry—but defensive weaponry was a no-no. "What do you need Armies for? Look at Vietnam. You can't use the tanks and all that weaponry. These little fellows in the black pajamas are running around, beating us around the clock and we are loaded with B-52s and tanks and all kinds of weapons.

America has too much power, they said. America has abused her powers, said Fulbright. America must disarm. We were the culprit. We were the source of all the world's troubles in the eyes of the leadership, Congress and in Washington. We ought to disarm.

Richard Nixon picked it up because he believed with Kissinger, he could outsmart the Democrats and show the way. The big Communist hater, Richard Nixon, wanted to show that he could get along with them and obtain an arms limitation treaty. You can see it was about the most unequal, stupid, dangerous thing to our security that you could possibly have. I happen to be the only living senator to vote against it. I picked up one vote with Jim Allen. So he and I were the only ones against it.

In any event, they passed it. It was like the emperor who wore no clothes. If Nixon could agree, then who were you to disagree? Thereupon was detente.

Subsequently, anything that seemed disturbing to that all important relationship between the Soviets and the United States was "povocative and destabiliz-

"Subsequently, anything that seemed disturbing to that all important relationship between the Soviets and the United States was 'provocative and destabilizing'."

ing" and should be avoided. In Diego Garcia in the Indian Ocean, we restricted the width of the runways. They were prohibited from being wide enough to hold a B-52 bomber. If they could hold a B-52, to own B-52s would be "provocative and destabilizing."

President Ford could not receive Solzhenitsyn, the famous Nobel Prize winner at the White House. Solzhenitsyn had to go talk with George Meany and the AFL-CIO because to have him at the White House would have been "provocative and destabilizing."

You heard a few weeks ago on the television program *60 Minutes* about the 330 KGB agents at the UN. Everytime that the FBI refused their entry, the State Department would issue a visa because to deny them admission would have been "provocative and destabilizing."

The same applied to technology. The Commerce Department would say "no" only to be contradicted by the State Department and the White House. The IBM computer that was not supposed to be used is now at the Kama River where it is building Soviet trucks and tanks that roll into Afghanistan. They are American-made because to refuse that computer would have been "provocative and destabilizing."

Lenin said years ago that we would hang ourselves. When he was asked about who would furnish the rope, he replied, "They will furnish the rope." Sure enough, in the 1970's we have been furnishing the rope because, to do otherwise would have been "provocative and destabilizing."

We had our embassy in Iran seized in November last year. We told Secretary Vance that we realized that it is impossible to build a fortress America in every country but that a few stop gap measures would give embassy people at least a couple of hours to destroy restricted material and see whether the host country troops are coming. If they don't come to help in two hours, then you are finished and you don't belong in that country in the first place. But at least let's not have a scraggly crowd fall over the walls and within 20 minutes reach the inside of the embassy and have it in hand.

He said to do that would be "provocative and destabilizing."

And, we see now, unfortunately, that attitude being reassumed right this very minute in Washington. I thought Afghanistan would have reawakened America. But there is an argument now on the Hill that we shouldn't approve an aid package for Pakistan to stop the Soviets at her borders, because that would be "provocative and destabilizing."

Suffice it to say, that our defenses are in the most sorry shape possible. We have a supposedly mobile Army but it is 60,000 vehicles shy. We have a Navy that is supposed to cover three oceans. The chief of naval operations says that he has, at best, an ocean and a half Navy. They had 950 vessels in 1970. Today, they are down to 398. We don't have the crews. We have two destroyers in Mississippi ready to go but we don't have crews to put on them.

"We have a supposedly mobile Army but it is 60,000 vehicles shy. We have a Navy that is supposed to cover three oceans. The chief of naval operations says that he has, at best, an ocean and a half Navy."

In the Air Force, the planes are older than the pilots. We are going to be 3,500 pilots shy. You see, we were losing planes in the Navy last year. We had 126 planes crash. We lost 74 pilots because we don't give them enough flying time and operations, or the planes enough maintenance. Just since Christmas, we have lost 40. The president's budget only replaces 72.

You see now what I am talking about. Three marine divisions ready to go in the Middle East, but the equipment for only one.

