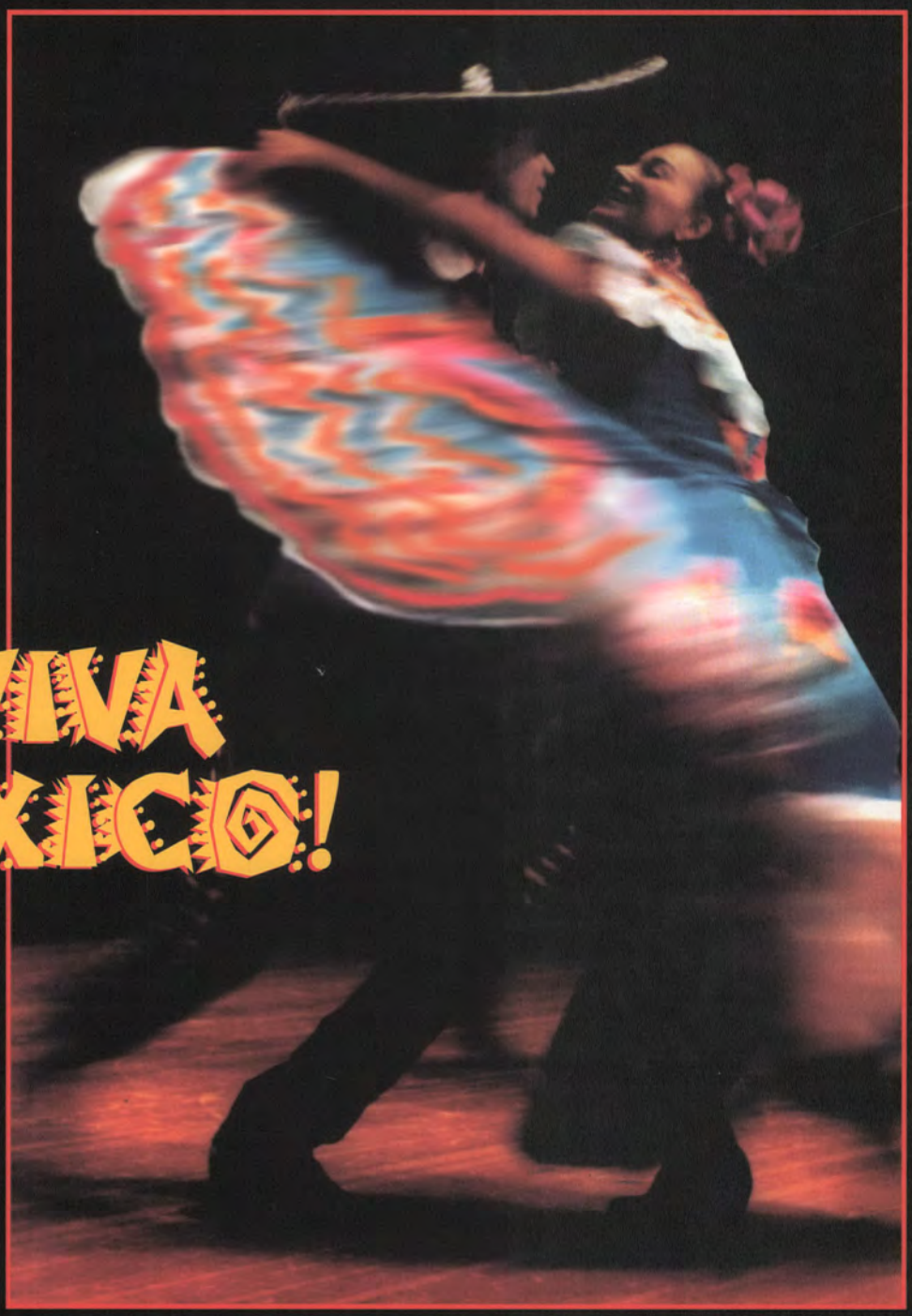
TITLE News

JULY-AUGUST 1997



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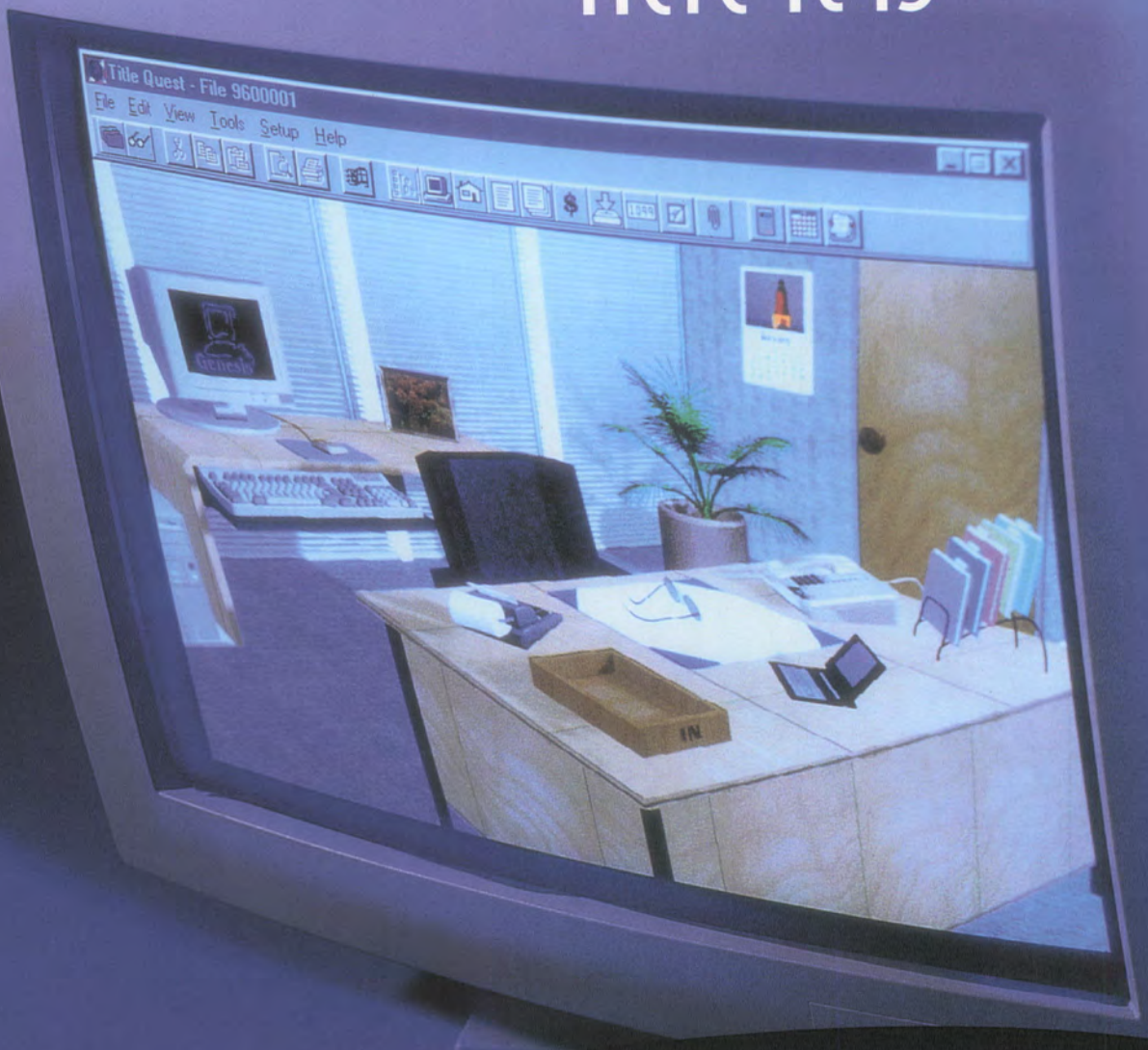

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TITLE News

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On the cover: *Mexico, a country long admired for its arts and culture, has attracted growing attention from foreign investors interested in real estate ventures since its enactment of a 1993 law removing many prior economic prohibitions. This brighter outlook also has increased the importance of American title insurance in the emerging market south of the border. For an overview, please turn to page 21. (Sincere appreciation for assistance in the development of this cover design is extended to the Mexican Cultural Institute, and to the Maru Montero Dance Company)*

FEATURES

AND MORE...

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A MESSAGE FROM THE PRESIDENT

With the end of summer rapidly approaching and our Annual Convention in Seattle just a few weeks away, I can't help but reflect on two of the biggest issues before your Association and try to place them in perspective for the future.

If ranked in terms of visibility, bank powers certainly jumps out at the head of the class. It gets most of the "press," in part, because the battle is being waged in Washington, DC, and in part because the policy issues at stake are even larger than the title industry's specific concerns. The length of time this debate has been an Association concern is also a factor. Our members now are really familiar with the issues and are participating in the debate.

I am less worried about bank entry into the title insurance business than many other things. Certainly, there will be additional banks experimenting with the title insurance business. However, if ALTA's federal legislative proposals are successful, that experimentation will occur within holding company affiliates that are forced into competing on a level playing field.

I believe many of those experiments will be both limited in geographic area and short lived in duration. The reality is we're providing more value for less money today than ever before to our lender customers in many parts of the country. Where product alternatives are limited or rates are high enough to provide attractive margins, some banks and/or other lenders will come into the business. However, I believe that we're presently giving more value for less money than ever before, to our lender customers in many areas of the nation.

RESPA is clearly an issue that is both troubling and frustrating for our industry. From my perspective, most RESPA problems come from the same issue- -RESPA (and or HUD) unwillingness to recognize any monetary value for business generation or maintenance of long-term customer relationships. The great paradox of RESPA is that the minute you give monetary value for business generation, you open the door for many abuses and create great concern within the consumer lobbying group.

After participating in ALTA's RESPA task force discussions and talking over RESPA issues with members of Congress and other interested persons, I'm convinced the issue won't go away quickly. Any attempt to amend or change RESPA will require "buy-in" from all the related trade association players and consumer groups. Consumer advocates are not likely to look kindly on any monetary recognition for business generation referrals, and won't accept an outright repeal of RESPA without an identified replacement. Congress won't introduce narrow issue amendments that don't pass consumer advocate tests. "Bundling" or "packaging" of services is being pushed as a possible solution by some lenders, but I view those as unacceptable to small and medium size companies in many segments of the settlement services industry.

The most promising solution from my perspective is a comprehensive disclosure at the front end of the home building process, with cost disclosures for each product or service that become a ceiling for the purposes of the buyer/borrower loan transaction. Individual service providers could then compete for the business in their market segment and pay referral fees as long as the individual product price ceilings are not exceeded. Strict functional state regulation could be maintained for each product or service as appropriate.

In any event, it would certainly be splendid if one or two of these major policy issues could be moved off ALTA's "hot button" list. Unfortunately, their importance and complexity result in them likely to be on the ALTA agenda for several years. The good news is that the knowledge, experience and work ethic of your Association's Washington staff, coupled with thoughtful consideration and hard work by committee members, provide continuity of both principle and policy implementation from one year to the next.

More importantly, the foundation of the title industry is based on a combination of the care and concern of many wonderful people within it, our heritage of being the anchor point for the sale and secure transfer of a single family home and the unique nature of the title business, which both reviews and creates our nation's history as part of our work process.

Thank you for allowing me to have been of service to a great Association of title persons, and for your help and friendship.

Dan R. Wentzel

Rating Bureau Participation After *FTC v. Ticor*

By John C. Christie, Jr.

Editor's Note:

ALTA asked the author, John Christie, to write an article on the current state of the law regarding the establishment and operation of rating bureaus in the context of the regulation of title insurance. With the renewed interest that has been expressed in recent years regarding this form of rate regulation, there have been concomitant concerns about knowing the "rules of the game" as they have changed in light of the long legal battle the industry fought with the FTC and others. Author Christie was the principal counsel in those battles. In order to make those new rules clear, he brings the reader back to the beginning of these legal struggles and lays the foundation for both the current state of the law and a very helpful overview of what it takes to operate a modern rating bureau in the title industry today.

* * *

On January 7, 1985, the Federal Trade Commission filed an administrative complaint against six title insurers alleging that their participation in rating bureaus in 13 states violated the federal antitrust laws. The very next day, the first of 17 treble damage actions against various title insurers was filed, complaining of the same activity.

This litigation led a long life. The FTC case itself was not resolved for eight years. The last of the damage cases came to an end less than a year ago, a life of over twelve years.[1] During this lengthy history, the FTC litigation was the subject of decisions by the FTC itself[2], the Third Circuit Court of Appeals (twice)[3], the D. C. Circuit Court of Appeals[4] and the United States Supreme Court.[5] The damage litigation resulted in separate decisions by the Third Circuit (twice)[6], the Ninth Circuit[7], the Wisconsin Supreme Court[8], the Arizona State Court of Appeals[9], as well as numerous lower courts. In addition to that, one of the issues in the damage litigation was also accepted for review by the United States Supreme Court, fully briefed and argued, but ultimately returned to the lower courts by a divided opinion of the Court finding that the original certiorari decision had been "improvidently granted."[10]

Irresistible as it might be (for the author, if not for the reader), this article is not the story of the litigation as such. Instead, this article addresses the impact of the precedent created during the course of this litigation on future industry participation in title insurance rating bureaus. In summary, the antitrust focus has shifted from the McCarran-Ferguson Act to the state action doctrine, and the requirements for the application of that doctrine warrant careful consideration and regular monitoring.

The author is a senior partner in the Washington office of Hale and Dorr, LLP. He represented Chicago Title Insurance Company, Ticor Title Insurance Company, and Security Union Title Insurance Company in the litigation discussed in this article, and argued the case for all of the respondents before the Supreme Court. The author specializes in antitrust counseling involving mergers and acquisitions, the Hart-Scott-Rodino antitrust pre-acquisition reporting requirements, investigations by federal and state antitrust enforcement officials, compliance programs, trade association conduct and marketing and distribution issues. An active litigator in federal and state trial and appellate courts across the country, he regularly handles cases involving the Justice Department, the Federal Trade Commission, and State Attorneys General, as well as private litigants. He is a graduate of Harvard Law School.