I could keep on going down the list. The volunteer Army has not worked and you don't see the spirit of sacrifice. You see them on television. They are not for registration. We need it badly, I can tell you categorically. I wish it were not so but we do.

Before we do anything else in the world, we are going to have to change around that mentality. We are very much like we were some 40 years ago.

John F. Kennedy, as a senior at Harvard called upon to write his thesis after having spent a year at the Court of St. James, where his father was the ambassador, wrote a book, *Why England Slept.* He asked how the great British empire could find itself in conflict, at war with Germany. How this could come about now—to be threatened by the vanquished of World War I within 20 years. And, he said, to begin with, there was an air of futility, an idea that you couldn't defend yourself against bomber attack. Secondly, he said, there was the idea of an inferiority complex. The Germans felt that the Versailles Treaty was extremely punitive and they were only building up their arms to show their macho. Thirdly, the prevalent belief was that if you gave to defense programs you would restrict your social programs. Sir Herbert Morrison, on the floor of the Parliament, said as much. Lastly, it was believed that arms cause war and everybody ought to disarm.

The point is that Neville Chamberlain went to Munich not as an appeaser, he went representing the majority view of the English people. That is the lesson from *Why England Slept.*

Now, 40 years later you've got *Why America Slept.* You've got the very same parallelisms that you can't defend yourself from a nuclear attack.

All last year when we discussed SALT-II Marshall Shulman of the State Department repeatedly assured us that we needn't worry about the Soviets. That, of course, was before the invasion of Afghanistan. Shulman said the Russians can't compete politically, economically or culturally. The only way they can do it is build up big armies and arms. They are not going to use them anywhere.

Meanwhile others were saying the same old things about denying social programs and that arms cause, rather than prevent, war.

I thought that with Afghanistan we had had our Pearl Harbor on the cheap. It hadn't cost any lives in America and we would move forward, as President Carter said in his Carter Doctrine. But, I can tell you that the budget that he has submitted is a cut from what he found necessary last year *before* Afghanistan and Iran. And, I can tell you here and now that if we don't put some credibility into the Carter Doctrine and the defense posture and the commitment of this country for world freedom, then we are totally lost.

But, before it all, Abraham Lincoln said over 100 years ago, we've got to think anew; we've got to act anew, and we've got to disenthrall ourselves. If we could do that, then by working together, we can win.

Names In The News . . .

Parker Kennedy *Dieter Bailly*

First American Title Insurance Co., Santa Ana, announced the promotion of **Parker S. Kennedy** to director of national sales for the company's nationwide network of offices. Kennedy, formerly manager of the company's Ventura County office, will now head the national sales program which is designed for clients doing business in more than one state.

Kennedy is a member of the California Bar Association and practiced law with Levinson & Levinson of Beverly Hills before coming to First American.

Succeeding Kennedy as manager of First American's Ventura County office is **Robert G. Noe** of Orange County, who also was appointed vice president. In addition to managing company operations in Ventura County, Noe will serve as counsel for the area. Prior to his recent appointment, Noe was regional counsel in the San Francisco Bay area and president of a company subsidiary, First American Title Company of San Francisco.

Filling Noe's position as president of First American Title Company of San Francisco was **Lawrence H. Rebholtz** of San Francisco. Formerly, Rebholtz was vice president of the San Francisco operation, escrow supervisor and branch manager.

Another major change at First American is the addition of **Dieter M. Bailly** of Newport beach to the corporate staff of the firm as vice president—information systems. Bailly will provide technical guidance to the company's managers interested in updating data and word processing equipment. He joined the company last March, leaving the Newport Beach firm of Price Waterhouse and Company.

Chicago Title and Trust Co. announced the election of **James F. Sheerin** to the company's board of directors. Sheerin is senior vice president of Hilton Hotels Corporation's central region, which includes five Hilton Hotels in the Chicago metropolitan area. He also is 1980-81 chairman of the Chicago Convention and Tourism Bureau, treasurer of the Metropolitan Fair and Exposition Authority and member of the board of directors of the Greater Chicago Hotel and Motel Association.

Chicago Title Insurance Co. announced that **William W. Laiblin** was elected vice president and associate general counsel. Laiblin assists in making underwriting determinations involving special transactions such as condominiums, shopping centers and railroads. A 34-year veteran of the company, Laiblin most recently was assistant general counsel.

James Sheerin *William Laiblin*

Other announcements from Chicago Title were the appointments of **Francis J. Leyhane**, a vice president, to regional counsel and **Matthew J. Keller, Jr.** to divisional counsel.

As regional counsel, Leyhane is responsible for underwriting policy in Illinois. Keller is now chief underwriter for the Chicago metropolitan division, where he also manages the title legal department.

At Chicago Title offices around the country, six other appointments recently were made.

Vernon Barker of Kansas City, Mo., was promoted to assistant vice president—sales. **J. David Clossin** of Indianapolis, Ind., was named associate divisional counsel. **John Ford** of Hartford, Conn., was appointed a title operations officer and transferred to the New Haven office. **Raymond Thompson** of Kansas City, Mo., was promoted to resident vice president from assistant vice president. He continues to manage title operations and the Jackson County title plant.

The recent election of **Robert McClaran** as president and **Frank T. Finch** as senior vice president of Columbia Real Estate Title Insurance Co., Washington, D.C., was announced.

McClaran was promoted from executive vice president. His background includes experience in land development, real estate financing and presidency of a major title company.

Finch was elected as a member of Columbia Title's executive committee. He is also senior vice president/operations Zone III with American Title Insurance Co., Miami, Fla., the firm's parent company.

Robert McClaran *Charles Mucci*

Charles A. Mucci was elected member of the board of directors of USLIFE Title Insurance Company of New York. Mucci is senior vice president—national operations at USLIFE, having joined the company in 1971.

USLIFE Title of New York also announced the promotion of **Charles H. Wimer** to assistant vice president and chief claims counsel. A titleman of eight years experience, Wimer joined USLIFE last year.

Title Insurance and Trust Co. (TI) Los Angeles, welcomed the return of **Robert Dolan**, a former TI titleman of 33 years, as a company vice president and Contra Costa county manager. Dolan was away from TI for four years during which he was associated with Emmette Gatewood Realtors in Los Gatos and then the Maslesa Development Corp. in Campbell. He comes to his new position with an insight of customer group concerns.

TI also announced the appointment of **Charles R. Bradley** as region sales manager for the company's western region as well as his election to vice president. As region sales manager, Bradley is responsible for TI's sales strategy and market penetration in California, Nevada and Arizona. He works out of the home office in Los Angeles. Previously, Bradley was national sales training manager.

In Harm's Way

"If we fail to overcome current inflation it may soon begin to dissolve the glue that holds our society together. . . At best, the result will be an era of deep social divisions, with hostility and bitterness spreading."—Arthur F. Burns, former chairman of the Federal Reserve Board

Savings and Loans—*(from page 38)*

judgement as to whether, for example, it is a prudent loan or the lender has adequate security. The second lien may be small or it may be large. It may depend on how much is out there in other than a first lien status.

In regard to our legal problems, there are no perfect answers. It is a tough subject area. We have appreciated and valued the good services of some title companies, many ALTA committees and the ALTA staff. I know that many of our people around the country have talked to their title companies because I have told them that if they think they have a problem but are not sure, they should talk to their title company and ask if they will insure.

You have been very helpful because we need a product that is legal and, most importantly, that you will insure. If you won't insure us, it won't do any good.

Well, is the savings and loan business coming or going in the 1980s? At the moment, we appear to have problems. We are going to fight hard, we are going to work hard, we are going to try as best we can to come up with the right kinds of answers. We are going to suffer. We're probably going to lose a few of our friends and colleagues along the way. But, that's what happens when you get into the tough battles, not everybody survives.

When all is said and done, though, the savings and loan business will be there. It is a good business. We are doing a good job serving thrift and home ownership.

This business can change, because if it doesn't the world will pass us by. You face that and we face that. About a year from now—maybe six months or a year and a half—we will be back, stronger than ever, I hope, serving the home ownership needs of the people of this country.

In the process, we are going to need you and we will continue doing a lot of business with the title companies of this country. We look forward to working with you in the future.