The Issues:

The federal antitrust laws prohibit activities constituting an unreasonable "restraint of trade." Certain activities are considered *per se* violations; that is, they are conclusively presumed to be unreasonable and therefore illegal without the need for inquiry into their purpose or actual competitive effects. The FTC determined, and this article will assume, that participation in a state-authorized rating bureau constitutes a *per se* violation of the federal antitrust laws, absent the application of a recognized antitrust exemption.[11]

Two potentially applicable federal antitrust exemptions are those embodied in the McCarran-Ferguson Act and the so-called state action doctrine. The McCarran Act, 15 U.S.C. § 1011 *et seq.*, provides, in effect, that the "business of insurance" shall be exempt from the federal antitrust laws, to the extent that business is regulated by state law. The state action doctrine finds its authority in a 1943 decision of the Supreme Court interpreting the Sherman Act as not having been intended "to restrain state action or official action directed by the state."[12] The principal focus of the FTC proceeding involving title insurance rating bureaus was the question of whether one or the other of these exemptions served as a complete defense.[13]

McCarran Act

In the FTC litigation, it was conceded that "regulation by state law" existed in each of the 13 states.[14] As a result, the McCarran Act issue was whether the conduct complained of involved the "business of insurance" within the meaning of the McCarran Act.

Beginning in 1978, the Supreme Court decided several McCarran Act cases which

caused the scope of the "business of insurance" requirement in a McCarran Act context to be more narrowly interpreted.[15] The Court emphasized in these cases that there must be a relationship between the challenged business activity and the spreading or underwriting of the risk to be insured. These decisions have worked to potentially limit the scope of the McCarran Act applicable to title insurers in this context, to rate-related activities affecting the assumption of risk alone.

Thus, in an earlier case initiated by the Justice Department against the Title Insurance Rating Bureau of Arizona challenging the filing of rates for the provision of escrow services, the Ninth Circuit affirmed a rejection of a McCarran Act defense. *United States v. TIRBA*, 700 F.2d 1247 (9th Cir. 1984). In doing so, these activities were characterized as "merely ministerial functions" which did not "spread or underwrite risk." *Id.* at 1251.

In the FTC litigation, the principal McCarran Act issue was whether the filing of rates for search and examination services performed by title insurers for the purpose of defining the terms of the title insurance policy was the "business of insurance." A unanimous Commission sustained an administrative law judge's conclusion "that the search and examination function is not underwriting in the sense of assuming and spreading risk among a universe of insureds."[16] On appeal, a divided Third Circuit affirmed.[17] The majority found that title search and examination does not "itself" spread or transfer risk and, moreover, was not part of the insurer-insured relationship because, "[h]istorically, title search and examination services were provided by persons or entities separate from the issuer of the title insurance policy itself."[18]

On the other hand, the dissenting judge concluded that "the sensible view [is] that a title search and examination performed as part of the process of issuing title insurance cannot be dissected from the rest of the [risk-assuming] process for the purpose of applying the McCarran-Ferguson Act."[19] This judge was persuaded because the FTC itself conceded that title search and examination is an indispensable component of the process of issuing a policy and because he found support in the underlying legislative history of the Act to suggest that activities preparatory to the issuance of a policy were within the purview of the Act.[20]

As a result, the application of the McCarran Act to the rate filing activities of a title insurance rate bureau is of some uncertainty, at least with respect to the filing of rates beyond those relating to the assumption of the risk. At minimum, these precedents would have to be reckoned with in any future litigation involving the application of the McCarran Act in this context.

State Action Doctrine:

Some years ago, the Supreme Court enunciated a two-part test for evaluating whether activities undertaken by private parties are entitled to protection under the state action doctrine: first, the challenged activity must reflect "clearly articulated and affirmatively expressed" state policy to displace competition with regulation; and second, the challenged activity must be "actively supervised" by the state itself.[21] Three months after the filing of the FTC complaint against title insurance rate bureaus, in a case involving motor carrier rate bureaus, the Court determined that a "clearly articulated and affirmatively expressed" state policy exists in a rate bureau context if a state permits or authorizes rate filing requirements to be satisfied through the filings of a bureau.[22] The Court rejected a stricter requirement, finding that "[the state action doctrine] was premised on the assumption that Congress, in enacting the Sherman Act, did not intend to compromise the states' ability to regulate their domestic commerce."[23]

...the antitrust focus has shifted from the McCarran-Ferguson Act to the state action doctrine, and the requirements...warrant careful consideration and regular monitoring.

Inasmuch as each of the 13 states in which the challenged title insurance rate bureaus existed had expressly authorized rate bureaus in this line of insurance, the principal state action issue came to be the second part of the Court's state action test; namely, did each of these states "actively supervise?" On this issue, the FTC litigation proceeded on essentially uncharted waters. To the extent the Supreme Court had applied the active supervision requirement previously, it had done so in a context in which a state had authorized anticompetitive private conduct, but had failed to establish any regulatory system for the supervision of that conduct. In such an instance, the resolution of the active supervision issue was pretty simple, for if there was no system it was unlikely that there would be any supervision.

Here, however, each state had by legislation provided for a system of regulatory supervision in some detail. In effect, the regulator (usually the state insurance department) was required to review the filings of the bureau to ensure that the proposed rates were not excessive, inadequate or unfairly discriminatory. In each state the rates required the department's prior approval or were permitted to go into effect if they were not challenged by the department within a specified period of time - - the so-called deemer or negative option provision. Once effective, all participants in the filing were required to charge those rates unless and until any participant should choose to file a deviation as provided by statute. The litigation focus came to be whether "active supervision" required anything more, and, if so, what.

On this issue, the Commission found active supervision to have been lacking in four states - -Arizona, Connecticut, Montana and Wisconsin.[24] It did so - - as subsequently characterized on appeal by the Third Circuit Court of Appeals - - by making qualitative judgments about the strictness or effectiveness of the state insurance regulators, singling out various aspects of the regulatory history that the Commissioners thought could have been done better.[25] The Third Circuit Court of Appeals reversed, concluding that if a statutory scheme of regulation exists, active supervision required only that a regulatory program be in place, staffed and funded, and that there has been some "basic level of activity" by the state directed at ensuring that the private parties were carrying out the state's policy.[26]

By a vote of six-to-three, the Supreme Court reversed the Third Circuit, finding a lack of supervision in two states - - Montana and Wisconsin - - and remanding back to the Third Circuit the issue as to the other two states. *Federal Trade Comm'n v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992) ("*Ticor*"). There were in fact four separate opinions: a majority decision authored by Justice Kennedy; a separate concurring opinion by Justice Scalia; and two separate dissenting opinions - - one by the Chief Justice, and the other by Justice O'Connor. *Id.* at 624, 640, 641 and 646.

At a fundamental level, the majority opinion departs from earlier discussions of

the state action doctrine by the Court, which had characterized the doctrine as a reflection of Congressional intent not to extend the federal antitrust laws to areas subject to state economic regulation. By contrast, the Court's discussion in *Ticor* emphasizes the pervasiveness and primacy of the competition principles generally reflected in the antitrust laws, and treats the doctrine as an antitrust "immunity" that is to be narrowly construed.

The opinion emphasizes the importance of actual state involvement for the application of the active supervision component of its two-part state action test:

> Our decisions make clear that the purpose of the active supervision inquiry is not to determine whether the State has met some normative standard, such as efficiency, in its regulatory practices. Its purpose is to determine whether the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties. Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy. The question is not how well state regulation works but whether the anticompetitive scheme is the State's own.

Id. at 633-35.

The majority went on to reject the active supervision standard applied by the Third Circuit as insufficiently demanding in the level of state involvement needed to invoke the doctrine. It characterized that standard as merely "the beginning point of the active state supervision inquiry," at least when a deemer option allows a rate to become effective without state action:

> Where prices or rates are set as an initial matter by private parties, subject only to a veto if the State chooses to exercise it, the party claiming the immunity must show that state officials have undertaken the necessary steps to determine the specifics of the price fixing or rate setting scheme.

Id. at 637-38.

In Montana and Wisconsin, the Court found that this standard was not satisfied. It determined that the "negative option" or deemer structure of the rate filing statutes there did not indicate substantive approval by the regulators of filed rates, in light of the fact findings made in the FTC proceedings. It characterized the administrative record as showing that "at most the rate filings were checked for mathematical accuracy" and that "[s]ome were unchecked altogether," and that in both states rates were permitted to remain in effect for several years before supporting information was provided to the regulators. *Id.* at 638. The Court stated that "[i]n the absence of active supervision in fact, there can be no state-action immunity for what were otherwise private price fixing arrangements." *Id.*

The principal dissenting opinion, written by Chief Justice Rehnquist, argued that the majority's standard was not consistent with precedent or sound policy. In his view, the Third Circuit standard was more closely attuned to the Court's prior precedent than the standard adopted by the majority, and, moreover, the majority's standard was unacceptably vague:

> The Court simply does not say just how active a State's regulators must be before the "active supervision" requirement will be satisfied. The only guidance it gives is that the inquiry should be one akin to causation in a negligence case; does the State play "a substantial role in determining the specifics of the economic policy." Ante, at 635.

Id. at 644 (Rehnquist, J. dissenting).

Justice O'Connor joined the Chief Justice and filed her own additional dissent. She argued that the majority diminishes state regulatory flexibility "by creating an impossible situation for those subject to state regulation:"

> Even when a State has a "clearly articulated policy" authorizing anticompetitive behavior...and even when the State establishes a system to supervise the implementation of that policy, the majority holds that a federal court may later find that the State's supervision was not sufficiently "substantial" in its "specifics" to insulate the anti-competitive behavior from antitrust liability. Ante, at 635. Given the threat of treble damages, regulated entities that have the option of heeding the State's anti-competitive policy would be foolhardy to do so; those that are compelled to comply are less fortunate.

Id. at 646 (O'Connor, J., dissenting). She also contended that the majority's rule permitting "after-the-fact evaluation of a State's exercise of its supervisory powers" was unfair to regulated parties, who have "no control over the regulator, and very likely will have no idea as to the degree of scrutiny that [their] filings may receive." *Id.* at 647 (O'Connor, J., dissenting). Moreover, she found the majority's standard for such an evaluation to be "not only ambiguous, but...counterproductive" because regulated parties who conform to state regulatory policy by filing reasonable rates may face greater antitrust risks because the state will have less need to become actively involved with such filings. *Id.* (O'Connor, J., dissenting).[27]

Both the legal and the regulatory setting should be managed in order to maximize the opportunity to establish a successful state action defense....

Analysis of the Court's Opinion:

The majority opinion states that the purpose of the active supervision requirement is to demonstrate that the state has "exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties." *Id.* at 634-35. This language suggests a simple dichotomy between public and private decision-making rather than the complex interaction commonly reflected in a regulatory relationship in the real world. Framing the inquiry as "whether the State has played a substantial role in determining the specifics of the economic policy," *id.* at 635, also is not illuminating because it leaves unclear how "substantial" the state's involvement must be, how a state must act in order to "determine" the policy, and how "specific" the state's involvement must be.

Moreover, as emphasized by Justice O'Connor in her dissent, because the active supervision requirement is to be evaluated through an after-the-fact assessment of state regulatory activity, it may not always be easy to know in advance whether the doctrine will protect rate filings made in any particular regulatory environment. In addition, the availability of the defense does not depend primarily on the actions

of the regulated parties, but rather the actions of the regulators, who are certainly beyond their control and not always totally predictable.

The majority's opinion characterizes the factual record in Montana and Wisconsin as displaying an egregious absence of state oversight -- in which "the potential for state supervision was not realized in fact." *Id.* at 638. It says that "at most the rate filings were checked for mathematical accuracy" and that supporting information for filings was not provided. *Id.* From the standpoint of limiting the unfavorable effect of the Court's decision as precedent, this characterization of the facts may be useful. It permits defendants in future cases to argue for a different outcome on grounds that the record there demonstrates a greater level of state supervision.[28] In fact, however, the majority's opinion demonstrates the risk of result-oriented factual determinations that may accompany a court's later disapproval of rate bureau activity as "pernicious price-fixing." *Id.* at 639. Participants in future rating bureaus should understand the risk that the resolution of the active supervision issue under the Court's analysis is fact-intensive.

Managing Future Rating Bureau Participation:

The Supreme Court in *Ticor* reaffirms the basic rule that private parties are protected by the state action doctrine in a rating bureau context if the requirements of "clearly articulated state policy" and "active supervision" are satisfied. However, the Court's "active supervision" standard dictates that future participation in rating bureaus be carefully considered and continuously monitored. Both the legal and the regulatory setting should be managed in order to maximize the opportunity to establish a successful state action defense in the event of any antitrust challenge.[29]

The most favorable setting for the existence of a strong state action defense is one in which the state statutory regime unambiguously authorizes the specifics of the proposed rate filing activity by the bureau; where the statutory and regulatory regime makes it likely that state regulators will affirmatively oversee the rate filings made by the bureau; where the state regulatory program is staffed and deals with the bureau's filings in a manner that reflects knowledgeable application of the state's statutory standards; and where there is reasonable assurance that the regulatory process will produce evidence of affirmative analysis supporting determinations by the regulators approving filed rates before they go into effect. More specifically, the following steps would appear prudent:

Evaluation of State Law. An early step in any state should be a careful evaluation of the statutory provisions regulating title insurance rates and rating bureaus. This should include a focus on the extent and clarity of state authorization, possible statutory ambiguities with respect to particular rate components, the existence of standards for reviewing filed rates and authority for the regulator to enforce those standards, and the provisions for state court oversight of the regulator's conduct, among other matters. Such an evaluation will provide the framework for assurance that the ingredients of the first state action requirement ("affirmative state policy") are present, as well as knowledge of the statutory context in which the state's supervision will be carried out.

An early step in any state should be a careful evaluation of the statutory provisions regulating title insurance rates and rating bureaus.

Evaluation of State Regulatory Atmosphere. It is essential to evaluate the future regulatory atmosphere within which a revived rating bureau will operate. States with a historical record of consistent and thorough proceedings to review title insurance rate filings and other industry issues will provide greater assurance of future attention to bureau filings than in a state where this kind of record has not occurred. Occasions on which the regulator demands more information to justify a rate filing, rejects or cuts back a proposed rate increase or otherwise acts in an adversarial fashion to the rating bureau will all enhance a state action defense. The quality of evidence of "active supervision" seemingly demanded by the Supreme Court's vague *Ticor* standard may have the unfortunate and inefficient effect of requiring rate bureaus to adopt strategies that will produce public hearings on, and regulatory modifications to, proposed rates.

Establishment of a Prior Approval Procedure for Rate Reviews. *Ticor* suggests a greater level of concern in a context in which rates might become effective through the operation of a deemer option. As a result, state review procedures should be made to conform to a prior approval pattern, either by statute or in practical operation. Even without a conforming statute, state regulators may be willing to commit to prior written approval of proposed rates before they become effective. Prior approval provides a greater degree of assurance that the state has reviewed a rate filing, and should result in an affirmative finding (before the rates are implemented) that the proposed rates meet the state's regulatory criteria.