Indians—*(from page 40)*

Your committee, with Tom Finley of the Washington, D.C., law firm of Pierson, Semmes, Crolius & Finley, is working on legislative language which we hope will help accomplish this. We also hope to receive support from the various state congressmen and senators who must realize that, while they might not have a case in their state today, it is very possible that by this time next year such a suit could be filed in an important area of their state. They need to realize that such a suit can tie up land transactions, land financing, the issuance of bonds by their municipalities and possibly result in financial chaos.

This is not a very happy report that I have brought you and not a very happy note on which to end this convention. A young lady from New York asked me last night up in our parlor, "What about these Indian claims, are the Indians going to get us?" All I could say to her is that the ALTA Indian Claims Committee is in the saddle, we have drawn our sabres and your captain is riding the point in the finest tradition of Jeb Stewart. We shall do our best to defend all of our title companies against these raids.

We have great representation in the Finlay law firm. They are in contact with congressmen and with state attorneys general. They keep us well informed. As time goes on we will continue to try to keep you informed.

Model Law—*(from page 22)*

insurance departments will require a statistical basis for the rates we charge. Even the model bill does not eliminate advisory organizations which assist insurers in rate setting by collecting loss and other information. I do not believe that by seeking exclusion from the model act we are affecting the industry's future involvement vis-a-vis rating organizations, one way or the other.

The committee report, which is due in May, will include a complete rewriting of the first draft of the model bill. I will continue to try to keep title insurance out of this law. I may not be successful. However, in my judgment, it would be harmful to the industry—and not helpful to the consumer—for us to be included. I hope you agree with that position.

Commissioner Addresses NJLTIA

New Jersey Banking Commissioner Angelo R. Bianchi addressed members of the New Jersey Land Title Insurance Association about the economic climate and the availability of mortgage funds at the association's spring general membership meeting last month.

Commissioner Bianchi indicated that he did not expect conditions in the housing construction area to improve significantly until next spring. With respect to the availability of mortgage funds, the commissioner stated that interest rates would not decrease significantly until the cost of funds to banking institutions decreased. He proposed that interest on savings accounts be exempt from federal income tax and that the present limitation on the interest a bank can pay be removed. In this way, banks could compete for new funds at interest rates which would permit them to lend those funds at mortgage rates significantly below those presently in effect. In addition, Commissioner Bianchi indicated that such a step would encourage savings in the United States at a time when the savings rate of the American people is declining. An increase in the savings rate would increase the funds available for the new investment.

The commissioner also discussed briefly the new forms of mortgages which are gaining popularity. He suggested that the title insurance industry should look carefully at these new forms of mortgages in order to anticipate the questions and problems which will invariably arise.

Another key event at the NJLTIA spring meeting was the honoring of retired State Supreme Court Justice Worrall F. Mountain. Justice Mountain was recognized for his many contributions to New Jersey jurisprudence, particularly in real estate law, during his eight years on the State Supreme Court.

ALTA's Braxton Wins Again

ALTA's popular radio public service spots featuring the mythical adventures of Sgt. Braxton and Zing have received a Certificate of Excellence in the Thoth Awards Program of the National Capital Chapter, Public Relations Society of America.

The certificate was presented to ALTA Vice President—Public Affairs Gary L. Garrity, creator and producer of the Braxton PSAs, in recognition of meritorious achievement in public relations.

Sgt. Braxton, Canadian Mounted Police retired, and Zing, his retired lead dog, encounter land title problems in an amusing manner during their radio episodes focusing on a quest for peaceful home ownership in the United States.

The Braxton spots are produced as an activity of the ALTA Public Relations Program and reach an audience of millions extending through every state. They have been broadcast by the Mutual Broadcasting System, the Associated Press Radio Network and by hundreds of individual stations—all in free public service air time for which ALTA makes no payment.

The Role of Title Insurance In Conveyancing

A Title Insurance Seminar

This meeting is sponsored by the American Land Title Association
In Cooperation with the Wisconsin Land Title Association
9 a.m. to 5 p.m., September 11, 1980 in the Hyatt Regency, Milwaukee, Wis.

Topics and Speakers:

Title Insurance Coverage— *Marvin C. Bowling, Jr.*
Senior Vice President and General Counsel
Lawyers Title Insurance Corp.
Richmond, Virginia

Robert T. Haines
Vice President and General Underwriting Counsel
Chicago Title Insurance Co.
Chicago, Illinois

Use of Title Insurance by the Lender— *Joseph F. Schoendorf Jr.*
Schoendorf and Sorgi
General Counsel
Security Savings and Loan Association of Wisconsin
Milwaukee, Wisconsin

Use of Title Insurance by the Practicing Attorney— *Allen N. Rieselbach, Esquire*
Reinhart, Boerner, Van Deuren, Norris & Rieselbach
Milwaukee, Wisconsin

Title Claims— *Roger Williams*
Senior Vice President, Secretary and General Counsel
Pioneer National Title Insurance Co.
Los Angeles, California

Registration fee of $65 per attendee covers meeting costs, handbook and lunch.
Send names and addresses of registrants and remittance, made payable to the American Land Title Association:

American Land Title Association
Suite 705, 1828 L St., N.W.
Washington, D.C. 20036

Calendar of Meetings

June 1-3
Pennsylvania Land Title Association
Buck Hill Inn
Buck Hill Falls, Pennsylvania

June 8-10
New Jersey Land Title Insurance Association
Seaview Country Club
Absecon, New Jersey

June 13-14
South Dakota Land Title Association
Holiday Inn of the Northern Hills
Spearfish, South Dakota

June 19-21
Land Title Association of Colorado
Wildwood Inn
Snowmass Village, Colorado

June 19-21
New England Land Title Association
Wentworth-By-The-Sea
Portsmouth, New Hampshire

June 26-28
Michigan Land Title Association
Sugar Loaf Mountain Resort
Cedar, Michigan

June 26-28
Oregon Land Title Association
Sun River Lodge
Bend, Oregon

June 27-29
Illinois Land Title Association
Marriott Pavilion Hotel
St. Louis, Missouri

July 10-13
Idaho Land Title Association
Elkhorn at Sun Valley
Sun Valley, Idaho

July 11-12
Utah Land Title Association
Holiday Inn Park City
Park City, Utah

July 17-19
Wyoming Land Title Association
Laramie, Wyoming

July 31-August 6
American Bar Association
Honolulu, Hawaii

August 7-9
Montana Land Title Association
Edgewater Inn
Missoula, Montana

August 14-16
Minnesota Land Title Association
Sunwood Inn
St. Cloud, Minnesota

August 15-16
Kansas Land Title Association
Ramada Inn
Topeka, Kansas

September 6-9
Indiana Land Title Association
Sheraton West Hotel
Indianapolis, Indiana

September 7-9
Ohio Land Title Association
King's Island Inn
Cincinnati, Ohio

September 7-10
New York State Land Title Association
Kutsher's Country Club
Monticello, New York

September 11-13
North Dakota Land Title Association
Holiday Inn
Fargo, North Dakota

September 17-19
Nebraska Land Title Association
Holiday Inn-Old Mill
Omaha, Nebraska

September 17-19
Washington Land Title Association
The Alderbrook Inn
Union, Washington

September 24-27
Dixie Land Title Association
Mobile Hilton
Mobile, Alabama

September 25-26
Wisconsin Land Title Association
Playboy Club
Lake Geneva, Wisconsin

September 26-28
Missouri Land Title Association
Almeda Plaza Hotel
Kansas City, Missouri

October 14-17
American Land Title Association
Honolulu, Hawaii

October 24-26
Palmetto Land Title Association
Myrtle Beach Hilton
Myrtle Beach, South Carolina

October 26-29
Mortgage Bankers Association
San Francisco, California

October 30-31
Land Title Association of Arizona
Westward Look Resort
Tuscon, Arizona

November 5-8
Florida Land Title Association
Don Cesar Hotel
St. Petersburg Beach, Florida

November 7-13
National Association of Realtors
Anaheim, California

November 16-21
U.S. League of Savings Associations
San Francisco, California

December 3
Louisiana Land Title Association
Royal Orleans
New Orleans, Louisiana

American
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