Establishment of Objective Criteria for Rate Approval. *Ticor* indicates that a lesser degree of supervision may be necessary where the state establishes a regulatory system under which "sampling techniques or a specified rate of return allow state regulators to provide comprehensive supervision without complete control." *Ticor*, 504 U.S. at 640. It analogizes to an earlier Supreme Court decision[30] involving a state statute which specified a fixed margin between wholesale and retail liquor prices. *Id.* The basis for this distinction is not stated by the Court, but specifying such objective criteria could be thought of as action by the state to determine the specifics of the filed rates consistent with the majority's standard.

The Court's comment suggests that the state action defense may be enhanced in a state where the regulator adopts specific objective criteria for evaluating rate filings, implementing the general statutory criteria in most states requiring rates to be "not excessive, inadequate, or unfairly discriminatory." Following the Court's suggestion, this could involve a specified profit margin or rate of return against which the filed rate structure might be judged.

Ongoing Monitoring of the Bureau and the State. All participants in future bureaus should commit to actively monitor the rating bureau and state regulators to be certain that bureau filings are receiving the requisite level of attention by the state and that all other relevant state requirements are being met. The employment of knowledgeable antitrust counsel to assist both in the formation of any bureau, as well as in its ongoing work, is both efficient and indispensable in this regard. Local company representatives in any bureau should be informed on these issues and be aggressive in ensuring that active supervision standards are being met. If any regulatory lapses occur, a participant should be prepared to evaluate the increased antitrust risk and to

promptly withdraw from the bureau if necessary.

NOTES

1. In fact, as this article is written the parties continue to litigate plaintiff attorney fees in one of these cases.

2. *In the Matter of Ticor Title Ins. Co. et al.*, 1986 FTC LEXIS 1 (Dec. 22, 1986).

3. *Ticor Title Ins. Co. v. Federal Trade Comm'n*, 998 F.2d 1129 (3rd Cir. 1993); 922 F.2d 1122 (3rd Cir. 1991).

4. *Ticor Title Insurance Co. v. FTC, et al.*, 814 F.2d 731 (D.C. Cir. 1987).

5. *Federal Trade Comm'n v. Ticor Title Ins. Co.*, 504 U.S. 621 (1992).

6. *In re Real Estate Title and Settlement Svcs. Antitrust Litigation*, 869 F.2d 760 (3rd Cir. 1989); 815 F.2d 695 (3rd Cir. 1988).

7. *Brown v. Ticor Title Ins. Co.*, 982 F.2d 386 (9th Cir. 1992).

8. *Prentice v. Title Ins. Co.*, 176 Wisc. 2d 714, 500 N.W.2d 658 (1993).

9. *Tucson Unified School District v. Chicago Title Ins. Co.*, 167 Ariz. 114, 804 P.2d 843 (App. 1991).

10. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117 (1994).

11. *In the Matter of Ticor Title Ins. Co.*, 112 FTC. 344; 1989 FTC. LEXIS 115, 168 (Jan. 7, 1985). However, even if the regulatory mechanism established by the state fails to provide federal antitrust immunity, arguably the involvement of the state sufficiently undermines presumptions about "purpose" and "effect" normally associated with such activity to warrant inquiry about the competitive effect of the activity. Such an inquiry is not normally entertained under the *per se* rule.

12. *Parker v. Brown*, 317 U.S. 341, 351 (1943).

13. This is not intended to suggest that other defenses might not apply. In a damage case context, for example, the filed rate doctrine can be particularly important. That doctrine operates to deny damages to a plaintiff if the damages are necessarily based upon a rate which has become effective by virtue of a regulatory system. *Prentice v. Title Ins. Co.*, *supra*, 500 N.W.2d at 726-7 ("Under the filed rate doctrine ..., the availability of ... a regulatory remedy bars a private rate-related suit for damages.")

14. The title insurance rating bureaus challenged in the litigation had existed in the states of Arizona, Connecticut, Idaho, Louisiana, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Wisconsin and Wyoming. In a number of title insurance antitrust cases, it had become well-established that there is "regulation by state law" as contemplated by the McCarran Act if the conduct complained of is simply permitted or prohibited by state legislation. Under this standard, the existence of the "insurance unfair methods of competition act," a part of the insurance code applicable to title insurers in these states and most others, is sufficient. *Crawford v. American Title Ins. Co.*, 1974-2 Trade Cas. ¶ 75,320 (N.D. Ala. 1974), *aff'd.* 518 F.2d 217 (5th Cir. 1975); *Lawyers Title Co. of Missouri v. St Paul Title Ins. Corp*, 526 F.2d 795 (8th Cir. 1975); *Harrison v. Chicago Title Ins. Co.*, 1974-2 Trade Cas. ¶ 75,321 (D.C. Kan. 1974).

15. *Union Labor Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982); *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205 (1979).

All participants in future bureaus should commit to actively monitoring the rating bureau and state regulators to be certain that bureau filings are receiving the requisite level of attention by the state, and that all other relevant state requirements are being met.

16. *In the Matter of Ticor Ins. Co.*, 112 FTC. 344, 1989 FTC. LEXIS 115, 228 (Jan. 7, 1985).

17. *Ticor Title Ins. Co. v. Federal Trade Comm'n*, 998 F.2d 1129 (3rd Cir. 1993).

18. *Id.* at 1134.

19. *Id.* at 1142 (Alito, J. dissenting).

20. The dissenting judge agreed with the analysis in an earlier Tenth Circuit opinion holding that search and examination services performed by title insurers were the "business of insurance" within the meaning of the McCarran Act as well as with several lower courts within the Third Circuit. *Commander Leasing Co. v. Transamerica Title Ins. Co.*, 477 F.2d 77 (10th Cir. 1973); *Schwartz v. Commonwealth Land Title Ins. Co.*, 374 F. Supp. 564 (E.D. Pa. 1974); *McIlhenny v. American Title Ins. Co.*, 418 F. Supp. 364 (E.D. Pa. 1976); *In re: Real Estate Title and Settlement Svcs. Antitrust Litigation*, 1986-1 Trade Cas. (CCH) ¶ 67,149 at 62,933 (E.D. Pa. 1986). Despite the division of authority on this issue, the Supreme Court declined our invitation to resolve the matter. *Ticor Title Ins. Co. v. Federal Trade Comm'n*, 510 U.S. 1190 (1994).

21. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).

22. *Southern Motor Carriers Conference, Inc. v. United States*, 471 U.S. 48, 56 (1985).

23. *Id.*

24. *In the Matter of Ticor Ins. Co.*, 112 FTC. 344. Following the *Southern Motors Carriers* case, *supra*, the FTC staff determined to drop the states of Louisiana, New Mexico, New York, Oregon and Wyoming from the case and stipulated that active supervision had occurred in New Jersey and Pennsylvania. The Commission concluded that its staff had not met its burden of proof with respect to Ohio on other issues and determined that active supervision had existed on the record in Idaho.

25. *Ticor Title Ins. Co. v. Federal Trade Comm'n*, 922 F.2d 1122, 1138 (3rd Cir. 1991).

26. *Id.* at 1140.

27. On remand back to the Third Circuit, the Third Circuit determined that "active supervision" had not occurred in either Arizona or Connecticut under the standard created in *Ticor. Ticor Title Ins. Co. v. Federal Trade Comm'n*, 998 F.2d 1129 (3rd Cir. 1993). Although determining that there was "some evidence" of active supervision in Arizona, the court accepted the Commission's conclusion that the insurance department had not undertaken any substantive review of the bureau's filing. *Id.* at 1140. In Connecticut, although the department took "an interest" in the bureau filings, the court also found evidence that the department could not "meaningfully examine" the proposed rates "because it never obtained the information necessary for a proper evaluation." *Id.*

28. Indeed, in several active supervision cases since *Ticor*, that is precisely what has occurred. *TEC Cogeneration, Inc. v. Florida Power & Light Co.*, 76 F.3d 1560, 1569-70 (11th Cir. 1995); *Yeager's Fuel v. Pennsylvania Power & Light*, 22 F.3d 1260, 1271 (3rd Cir. 1994); *DFW Metro Line v. Southwestern Bell*, 988 F.2d 601, 606 (5th Cir. 1993); *Nugget Hydroelectric Pacific Gas & Electric Co.*, 981 F.2d 429, 434 (9th Cir. 1992).

29. In light of *Ticor*, this would be prudent in contemplation of rate bureau participation anywhere. However, for the respondent title insurers in the four states where a violation was found it is mandated by the FTC Order entered at the end of the litigation. That Order prohibits those respondent insurers from participation in rate bureaus in those four states *unless* the requirements of state action are met.

30. *324 Liquor Corp. v. Duffy*, 479 U.S. 335, 344, n.6 (1987).

Value of Third-Party Reinsurance To the Title Insurance Industry

By Richard W. Reese, Jr.

Historically, intra-industry reinsurance markets usually come into being because insurable risks surpass the single risk capacity of any one insurer. For title insurance, large commercial real estate transactions necessitate regulatory single risk capacity greater than any one insurer can provide. In addition, real estate lenders impose single risk capacity guidelines which are even more stringent than the regulatory limitations. These capacity restraints produced an intra-industry reinsurance market. As is usually the case with such markets, the intra-industry title reinsurance market is transactionally driven with reinsurance being offered primarily on a facultative basis.

As insurance markets mature, the need for third-party reinsurance emerges. The primary motivation to change from an intra-industry to third-party reinsurance market is either the need for efficiently priced capital or the desire of gaining strategic or competitive advantages. It is our belief that the title insurance market is ready for such a transformation.

Limitations, Intra-Industry Reinsurance

An intra-industry reinsurance market is limited in a number of ways:

- Risk Concentration: In terms of shifting risk, an intra-industry reinsurance market provides little risk spreading or diversification. For title insurance, the main reason is that it is a concentrated, monoline (one class of business) industry exposed to the highly cyclical real estate industry. Thus, the negative effects of the real estate cycle usually affect all primary insurers at the same time and with much the same severity. Good examples are the high loss ratios experienced by the entire title industry in the early nineties and the low operating profitability experienced by the industry in 1995 after the refinancing boom ended.

The primary motivation to change from an intra-industry to a third-party reinsurance market is either the need for competitively priced capital or the desire of gaining strategic or competitive advantages.

- Reinsuring With Competitor: When a primary company reinsures with a competitor, conflicts of interest can and do emerge. The most obvious conflict of interest is that the primary insurer's clients are exposed to competitors. Also, since competitors are privy through reinsurance to the entire details of a transaction, an intra-industry market inhibits the development of differentiated, value added products and services. Such competitively undifferentiated markets become price based often resulting in lower primary insurance rates.
- Competitive Advantage: Reinsurance, especially treaty reinsurance, can create competitive advantages such as greater single risk capacity, a sounder capital structure, or a reduction in reserve requirements. For example, a primary insurer through a reinsurance treaty can augment its single risk capacity by sharing each insured risk in some percentage with the reinsurer. This increased capacity enables a primary company to insure larger transactions with the same capital base and allows it to service a broader segment of the market. Such augmented capacity could be an important consideration with lenders looking to use fewer service providers.
- Strategic Advantage: For a primary insurer wanting to undertake a strategic initiative that requires additional resources, a third-party reinsurer is essential. The very essence of a strategic initiative is to be innovative, out in front of the competition, and secure of confidentiality. A typical strategic initiative utilizes innovative insurance products or develops highly differentiated services to meet the emerging needs of the market.

The author is chief operating officer, title insurance, for Capital Re's Capital Title Reinsurance Company, with offices in New York City. In developing a title reinsurance company business plan, he spent over two years studying the capitalization and exposures in the title insurance industry. Relying on his extensive capital markets background, he developed strategies and title reinsurance products designed to allow the industry to respond more effectively to a formal rating agency process and the growing concern of financial institutions about the overall credit quality of the industry. Prior to joining Capital Re, he operated a real estate firm specializing in credit enhanced and inflation adjusted real estate financings.

Third-Party Reinsurance

Third-party reinsurance can alleviate most if not all of these issues.

1. Risk Diversity: Title insurance claims rarely exceed the primary retention

level. This means the third-party reinsurer is usually insulated from lower level risk. Therefore, the capital of third-party reinsurers can be preserved to meet the financial obligations of catastrophic losses. If the third-party reinsurer's capital supports a broad line of insurance, then the risk diversity it provides is further enhanced especially if the other reinsurance lines are not correlated with the real estate cycle.

2. Reinsuring With Competitor: A third-party reinsurer is not a primary company nor is it a competitor for primary business. Furthermore, the long term risk of a monoline title reinsurer becoming a primary is remote in that it is not staffed or culturally prepared to underwrite risk on a transactional basis. As title insurance is as much a real estate information as an insurance business, the threat of a title reinsurer becoming a primary company is even more remote.
3. Competitive Advantage: A main goal of a third-party reinsurer is to provide competitive advantages to its client. The interests are aligned in that to the extent a primary insurer gains a competitive advantage and increases its market share both the primary and the third-party reinsurer gain.
4. Strategic Advantage: One of the greatest assets of a reinsurance company is often intellectual capital especially as evidenced by innovative reinsurance structures and strategies. Thus, not only can a third party reinsurer provide increased capital strength as a solution to strategic initiatives but also the reinsurance concepts and ideas that make strategic initiatives work. A good example is reinsurance covers designed to alleviate specific balance sheet concerns of rating agencies and/or lenders.

Constraints of the Title Industry

- Single Risk Capacity: At the end of 1996, the title insurance industry had consolidated statutory capital of roughly $1.4 billion (source Corporate Development Services). From a regulatory point of view, this gives the industry roughly $700 million of single risk capacity. Most large lenders limit the title industry's single risk capacity to well under $500 million and some to under $400 million. Individual companies are limited even further. From a competitive point of view, this does not allow any single company to control transactions larger than $50 to $100 million without resorting to the intra-industry reinsurance pool.
- Capital Adequacy and Return on Capital: For the retail and small commercial market, title insurers need less capital than is currently dedicated to the industry. On the other hand, investment grade real estate, i.e. properties or groups of properties with values in excess of $25 million, need more insurance capacity than most companies can provide and in some instances more than the whole industry can provide. The growing securitization of the commercial real estate market is increasing the size of such transactions further exacerbating the need for more capital. In order to be competitive in this market, insurers must retain as much capital as possible making it difficult to achieve acceptable returns on equity in this era of low profitability.
- Statutory Premium Reserve (SPR) and Liquidity: For title insurers, one of the great negatives of statutory accounting is the statutory premium reserve (SPR). As many in the industry have noted, SPR is not a claims paying reserve but a liquidation reserve under the control of state departments of insurance. Most states have highly restrictive investment guidelines relating to the corresponding assets and allow little discretion in terms of using these assets to pay claims or to provide investment capital for growth. This means that most title companies have to build excess liquidity to meet claims-related liquidity needs and to provide capital to strengthen the claims paying ability. For an industry struggling with profitability concerns, this has proved a difficult task.
- Investment Restrictions and Investing in Operations: Title insurance is under intense pressure to lower the cost of providing its services and to speed up the delivery time of its products. For an industry that previously did not heavily invest in systems technology, this leaves the industry in a catch up mode. This problem is further aggravated by the constraints of SPR, limited industry profitability in the nineties, and capital market evaluations not favorable to raising equity capital.

If properly employed, third-party reinsurance is not a cost but an opportunity.

Third-Party Reinsurance: Answer to Industry Constraints

1. Single Risk Capacity: One of the primary benefits of treaty based, third-party reinsurance is it allows a primary company to commit its and its reinsurer's capacity to a transaction. This enlarged capacity not only allows primary companies to insure larger transactions, but to have more control over their competitive position in the market. Such advantages often aid primary companies in their goal to increase market share.
2. Capital Adequacy and Return on Capital: A reinsurance treaty with a third-party provider can be a substitute for capital. This is especially valuable in markets where raising capital in the equities markets is difficult and expensive for primary companies. Also, unlike capital raised on a primary's own balance sheet, the return on reinsurance capital is variable, i.e., usually paid through a volume-based reinsurance premium. The net result is often an improved return on equity. Also, reinsurance can be successfully used to alleviate rating agency concerns about the capital adequacy of a primary insurer.
3. Statutory Premium Reserve (SPR) and Liquidity: Third-party reinsurance can be used to restructure a balance sheet. Since a primary insurer establishes SPR on the basis of net retained liability, much of the SPR burden can be shifted to the reinsurer. This can be done on favorable terms in that SPR is established on a formula basis which treats the first dollar of exposure the same as the last dollar. By reinsuring over a large primary retention, a reinsurer can assume more liability in terms of SPR than in terms of risk, i.e., most title insurance risk is in the primary layer. This fact can make pricing attractive.
4. Investment Restrictions and Investing in Operations: This objective is the most easily satisfied and there are basically two methodologies. The first is to inexpensively reinsure existing title insurance polices, thus reducing SPR. This process frees up cash to either dividend to information subsidiaries or invest in support systems in the title insurance company. Furthermore, if a title insurer uses reinsurance capital to provide commercial insurance capacity, less capital is needed and more assets become available to dividend out for other purposes.

Summary

Third-party reinsurance is a source of capital that can provide a primary insurer with the means to initiate a highly differentiated strategy or competitive position. A third-party reinsurer is in a position to aid such companies to devise a reinsurance program that facilitates and enhances a

continued on page 46

Increasing Concentration in the Lending Industry and Its Implications for Title Insurance

Against a background of bigger mergers among financial institutions, is the direction of title business more subject to industry influence- -and more promising- -than the headlines may suggest?

By Nelson R. Lipshutz, Ph.D

When I was a kid growing up, the slang phrase used to describe someone involved in large financial transactions was, "He's talking in telephone numbers," meaning, of course, that the amounts involved were described by seven digits, i.e., in the millions of dollars. Today, that phrase would still be applicable, except now you would need to include the area code, because big deals are now billion dollar deals instead of million dollar deals. Transaction sizes have increased a thousand fold in our lifetime.

That's a big number, and surprisingly little of it has been caused by inflation. The purchasing power of the dollar has declined by a factor of 6 since 1950[2], so that, in real terms, typical transactions have gotten about 160 times larger.

One hundred and sixty is still a big number. The total size of the economy, as measured by the Gross Domestic Product in constant dollars, has increased about 8.2 times since 1950[2]. So, after taking absolute economic growth into account, transactions sizes have *still* grown 20 times faster than one might have expected.

This hypertrophy of business entities has been caused by a variety of factors, ranging from increase in the effective span of management control facilitated by computer power and telecommunications, to improvements in logistics, to expansion of the capital markets. But when you boil them all down, they can be summarized by the fact that, in a modern economy, there are huge economies of scale available in every facet of business, from production through distribution through finance. The consequences of these economies of scale are so great that they are surging forward, demolishing institutional barriers as they go.

The past decade has seen the emergence of gigantism in a variety of industries.

The author is founder and president of Regulatory Research Corporation, Waban, MA, and has developed methods of economic analysis that have been adopted as the basis for title insurance regulation throughout the country. His activity has included presenting testimony before state insurance departments, and consulting with title insurance underwriter management on issues including rate justification, loss reserving, company valuation, and mergers and acquisitions. He earned his doctoral degree at the University of Chicago, and received his MBA from the Wharton School, University of Pennsylvania. The accompanying article is based on a commentary presented during the 1997 ALTA Mid-Year Convention.

In a few, like computer software, the giants have emerged as start-ups. But, in most, the creation of giants has been driven by mergers and acquisitions.

Figure 1 shows that the total value of mergers and acquisitions in the economy, as reported by *Mergerstat Review*, has grown spectacularly since the 1960s[3]. But it isn't that there are more mergers now than formerly. Figure 2 shows that the number of mergers we are seeing now, while enormous, is no greater than it was during the conglomeration boom of the late 1960s. The difference is that the mergers are a lot bigger.

In 1969, there were 6,107 reported mergers, with a total value of $24 billion. In 1996, there were 5,848 deals with a total value of $500 billion. In 1969, 24 deals had a value above $100 million. In 1996, there were 640 deals with a value above $100 million. As the late Senator Everett Dirksen of Illinois once said, "A billion here, a billion there- - pretty soon you're talking real money." Of the 100 largest mergers and acquisitions ever made, one third occurred during 1995 and 1996. The explosion in the number of economic giants is not just an illusion produced by journalistic hype.

As each day's headlines trumpet forth the announcement of yet another multi-billion dollar merger of financial institutions, it would be easy to conclude that competition is being suppressed, and that fewer and fewer institutions are exerting more and more control over the markets into which the title insurance industry must sell its products and services. The reality, however, is more complex. What I hope to do in this article is examine some of the changes in structure in the financial institutions sector of the economy in a bit more detail than is provided by the headlines, and to suggest

that the title industry's markets are both more controllable, and more promising, than sensational business journalism might suggest.

THE NATIONAL PICTURE

In order to begin the analysis, let's take a look at how the banking, thrift and mortgage banking businesses have evolved nationwide over the past decade.

Commercial Banking

Data maintained by the Federal Reserve System, set forth in Figure 3, indicate that between 1984 and 1996, the number of commercial banks in the United States fell from about 14,400 to about 9,500, which is a decline of 34 percent[4]. This isn't just the effect of banks being converted into branches within holding companies as wider area banking becomes legal. If we look at the number of banking organizations (including independent banks, one-bank holding companies, and multi-bank holding companies), we see about the same size effect, i.e., a decline from a little over 11,000 in 1984 to just under 8,000 in 1994[5].

It's important to keep in mind that we're talking about commercial banks here, not S&L's. We're not looking at the effect of the S&L collapse. This consolidation has been moving ahead full blast for a decade, and the rate hasn't changed significantly. Every business day, two banks vanish.

It's also worth noting that the vanishing banks tend to be the least financially sophisticated. There has been only about a 9 percent decrease in the number of one-bank holding companies. The attrition has been almost entirely in independent banks, whose number has been cut in half.

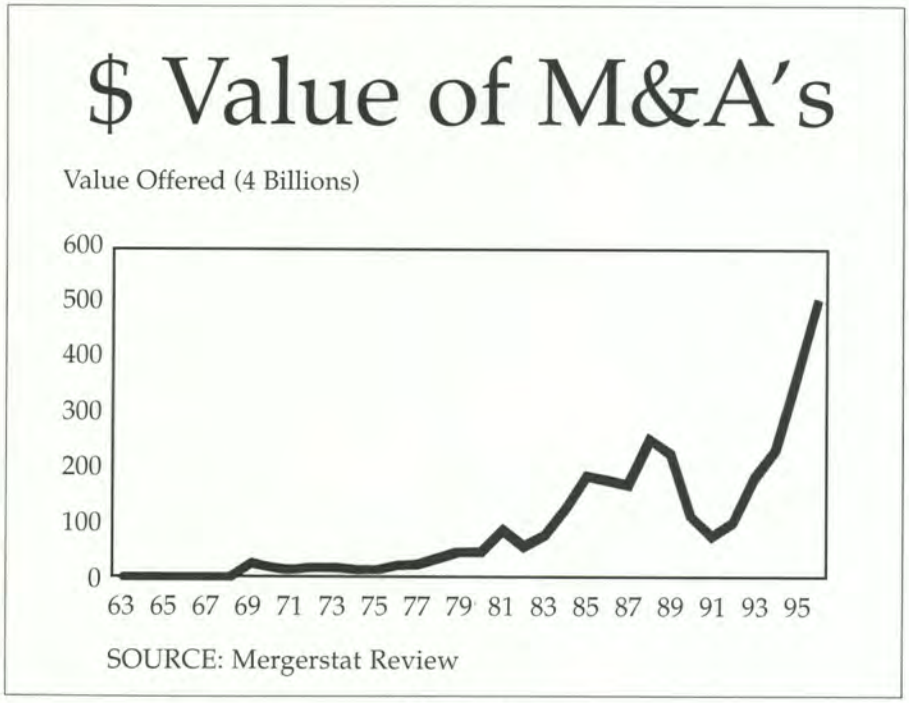

Figure 1

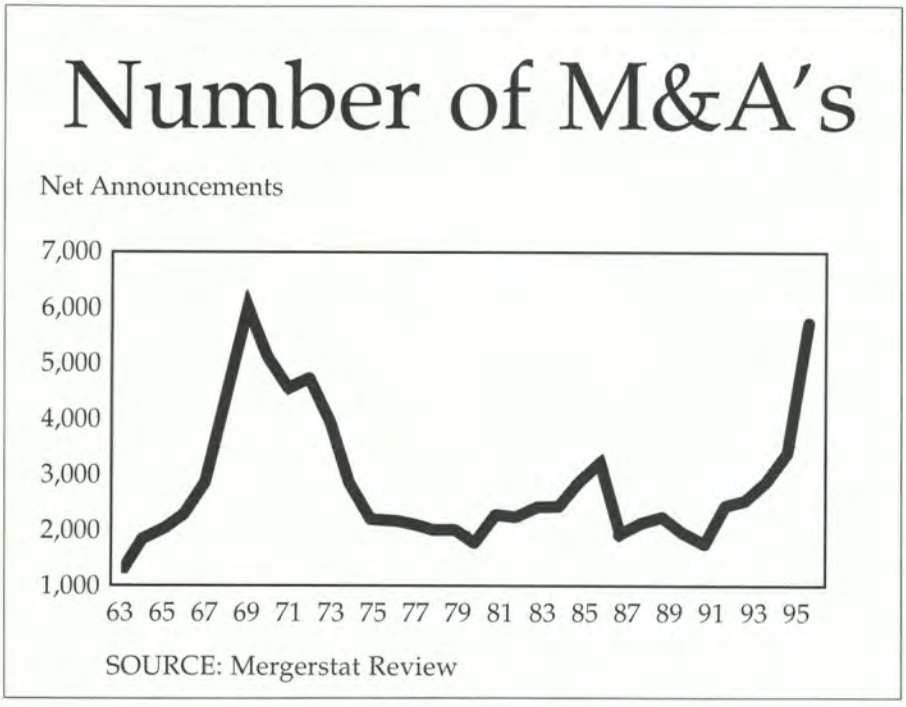

Figure 2

New economic forces are driving the primary lending market to a national basis dominated by large, national firms. The market for title insurance is sure to follow.

The drop in the number of banks has been accompanied by a substantial increase in the relative size of the largest banks. In 1984, the 25 largest banking organizations in the United States held 29 percent of all commercial bank deposits. By 1994, the 25 largest banking organizations held 42 percent of all commercial bank deposits.

Thrift Institutions

The picture for thrift institutions looks quite similar. Between 1984 and 1994, the number of thrift institutions dropped 40 percent from 3,400 down to 2,000. The most severe drop, of course, was among S&Ls, whose numbers declined 73 percent. What is less often recognized is that the number of state-chartered and federally-chartered savings banks grew substantially over the same period. Overall, thrifts are getting larger, too. Consolidation among the thrifts

over the decade led to an increase in the share of total thrift deposits of the top 25 institutions, from 21 percent up to 29 percent.

Mortgage Banking

The same trend to vanishing marginal players and expanding leading players also characterizes the mortgage banking business. Nationwide, the share of total mortgage originations represented by the top 25 mortgage originators has increased from 19 percent in 1990 up to 37 percent in 1996, with the lead firm doubling its market share. In terms of servicing, the top 25 share has more than tripled from 14 percent in 1990 up to 48 percent in 1996, as has the share of the leading firm[6].

The National Picture at a Glance

Shades of Wal-Mart! Circle the wagons and count the children — the monopolists have arrived! Right? Well, maybe not.

If agents intend to remain viable independent economic actors, they must themselves achieve these economies and incorporate the realized economies in their pricing...

The problem is that we have been talking about national figures. But, in the real estate business, and title insurance is part of the real estate business, while you may do business with national companies, you do it at the local level. And the national picture doesn't give as much insight as you might expect into what is going on locally.

Old-fashioned industrial structure analysis would look at the increase in the share of total deposits represented by the top firms at the national level and conclude that competition was in deep trouble. The reason would be an assumption that the way in which a firms builds up national market share is by dominating local areas, and then expanding these areas to cover progressively more and more of the country. That kind of analysis lay behind the "big is bad" competition policy that led to the antitrust laws in the first place, and that dominated policy in the 1960s and 1970s. But is it true?

THE STATE-LEVEL PICTURE

If you look at financial concentration measures at the state level, you see substantial variations from the national picture. While concentration has increased almost everywhere, there are significant variations from state to state. Furthermore, the level of concentration at the state level holds some surprises.

Depository Institutions

Between 1984 and 1994, the role of the biggest banks increased in almost every state outside the midwest. One easy way to see this is to look at the states in which the three leading banks had a combined mar-

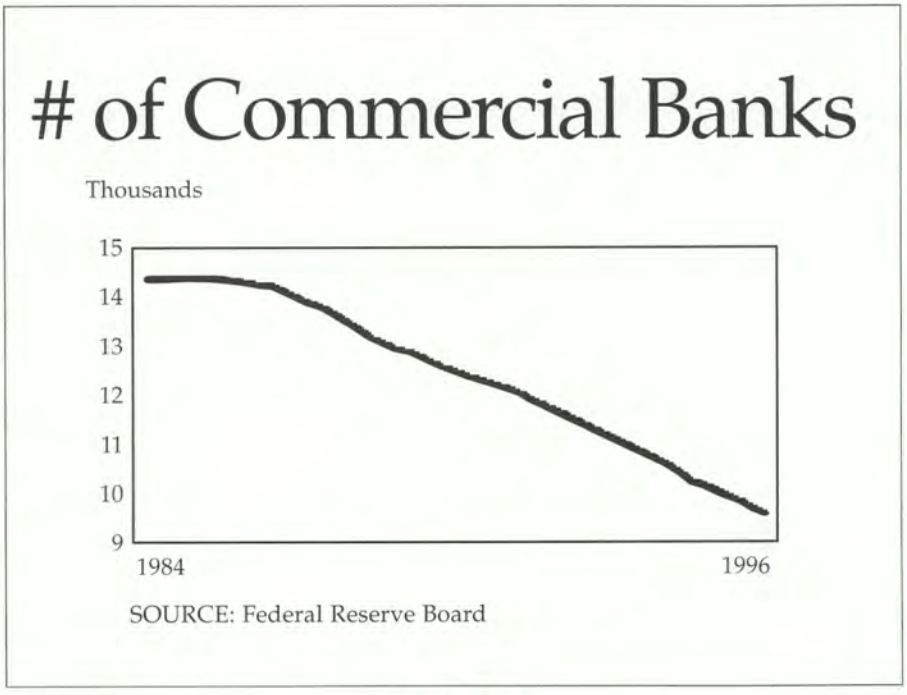

Figure 3

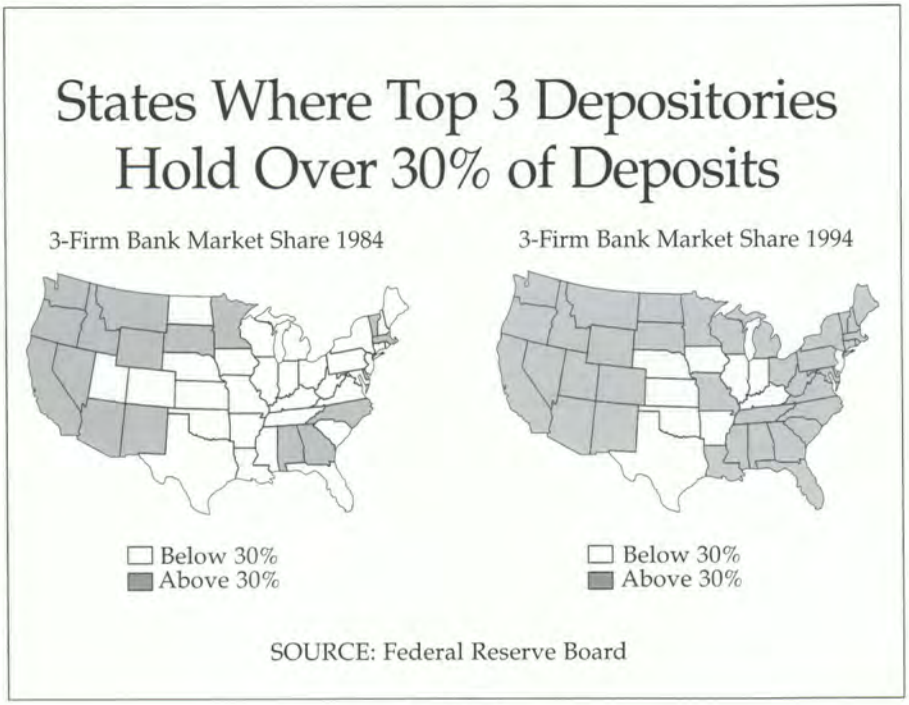

Figure 4

ket share exceeding 30 percent in each of these years, as is set forth in Figure 4[7]. Being big is clearly very important. But has it damaged competition?

In order to look at this question more closely, I have to burden you with some economist's hocus-pocus. Let me introduce you to Hirschman-Herfindahl Index, fondly known to industrial organization economists and antitrust lawyers as the HHI (which is not only easier to say but also deftly sidesteps a priority dispute between Professors Hirschman and Herfindahl).

The HHI is equal to the sum of the squares of the market shares of all the companies in a market. If there is only one company, so that it has a market share of 100 percent, the HHI is 10,000. If there are four equal size firms, the HHI is 2,500. If there are 10 equally sized firms, the HHI drops to 1,000.

The nice thing about the HHI is that it takes into account the market shares of all the firms in the market, not just the top three. So, for example, the HHI can distinguish between Snow White and the Seven Dwarfs vs. Snow white and the Two Dwarfs and the Seventy-five Smurfs, which a three-firm share of market analysis cannot do.

As a general rule, market analysts like those with the Department of Justice and the Federal Trade Commission divide markets into three groups based on the value of the HHI[8]. Markets with an HHI below 1,000 are considered unconcentrated; markets with an HHI between 1,000 and 1,800 are considered moderately concentrated; and markets with an HHI above 1,800 are considered highly concentrated. In these terms, how concentrated have statewide banking markets become?

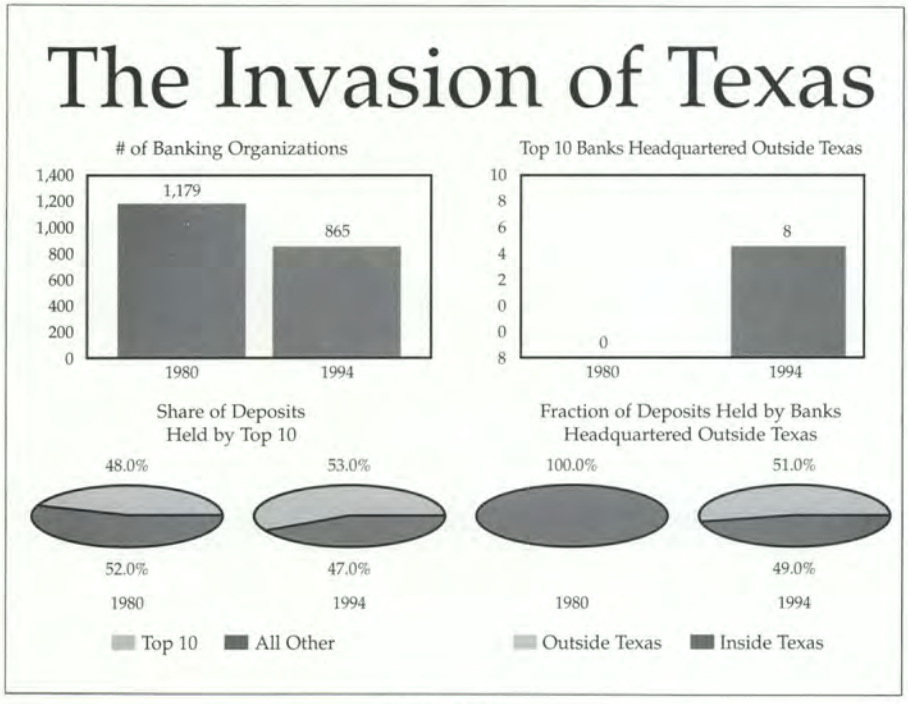

Figure 5

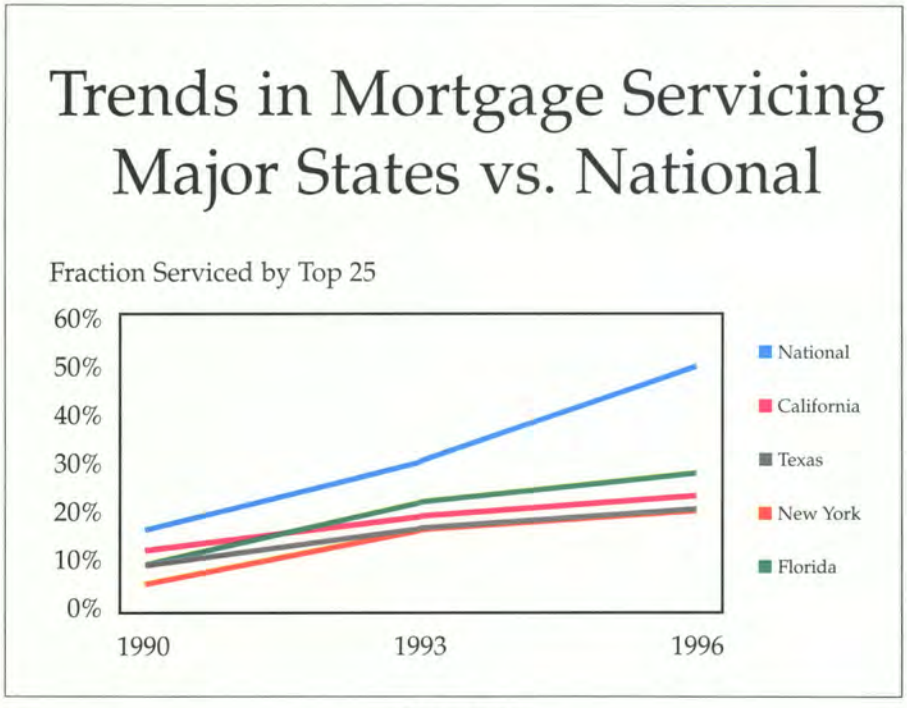

Figure 6

The pressures of consolidation that are transforming the banking landscape are going to lead some of your best customers to expand their operations into new territories. Why shouldn't you expand at the same time....

In 1984, only five states had moderately or highly concentrated banking markets (Arizona, Hawaii, Idaho, Nevada, and Rhode Island) based on these HHI criteria. By 1994, that list had increased to nine jurisdictions by adding Alaska, D.C., Oregon, and Utah. If we look at only *highly* concentrated state markets, the picture is even more striking. In 1984, only Rhode Island qualified as a highly concentrated state market. By 1994, that list had expanded by only one state (Arizona). In other words, while banks were getting bigger and bigger nationwide over the past decade, no group of banks managed to grab control of the banking market in any of the populous states.

Why not?

The fundamental reasons are clearly illustrated by a recent study of the Texas banking market[9]. Figure 5 shows that, between 1980 and 1996, the number of banking organizations in Texas dropped 27 percent from almost 1,200 down to 865. At the same time, the share of deposits held by the largest 10 banking groups grew from 48 percent to 53 percent, a minor change. *But they weren't the same banks.* In 1980, all the top Texas banks were headquartered in Texas, because foreign banks weren't allowed by local law. By 1996, eight of the top 10 banks were headquartered outside Texas. Overall, banks headquartered outside Texas held over 50 percent of all Texas deposits in 1996. In other words, the traditional Texas banks couldn't grab the share of the players who failed because new competitors piled into their markets.

It is important to ask whether the major consolidations which have occurred to date really have exhausted the economies of scale in title insurance underwriting.

Mortgage Banking

The only state level data readily available from FNMA are for servicing rather than originations, but the pattern is believed to be the same in both sectors. Recall that the national market share of the top 25 servicers almost quadrupled from 1990 to 1996, from 13 percent to 48 percent. What happened at the state level? Considered the case of California. In 1990, California mirrored the national market: the top 25 California servicers had a 12 percent market share. By 1996, that share had risen only to 25 percent. In other words, the share of the top 25 mortgage bankers rose only half as fast in California as it did at the national level. Similar results are for other large states. The market share of the top 25 firms doubled in Florida, while it tripled in Texas and New York. In other words, as is shown in Figure 6, concentration in mortgage banking in the large states is substantially lower than it is at the national level.

That's interesting. What it means is that the big mortgage bankers are not growing solely by increasing their domination of their traditional markets. Mortgage bankers are also growing substantially by becoming significant players in *other* mortgage bankers' traditional markets.

THE LOCAL MARKET LEVEL

Except for a few exceptional states like Rhode Island and Delaware, the relevant market for most retail banking (except for credit cards) is still the city or town and its associated suburbs and exurbs, if any. At this level, too, we see that the trend in concentration in the financial institution market is muted[10].

In urban markets (defined as SMSAs), average concentration increased only slightly over the 1984-1994 decade. For mar-

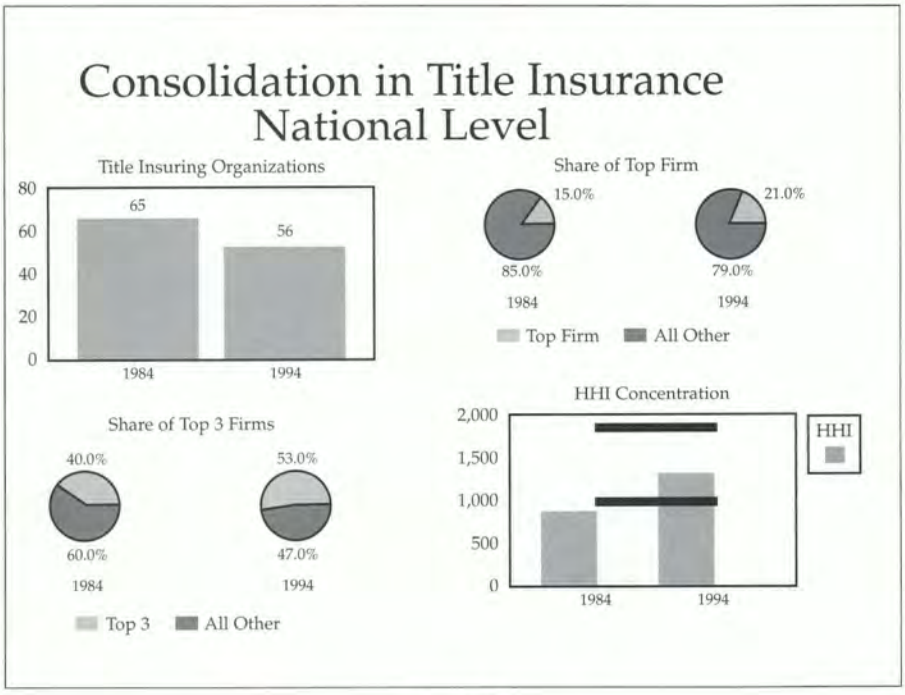

Figure 7

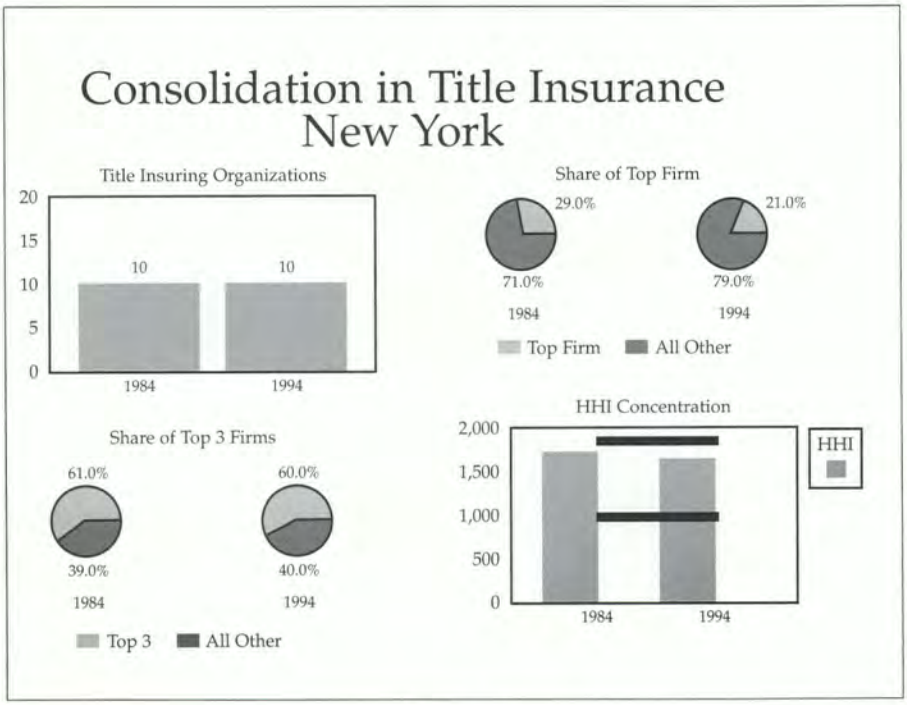

Figure 8

kets with a population over one million, the HHI remained below the 1,000 level. For markets with a population between 100,000 and one million, the HHI remained between 1,000 and 1,500. Only for urban markets with a population below 100,000 did the HHI rise to a level above 1,800, which corresponds to high concentration.

The picture is very similar for rural markets (defined as counties outside SMSAs). Because rural counties are intrinsically too small to support many banking organizations, concentration is necessarily high in such markets. But even here, counties with a population above 100,000 have remained only moderately concentrated (HHI between 1,000 and 1,800).

We can gain additional insight by looking at the local market situation in Texas. Texas has 218 local markets: 27 urban and 191 rural. In 1987, only 18 of these markets had an out-of-state bank active. By 1994, 87 markets (100 percent of the urban markets and over 30 percent of the rural markets) had an out-of-state participant[11]. Once again, invaders are driving the process.

COMPARISON TO CONCENTRATION (TRENDS IN THE TITLE INDUSTRY)

The title insurance industry has consolidated substantially since 1984. Figure 7, which is based on information maintained in the ALTA Form 9 database, shows that the number of independent underwriting organizations declined by 14 percent since 1984 (from 65 down to 56), the national market share of the top three firms increased from 40 percent up to 53 percent, and the national share of market of the leading firm increased from 15 percent up to 21 percent. The national HHI increased from 894 up to 1,334 so that the title insuring business, which was considered unconcentrated in 1984, would now be considered moderately concentrated.

This pattern is reflected at the state level in many jurisdictions, but there are important exceptions. Further, the deviations from the overall pattern reveal the same forces at work as characterize the financial institutions of title insurance's customer industries.

For example, consider the experience of New York as set forth in Figure 8. From 1984 to 1994, the number of insurer organizations in New York remained at 10, despite substantial consolidations among the firms that were in the market in 1984. The share of market held by the top three firms declined one percent point (from 61 percent down to 60 percent), but that doesn't mean that nothing changed; the number 2 and 3 firms in 1994 had been minor players in New York in 1984, and the leading firm's share of market declined from 29 percent down to 21 percent. At the same time, the four 1984 New York insurers that disappeared through mergers were replaced by firms which had not done business in New York before at all. Overall, the HHI declined from 1,680 down to 1,587.

IMPLICATIONS, NEAR TERM

Now, what does all this mean to the title insurance industry? First of all, it says something about survival. Remember, the companies that are around today developed strategies that allowed them to survive the transition from the world of 1984 to the world of 1997. While historians condemn generals for always fighting the last war, not the current one, it seems to me that the economic sea change that began n the 1970s still has a lot of steam left in it. Accordingly, we are not wasting our time examining how the winners are riding out the tide.

Your investment in learning new procedures in your area, which you must make, can also be applied everywhere.

LESSON 1 - - BIG IS GOOD, AND ALSO INEVITABLE

The evidence indicates that this lesson has certainly not been ignored by the title underwriting community. Yet, even today, the largest title insurance underwriter is small compared to many contemporary financial institutions. It is important to ask whether the major consolidations which have occurred to date have really exhausted the economies of scale in title insurance underwriting.

Title agents do not appear to have taken this lesson so much to heart. In the title insurance business, most of the effective agency consolidation seems to be occurring as agents are acquired by underwriters and merged into the direct operations network.

The acquisition of agents is driven by sound business considerations - - the perception by the acquirer that it can achieve further operational economies and increase the value of the acquired enterprise. If agents intend to remain viable independent economic actors, they must themselves achieve these economies, and incorporate the realized economies in their pricing so that it is preferable for a potential acquirer to continue doing business with them rather than to acquire them.

Further, as the banking industry consolidates, an ever larger fraction of the title insurance business is being written for a relatively few national customers. It's one thing to market to a local bank - - it's quite another to market to a subsidiary, branch, or division of a very large corporation. Personal relationships become replaced by corporate policies; qualitative perceptions get replaced by quantitative computations of bottom-line impacts. Can small, local businesses compete effectively in this environment? Or will such firms find themselves effectively restricted to the shrinking fringe market retained by the declining number of purely local lenders?

Of course, expansion takes capital, and the title insurance industry is not the most profitable in the world and so has limited ability to generate expansion funds internally. However, it is interesting that the capital markets are becoming increasingly interested in small companies. According to a recent article in the *Wall Street Journal*[12], fully 40 percent of the buy-out funds organized in the past two years have explicitly targeted industries composed of firms with annual sales in the $5 to $100 million dollar range, because these funds anticipate major consolidations. Capital may be more accessible than you think.

So why don't we see more giant title agents? I suspect that a good deal of the reason is that we all come to believe our own propaganda. For years, in its message to the public and the government, the title insurance industry has focused on the uniqueness of real estate recording and conveyancing practice in each county or village. In a lot of ways, it's perfectly true. But, as computers give us the ability to handle ever more complexity, aren't the similarities among regions coming to outweigh the differences? Which brings us to

LESSON 2 - - THE MUSIC MAN DIDN'T STAY HOME

"You gotta know the territory," sings the traveling salesman in The Music Man, and we all know many instances in which importunate expansion into new territories has gotten companies into a heap of trouble. What appears from the record of

continued on page 44

Farewell my friends.

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¡VIVA MEXICO!

American Title Insurance Brightens the Real Estate Outlook

By Mitch Creekmore

Viva Mexico! Our neighbor is steadily gaining momentum toward becoming the newest exciting frontier for title insurance.

Following enactment of the New Foreign Investment Law (FIL) by the Mexican national legislature in 1993, many economic prohibitions have been removed from foreign ownership of companies in that nation. A primary residential mortgage market infrastructure is taking shape, and plans are being developed for secondary mortgage market securitization. Key issues in the residential finance sector are creation of a standardized primary mortgage product and servicing mechanism. Dynamic growth is clearly in evidence for Mexican industrial areas such as Monterrey, Ciudad Juarez, Tijuana and Reynosa—and for resort locales including Cabo San Lucas, Puerto Vallarta, the Cancun corridor and Puerto Penasco, Sonora. Industrial expansion by multi-national corporations has jumped threefold in the border cities since 1996.

With this promising across-the-border real estate outlook in Mexico, what are the implications for that standard of American real estate investment protection- -title insurance?

Correspondingly, a role of critical importance is taking shape for American title insurance in Mexico because of the unique security offered to foreign investors. Title insurance already has established a beachhead south of the border, with at least three well known American title underwriters now in business there. (Please see the accompanying sidebar.) This particular article will view the title insurance market in Mexico through the experience of Stewart Title Guaranty Company, which has been issuing United States title policies on Mexican real estate for over four years. Patterned after the 1990 ALTA title insurance form, the United States contract of indemnity is issued by the Latin America Division of Stewart Title, only to foreign purchasers and lenders on property in Mexico. Though this policy is governed under the laws of the United States and is issued here, Stewart has received full approval from the National Commission on Bonds and Insurance in Mexico for a separate policy that

can be issued to Mexican nationals and Mexican companies. This Mexican title policy will not be available until Stewart creates its Mexican company. The Mexican policy will be similar to Stewart's U.S. policy, but will be governed under the laws of Mexico and subject to the National Commission's Department of Insurance.

Over the past three years, Americans in the Mexican title insurance vanguard have been actively engaged in educational communication emphasizing the importance of title coverage for the country's economic future. As these dramatic changes move closer to full reality, conveyancing in Mexico remains basically traditional through a land registration and title certification process similar to the Torrens system which, as many remember, received use in the United States during the early part of this century before being discarded as inadequate by most state and local governments.

While fundamentally sound, the Mexican conveyancing system has inherent, Torrens-like limitations that are especially troublesome in a vigorous market. The same kinds of title defects can arise in Mexico as in the United States, and there are other potential title hazards unrelated to American jurisdictions.

Examples of these additional title problems peculiar to our neighbor include "ejido" claims or expansions, labor liens, fideicomiso (Mexican bank trust entitlements), property regularization and permitted land use issues.

"Ejido" ownership of land in Mexico can be created by the federal government and entitled to citizens as a beneficial interest under Article 27 of the country's 1917 Constitution. "Ejidos" cannot be sold, subdivided, encumbered or mortgaged. In 1992, the national legislature passed a Constitutional amendment allowing for the privatization of "ejidos"- -a legal entitlement process allowing "ejidatarios" having these benefits to participate in, sell, lease, subdivide or joint venture with respect to land. Because this involves a title regularization process certified through the Office of Agrarian Reform, a title policy insuring against "ejido" ownership must be complete in the examination of all regularization documents and necessary certifications of entitlement. Stewart Title's Mexican title policy provides this coverage without a specific accompanying endorsement.

About the Author

Mitch Creekmore is director of business development for Stewart Title Guaranty Company's Latin America Division with offices in Houston. He joined the company in 1994 and works with Hector Barraza, vice president and manager for the division. A licensed Texas real estate broker with over 12 years of commercial experience, the author is responsible for development of the division's marketing strategy and implementation of its business plan. His responsibilities have included teaching Stewart Title's Mexico real estate course and networking with major law firms, banks, mortgage lenders and brokerage firms in Houston, Dallas, San Antonio, San Diego, Los Angeles, Phoenix, Tucson, Mexico City, Tijuana, Guadalajara, and Monterrey. He is a graduate of Louisiana State University, where he was all Southeast Conference in tennis as LSU's top player.

Notary, Registry Prominent

Key components in the Mexican system of land registration and title certification are the public notary (notario publico) and the public registry of the property (Registro Publico de la Propriedad)—the latter being the counterpart to the American county clerk's office.

In Mexico, the notary typically is an attorney with extensive real estate experience, appointed by the state governor to a specific district for life. The notary has governmental responsibility for legal acknowledgement of all real estate conveyances, preparation of conveyance documents, creation of wills, filing mortgage documents, and certifying corporate entities along with other legal processes. Included in the legal capacity of the notary concerning legal documents is acknowledgement of parties, preparation of the conveyance deed (escritura), a title search of the property (with primary reliance on the certificate of no liens as issued by the public registry, payment of all taxes including those for capital gains, consummation of the transaction and recording all necessary documents in the public registry).

Typically, there is one notario publico per 50,000 population within a given district.

The public registry is the central recording location for all public documents, which are filed by district. Copies of all recorded property documents can be provided by the registry, along with the certificado de libertad de gravamen (certificate of no liens), which shows liens or encumbrances affecting a particular property. The state of Tamaulipas has a single central registry for that entire state.

As was true in the United States before the arrival of title insurance, recourse in Mexico for a title defect can only be sought by initiating suit against the seller through a civil proceeding. Little, if any, protection or restitution is offered the buyer against the notary or public registry regarding loss from title defects. In Mexico's title assur-

From left, the author talks with Hector Barraza, vice president of Stewart Title's Latin America Division, and Rick Mata, human resources and facilities management, General Instrument de Mexico, near a new, Stewart-insured General Instrument manufacturing operation with a payroll of some 3,000 at Nogales, Sonora, Mexico.

ance system provided by the notarial certification process, buyers have little opportunity for remuneration if a loss occurs. The notary is not obligated to help with resolving a title problem and recourse against the notary for a mistake by the notary or anyone else is not grounds for repayment--unless there is proof of fraud, gross negligence or known misrepresentation in a Mexican court. In our neighboring country, the court system generally is a slow, expensive and an arduous process that most try to avoid. In real estate purchases, most of those unfortunate enough to experience loss absorb it and move on.

Beneath the official wrappings of the Mexican notarial certification process, there has been a growing awareness in recent times that no one individual or entity provides a monetary indemnifcation against title loss. That awareness included a realization that, if the real estate economy were to move into accelerated growth south of the border, it would be mandatory that investors in mortgages--especially foreign investors--receive assurance from a financially sound institution that titles serving as collateral for mortgages be marketable, with that assurance based on dollars instead of word of mouth assertion.

Major Title Insurers Square Off in Mexico Market

Chicago Title Insurance Company and First American Title Insurance Company also are among the known major competitors in the emerging title insurance market for real estate investments in Mexico.

Chicago Title has formed a reinsurance relationship with Grupo Nacional Provincial (GNP), Mexico's oldest insurance company. According to Jim Ryan, Chicago's senior vice president of international operations, the company's title policy has been filed with and approved by the Mexican Insurance Commission, and the first policies were issued in 1996. The policy is adapted to Mexican law and procedure from the ALTA policy issued in the United States.

Ryan said Chicago's relationship with GNP is considered important because of Mexican laws restricting a Mexican entity from insuring by foreign sources if the insurance sought is available in Mexico. Since most United States investors use Mexican subsidiairies or Mexican trusts to hold title to real estate, insurance is now directly available to these entities, he said. He added that Chicago Title has spent over two years developing its relationship with GNP, which produces title work through the Mexican company's exclusive agent, Title Insurance de Mexico (TIM), an operation with offices in Mexico City. TIM produces title commitments based on search and examination by approved Mexican attorneys and local notarios. According to Ryan, Chicago is involved in the final approval of the commitment and policy. He said the company considers its relationship with a firm of GNP's reputation and experience to be an advantage in a land claim or dispute arising in Mexico.

At First American, Senior Vice President Oscar Beasley reports the company has been insuring titles in all areas of Mexico for about 30 years through a network of contacts headed by World Title, located in Miami, FL. He said First American insures commercial and residential properties in Mexico, for fee or lease.

FIL Sets Stage

Enter FIL. With enactment of this law on December 28, 1993, some 95 percent of the economic prohibitions on foreign ownership in Mexican companies have been liberalized. Although foreign investment still is not permitted in some Mexican industries (electricity and mining are examples), FIL has greatly enhanced the outlook for those in the United States, Canada, Europe and the Pacific rim with respect to property in Mexico's "restricted zone"--50 km inland along the coast and 100 km along the border, along with all of Baja California, for commercial, industrial and hotel development. Under FIL, foreign investors can create wholly owned Mexican subsidiaries and have fee simple title to non-residential property vested in their Mexican companies.

Not only is there no requirement for foreign concerns to have Mexican partners in companies established south of the border—there also has been removal of the legal mandate that title be held by a "fideicomiso" (Mexican bank trust), eliminating the annual trust fee to the bank, based on asset value. Under FIL, the term of a trust was increased from a previous 30 to a current 50 years with 50-year renewals, ad infinitum.

In residential transactions within the "restricted zone," title still must be vested in the "fideicomiso," which provides an administrative process for property entitlement and not an ownership guarantee. Foreigners have held a common misconception that property held in a trust is a guarantee of good title. This certainly is not the case and further emphasizes the need for Mexican title insurance.

Insuring Foreign Investments

Stewart Title's policies are designed for foreign entities acquiring ownership interest in Mexican real estate and, as previously indicated, are not issued to Mexican nationals or Mexican companies. They have been prepared in owner's, loan, leasehold and mortgagee versions.

In general, Stewart's title coverages in Mexico are scheduled to cost about 1 percent of the insured value on an inclusive basis. In transactions where the coverage exceeds $1 million, this is projected as the rule rather than the exception.

What is involved in this cost structure? In order to issue a commitment and a subsequent title policy on Mexican land, a title search and legal opinion must be rendered by Mexican counsel. The opinion must recite a conveyance history back to 1917 or the sovereign of the land, with copies of all documents in the chain of title. A copy of the certificate of no liens, a letter of no affectation from the Office of Agrarian Reform or the local municipality regarding "ejido" status, and land use certification or municipal permits also must be furnished. Stewart Title's cost for the title search is $3,000 and generally is less than would be customary from Mexican law firms, due to the volume on an annual basis for any property in any location.

Stewart Title premiums for the Mexican coverage are fully negotiable and comparable to Texas Land Title Association regulated rates. As might be expected, price per thousand decreases with higher insured amounts. Rates can be reduced where multiple policies would be issued in a particular development, such as in residential subdivisions or condominium projects.

In its Mexican policies, Stewart Title takes the position of informing a proposed insured of issues affecting title via the commitment. The company would advise the seller of the same issues and indicate what must be resolved or provided in order to satisfy a particular exception. In some

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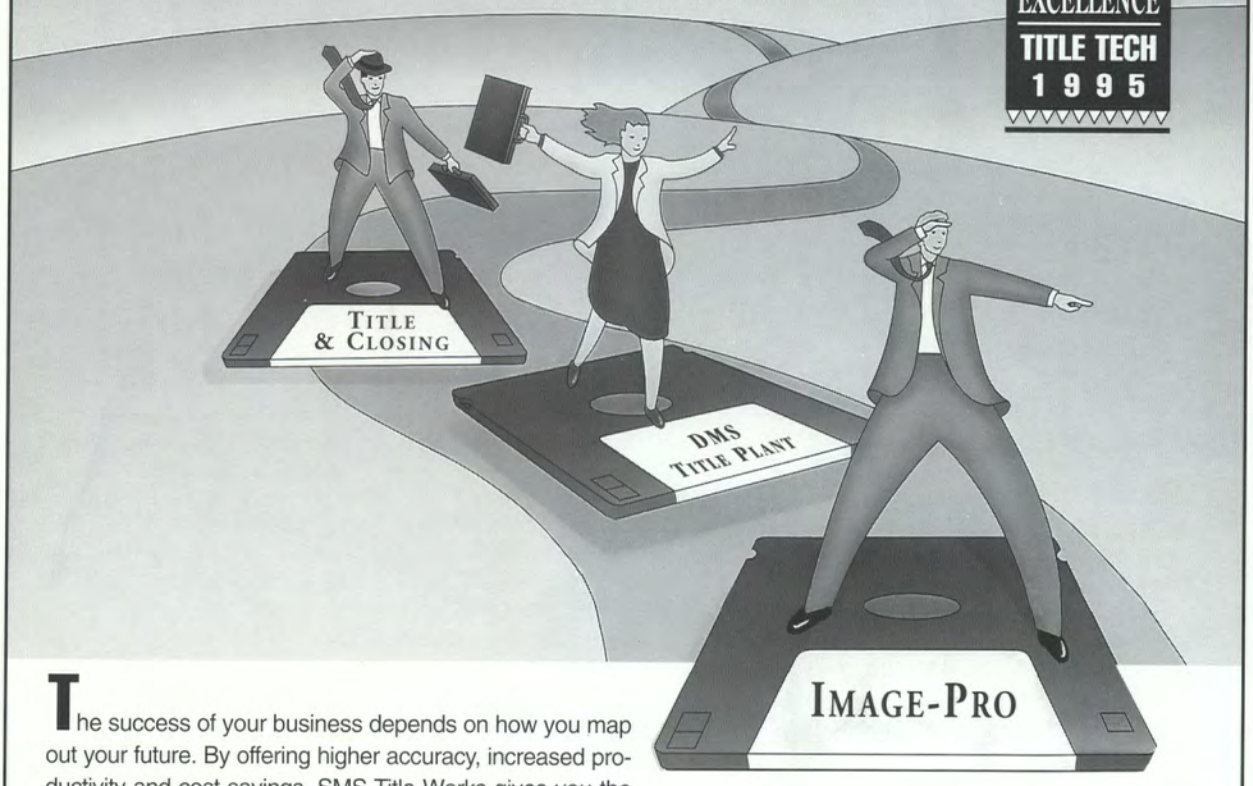
If You Travel On The Information Highway, You'd Better Plan For The Trip.

TECHNOLOGY AWARD OF EXCELLENCE
TITLE TECH 1995



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EDS Targets Replacement Of Sale/Closing Paperwork

By Christa Sladden
ACDS Marketing/Strategy

Editor's Note: The author is responsible for ACDS marketing and strategic industry relations at EDS in Plano, TX. She shares with *Title News* readers the following article, first in a three-part series on this EDS effort to bring to reality a paperless closing process. Richard A. Morelli, account manager for the ACDS project, is scheduled to speak during Title Automation 2000 on Wednesday, September 24, during the ALTA Annual Convention in Seattle.

EDS' Accelerated Closing and Delivery Services (ACDS) is a series of state-of-the-art electronic document management services designed to replace the current paper-based real estate sale and mortgage loan closing processes. The ACDS vision is to transform the real estate and finance industry by providing for legally binding electronic mortgage instruments, linking industry players together through a secure industry-wide electronic network, and eliminating much of the time, expense, and opportunity for error associated with the current manual processes. It will accomplish this through:

- Capture of original mortgage documents in electronic format at the source
- Protection of electronic documents to ensure authenticity, integrity, and non-repudiation utilizing cryptography technology
- Storage of electronic documents on a secure, centralized image repository
- Controlled access to electronic documents and system capabilities
- Routing of electronic documents to authorized ACDS participants
- Electronic communication among authorized ACDS participants

ACDS tracks all changes made to an electronic document. An electronic document is acceptable to legally bind a borrower to a mortgage loan transaction only if a solid trail of evidence exists to track it from inception. This security requirement has long kept the industry tied to paper. However, utilizing the highly advanced cryptography technology used by the U.S. military, ACDS ensures that electronic documents cannot be changed without detection.

Here's how it works.

Each ACDS participant uses an EDS-compliant, networked, desktop PC with Windows 95 and a security card (token) storing the participant's identification (digital signature). This workstation is connected to EDS' image repository, which stores original mortgage documents and acts as a clearinghouse. The lender provides authorization to the title company, closing agent, Realtor, investor, and any other facilitator to access information and original electronic documents on a loan.

From this point forward, any authorized participant may place faxed or scanned original documents into the repository, or they may transfer print files containing the documents into the repository. Then, depending on the type of access granted to them, participants may view or work on the documents from their workstation. The documents are always current because any changes saved by one participant are ready for use by the next.

When a participant completes work on a document, ACDS automatically:

- Verifies the participant's digital signature, and
- Seals the electronic document with it

Next, as an additional layer of security for those documents requiring a trail of evidence, ACDS also:

- Verifies that the document has not changed since sealing
- Appends a date and time stamp
- Seals the document and related information with the repository's digital signature

Borrowers use a stylus to "sign" closing documents, and ACDS applies the digitized signatures to the electronic documents.

ACDS complements a participant's internal imaging, workflow, origination, servicing, and other existing systems. ACDS offers basic workflow capability for organizing documents into folders, defining documents required for various loan products, and identifying those specific documents to which a participant is allowed access.

ACDS will shorten the real estate sale and mortgage loan closing processes, reduce mail, express service, and courier expenses for all participants, decrease the number of errors, and reduce the risk of frauEditors Note: The author is responsible for ACDS Marketing & Strategic Industry Relations at EDS in Plano, Texas. She shares with Title News readers the following article, first in a three part series on this EDS effort to bring to reality a paperless closing process. Richard A. Morelli, Account Manager for the ACDS project, is scheduled to speak during Title Automation 2000 on Wednesday, September 24, 1997, during the ALTA Annual Convention in Seattle, Washington.d associated with the industry's current manual process. It will link the industry together, streamline its processes, and usher in its next era of innovation.

ACDS development will be completed in fourth quarter 1997.

For more information, call Christa Sladden, ACDS Marketing, at 800/433-4055.

SMS Acquisition By First American

The First American Financial Corporation, parent of First American Title Insurance Company, has announced completion of its purchase of all of the operations of Strategic Mortgage Services, Inc. (SMS) and its subsidiaries, with the exception of the SMS flood certification business.

Those businesses acquired from SMS, a leading provider of real estate information services to the mortgage and title insurance industries, include the credit division, mortgage credit information service, property appraisal division, title division which provides title and closing services nationwide--primarily to second mortgage originators, and the settlement services business furnishing title plant systems and accounting services and closing software.

Datatrace Utilizing TIMS Software

Datatrace Information Services, Inc., subsidiary of Lawyers Title Insurance Corporation, and Title Data, Inc., Houston, have announced the licensing of Title Data's TIMS title plant software to Datatrace. As part of the accompanying project, the two concerns will convert some 130 million title plant records now in Datatrace's Richmond, VA, computer system.

Convention Seattle

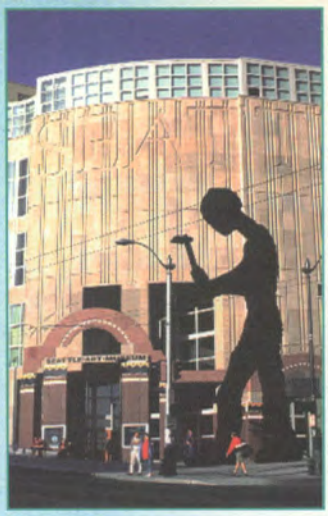
Northwest Splendor

By Leigh A. Vogelsong
ALTA Director of Meetings And Conferences

Updating on title industry issues in one of ALTA's most popular meeting locales will be on the calendar September 24-27 when the Association Annual Convention is held in the Emerald City of Seattle.

Unfolding under the timely theme, "Navigating through Change," the Convention will be headquartered at the Seattle Westin and will include a panoply of speaker luminaries and title management focused events. The hotel is located downtown, within walking distance of the celebrated Pike Street Market and waterfront area, and is about 30 minutes from the airport. For an overview of the proceedings, please see the accompanying Convention Calendar.

Headlining the guest speaker roster for the Convention is William J. Bennett, Ph. D, who was secretary of education during the Reagan administration, and who later becamedirector, Office of National Drug Control Policy. Since leaving government service, his writing, *The Book*



of Virtues, has sold over two million copies and was on the *New York Times* best seller list for 88 weeks. He, along with C. Dolores Tucker, has led a high profile public campaign against what they have characterized as Time Warner's sale of offensive and violent music. Most recently, he has joined Senator Joseph Lieberman (D-CT) and former Senator Sam Nunn, Georgia Democrat, in a similar campaign against daytime talk shows.

Dr. Bennett currently is the John M. Olin distinguished fellow in Cultural Policy Studies at the Heritage Foundation and is a co-director of Empower America. He also chairs, along with former Attorney General Griffin Bell, the Council on Crime in America.

As this is written, the remaining guest speaker roster is as follows.

- Gary Heil, authority on gaining employee commitment and not compliance, and on designing organizational structures consistent with goals and building customer loyalty. Author of *Leadership and the Customer Revolution*, he founded the Center for Innovative Leadership, a company dedicated to helping organizations implement strategies for continuous service quality improvement.

- Scott O'Grady, who in 1995 was shot down over Bosnia while flying a mission as an Air Force fighter pilot and survived for six days behind enemy lines before being rescued by Marines. His story is an inspiration to all who must overcome challenges.
- Michael Kinsley, well known national newsman with the *New Republic* and outspoken participant on television's "Crossfire" program before becoming a cyberjournalist with Microsoft Corporation, who will present observations on politics, culture and technology.
- Frank Abagnale, world-recognized authority on check fraud and secure documents after his personal experience and conviction while an amazingly ambitious impersonator and forger, who will conduct a special session on fraud/forgery. His appearance is sponsored by SafeChecks and his exploits are documented in his best seller, *Catch Me If You Can*. Abagnale was received enthusiastically as a speaker during the 1994 ALTA Annual Convention.

- Sheldon Hochberg and Philip Schulman, Washington attorneys who are widely respected for their expertise on the Real Estate Settlement Procedures Act, who will en-

gage in a point-counterpoint discussion, "RESPA: Love It or Leave It!"

September 26 has been reserved for Convention Educational Sessions, which will be presented on these topics: "Selling Your Business"; "Hiring and Keeping Generation Xers"; "Hot Topics"; "Escrow Management"; and "Don't Waste Your Time On-Line: How to Find Business and Professional Value on the Internet."

Again this year, the Convention will feature a presentation of title automation issues during Title Automation 2000 September 24 and 25. Besides the general program on automation, vendors will offer individual capability sessions centering on problem solving in title operations. For an example of the value these exhibitor sessions can hold for title management, please see the article on workflow modeling at Alliance Title & Escrow Corp., presented elsewhere in this issue of *Title News*. Also, Convention exhibits will be featured- -including those with the latest developments in title technology.

A Title Industry Political Action Committee luncheon, a spouse/guest program, various tours, a golf tournament and the Annual Banquet are other highlights. The golf competition will be held at Echo Falls Country Club, about 45 minutes from the hotel; a scramble format with shotgun start is planned.

Delta Air Lines (telephone 1-800-241-6760) and American Airlines (1-800-433-1790) have been designated as official carriers for those traveling to the Seattle Convention, and are offering discounted fares subject to applicable restrictions. Seats are limited. In order to receive a special fare, callers to Delta must refer to File Number N-1341; callers to American must refer to Star File Number S9647.

Further details will be released by the ALTA office meetings department as they become available (members may call toll free for updates, 800-787-ALTA, or visit the Association Home Page at http://www.alta.org). Registration fees have been set at $415 for members, $225 for companions.

Founded in 1851 on Puget Sound with mountain ranges to the east and west, Seattle is truly one of the most scenic locales in the nation. The Emerald City is known for its mild climate, with an average summer temperature of 73 degrees, and average annual rainfall is 36.2 inches. Following is a profile of the region's outdoor dimension, which stands ready to delight title professionals, their families and friends.

1997 ALTA Annual

Monday, September 22

3:00 p.m.-5:00 p.m.	Convention Registration

Tuesday, September 23

8:00 a.m.-12:00 noon	Convention Registration
2:00 p.m.-6:00 p.m.	
9:00 a.m.-5:00 p.m.	Land Title Systems Committee Meeting
9:00 a.m.-5:00 p.m.	Title Insurance Forms Committee Meeting
9:00 a.m.-5:00 p.m.	Education Committee Meeting
2:00 p.m.-4:00 p.m.	Government Affairs Committee Meeting
6:00 p.m.-9:00 p.m.	Public Relations Committee Meeting

Wednesday, September 24

8:00 a.m.-2:00 p.m.	Convention Registration
4:00 p.m.-7:00 p.m.	
8:30 a.m.-1:00 p.m.	Title Automation 2000 General Session/Luncheon
9:00 a.m.-11:00 a.m.	Directory Rules Committee Meeting
9:00 a.m.-12:00 noon	Agents Section Executive Committee Meeting
9:00 a.m.-12:00 noon	Underwriters Section Executive Committee Meeting
9:00 a.m.-12:00 noon	Title Insurance Forms Committee Meeting
9:00 a.m.-5:00 p.m.	Lender and Life Counsel Meeting
9:00 a.m.-5:00 p.m.	Associate Member, Legal Division Seminar
10:00 a.m.-12:00 noon	Past Presidents' Brunch
11:00 p.m.-4:00 p.m.	Affiliated Association Officer-Executive Brunch and Seminar
1:00 p.m.-5:30 p.m.	Exhibitor Capability Sessions
1:30 p.m.-3:00 p.m.	Indian Land Claims Committee Meeting
1:30 p.m.-5:00 p.m.	ALTA Board of Governors Meeting
5:30 p.m.-6:30 p.m.	First Time Convention Attendee Mixer
6:00 p.m.-6:30 p.m.	Spotlight on Exhibitors
6:30 p.m.-8:00 p.m.	Ice Breaker Reception- - Exhibits Open

Convention Schedule

Thursday, September 25

7:00 a.m.-8:15 a.m.	All About ALTA- -Orientation Session and Continental Breakfast
7:30 a.m.-8:15 a.m.	TIPAC Board of Trustees and State Trustees Meeting and Breakfast
8:00 a.m.- 1:30 p.m.	Title Automation 2000 Exhibits Open/Continental Breakfast
8:00 a.m.-2:00 p.m.	Convention Registration
8:30 a.m.-11:30 a.m.	General Session
11:30 a.m.-12:00 noon	Section Meetings
12:00 noon-1:00 p.m.	Buffet Lunch in Exhibit Hall
12:15 p.m.-1:30 p.m.	TIPAC Luncheon
1:15 p.m.-4:30 p.m.	Exhibitor Capability Sessions
1:30 p.m.-3:30 p.m.	Fraud Presentation- -Frank Abagnale
2:00 p.m.-4:00 p.m.	TIAC Shareholders/Board of Directors Meeting
2:00 p.m.-4:00 p.m.	M&O/R&R Committee Meeting
5:00 p.m.-6:00 p.m.	Exhibitor Appreciation Event (for exhibitors only)

Friday, September 26

7:00 a.m.-8:15 a.m.	Abstracter/Agent Research Subcommittee Breakfast
7:00 a.m.-8:15 a.m.	SLRAC Meeting and Breakfast
8:00 a.m.-1:30 p.m.	Title Automation 2000 Exhibits Open/Continental Breakfast
8:00 a.m.-2:00 p.m.	Convention Registration
8:15 a.m.-11:30 a.m.	ALTA Educational Sessions
9:45 a.m.-10:15 a.m.	Exhibitor Prize Drawings/Break
9:30 a.m.-11:30 a.m.	Companion/Guest Brunch
11:30 a.m.-5:45 p.m.	Golf Tournament
12:00 noon -1:00 p.m.	Buffet Lunch in Exhibit Hall

Saturday, September 27

8:00 a.m.-1:00 p.m.	Convention Registration
7:30 a.m.-8:30 a.m.	Sports Award Breakfast
8:30 a.m.-11:45 a.m.	General Session
1:00 p.m.-4:00 p.m.	Agency Management Round Table Discussion Groups
1:30 p.m.-2:30 p.m.	Educational Session- -ESOPs
6:15 p.m.-11:00 p.m.	Annual Banquet

Outdoor Recreation? Seattle Has It!

With fresh and salt water nearly surrounding the city and forests and mountains less than an hour's drive away, Seattle offers a wealth of sports and recreation activity. The wide range of facilities available encourages participation by almost any visitor- -including someone with just a few hours of free time.

Among the leading recreational offerings are the following.

Boating. Marinas and boat houses in and around Seattle have rentals on every kind of craft from a canoe to a fully-crewed yacht. Canoeists favor paddling in the placid bayous of the University of Washington Arboretum, on Lake Union or Green Lake. Big Lake Washington, east of the city, is a favorite among power boaters, anglers and canvas sailors. For visitors who like white water, river rafting firms in Seattle will arrange exciting runs down rivers in western Washington.

Fishing. Fighting trout are in abundance in surrounding King County streams and lakes. Salmon await those who prefer boat rentals and angling for the big ones in Puget Sound and Lake Washington.

Hiking. Hundreds of miles of trails that are ideal for easy hikes or overnight backpacking expeditions can be found in national forests that blanket the eastern half of King County. The Mountaineers and Sierra Club have offices in Seattle and offer guided trips. Equipment can be rented at a number of outdoor stores in the city.

Bicycling. Two splendid bicycle paths provide miles of level, traffic-free access and a number of local shops rent cycles. The 12 1/2-mile Burke Gilman Trail begins near the University of Washington, rounding the northern end of Lake Washington. The Sammamish Trail picks up some four miles farther along, running nearly 10 miles to Lake Sammamish. Heading south toward Auburn Redmond and Kent is the Green River Trail. Maps of these and other routes are available from the city parks and recreation department.

Jogging. Seattle's waterfront and the three-mile trail around Green Lake are jogger favorites. Maps and advice on inner-city jogging are available at local hotels.

Scuba Diving. There is much underwater exploration to fascinate scuba divers in Puget Sound. Advice and gear rental are available at the city's dive shops.

Horseback Riding. Riding horses can be rented at stables in King County. Equestrian trails are nearby- -in Issaquah, Renton, Ma-

ple Valley and Auburn.

Indoor Sports. The city and its suburbs offer sports, athletic and tennis clubs—as well as parks and recreation department facilities with indoor tennis courts, racquetball courts, jogging tracks, exercise equipment and swimming pools. Frequently, visitors are allowed guest privileges at private facilities for a modest fee.

Tennis. The parks and recreation department has 151 outdoor tennis courts in the area, 71 of which are lighted. Also operated by the city is the Seattle Tennis Center (call 684-4754), which has four outdoor and 10 indoor courts.

Boren Designated Honorary Member

Members of the ALTA Board of Governors have elected James L. Boren, Jr., to Honorary membership in the Association. The award is the highest honor awarded by ALTA.

Presentation of the Honorary membership will be during the Association's September Annual Convention in Seattle. The new honoree attended his first ALTA Convention in 1955.

Boren served as ALTA president in 1980-81 and is a past governor of the Association. He has been active on committees of the Association including the Government Affairs Committee. In 1984-85, he returned to ALTA service as Bylaws Committee chairman in a period during which the Bylaws were extensively reworked and the Executive Committee/Board of Governors restructured.

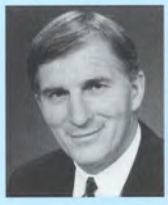
A past president of the Tennessee Land Title Association, he joined Mid-South Title Insurance Company, Memphis, in 1953, and became its president in 1973 and chief executive officer in 1985. Mid-South was founded by his father.

After Lawyers Title Insurance Corporation acquired Mid-South in 1978, Boren was elected a vice president of Lawyers the following year and became senior vice president and regional manager in 1991.

Among his many activities at the state level, Boren joined with the president of the state bar association as co-chairs of a Tennessee Department of Commerce and Insurance Commissioner's Committee on Title Insurance that drafted a report serving as the basis for major rewriting of that state's title insurance law. Immediately following, he was a member of the commissioner's related implementation committee.

Annual Convention Guest Speakers

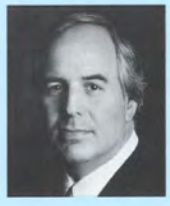
William J. Bennett, Ph.D
Former Secretary of Education
(September 27 General Session)



Gary Heil
Employee Commitment Authority
(September 25 General Session)

Scott O'Grady
Former Combat Pilot
(September 25 General Session)

Michael Kinsley
Microsoft Cyberjournalist
(September 27 General Session)



Frank Abagnale
Authority on Fraud
(September 25 Special Session)

Focusing Change with Workflow Modeling

Harnessing new customer needs to surging technology became a manageable reality at Alliance Title & Escrow through modeling that visualizes the company's entire title/escrow workflow in a perspective linking each element to the entire process

By C. T. Hemphill

Changing title customer needs and surging technology have made greater efficiencies a critical priority for Alliance Title & Escrow Corp., an organization formed two years ago by merging three smaller companies with operations throughout Idaho, Wyoming and Montana. As the merger has facilitated a new regional delivery system, these priority areas have generated major impact during management's consideration of improvements among the 23 offices and nearly 300 associates now comprising the company.

Making it abundantly clear that our organizational changes will need to be far-reaching in scope are these developments:

- The traditional customer need for many of the reports and title policies we provide is different. Bankers and other lenders are basing more of their lending decisions on risk management, rather than the desire to secure a valid and enforceable first lien. Lenders are asking us to provide and validate information that will help them make decisions; we no longer have the option of taking full title insurance orders without accepting their requests for lesser products as well. With this change, revenue per order decreases substantially, so we need gains in efficiency to realize acceptable profitablity levels. The cost, quality and speed of our delivery system therefore becomes much more strategic.

- Integration with our customers and underwriters through sophisticated systems and telecommunications will force us to migrate into our customer's production routines, and we must do this cost effectively. Eventually, we most likely will move into helping our lenders and Realtors with their production processing.

Solving the challenges implicit in this climate of change requires implementation of a new class of software. But, by itself, technology is just another place to throw money in hopes that something good may ultimately result. Margins in the title industry no longer allow this approach. Before making a substantial investment in new technology, we needed a clear plan for accomplishing the goals of Alliance Title & Escrow.

That clear and definitive plan has been achieved through workflow modeling.

Solution Emerges at Convention

Our movement toward a workflow model began last fall during the ALTA Annual Convention in Los Angeles, when I attended an educational session on the subject conducted by Ron Nelson, consulting partner for InfoStream (formerly Advanced Escrow and Title Systems). During the session, I learned workflow is a sequence of actions or steps used in business processes, and that title and escrow currently include fairly predictable business processes.

The core elements in workflow, it was pointed out, are roles, rules, routes and process. A role is a logical representation of a person or application in the process. A rule is conditional logic determining the status and next step in the route for the workflow design. A route is a definition of what flows to whom and in what sequence. (Routes can be sequential: A to B to C; parallel, A to B, and C to D; and conditional, if mortgage is greater than $750,000, then send to E- -otherwise, send to B.) Process is a series of specific steps needed for completion of a specific transaction type. (Transaction types, steadily gaining in importance for the title industry, generally fit into two broad categories: Sale or Refinance- -which include FHA, VA, insured conventional, uninsured conventional, real estate contract, REO, etc.)

InfoStream showed the Los Angeles educational session participants a computerized workflow model that the organization had developed for title and escrow operations. The model offered a simplified visual picture that facilitated comprehending the entire title/escrow workflow- -how each detailed element related to the entire process. The model could be easily changed, with a new graphic picture of the workflow emerging each time supporting information was modified.

After the Convention, members of our management team at Alliance Title & Escrow debated whether to bring InfoStream on board to help with our workflow modeling- -or whether we should do the work ourselves. Finally, we opted for the services

The author is president of Alliance Title & Escrow Corp., Boise, ID, and began his title career as a poster in 1970. A member of the Oregon Bar Association, he joined AllianceTitle in 1995. His background includes 27 years with leading title companies- -seven years as a county manager.

of the consultant because of the importance we placed on a separate and objective evaluation. When the modeling began, it proved fascinating to compare the actual cost of producing an order with each of the components making the cost reach its current level. As a result of the modeling, we know what our costs are, and what elements need to be targeted with new technologies, training, new processes and associates with broader abilities.

Through our workflow model, we now have the opportunity to bridge our past processes into the future, with the capabilities of the appropriate software package.

Beginning in Two Offices

Our workflow project was simultaneously launched in two offices, so there would be solid comparative benchmarks from two sources, and this proved very worthwhile. The first stage was an orientation for the Alliance Title & Escrow leadership team, followed by meetings with associates who actually do the work. Next came interviews with production management and staff.

As the process continued, every finding was validated with more than one person to assure accuracy and consistency. The analysis was conducted step by step, and person by person, culminating in a detailed process graphically depicting a completed title and escrow closing process as it currently exists.

Each element of the process was dissected into small sets of related objects, with the associated labor hours, labor rate, interdependent relationships with other parts of the process, and, ultimately, start to finish duration. Following collection of all the data, it was entered into a workflow database to allow manipulation. Refinements and adjustments then were made in consultation with Ron Nelson.

Next, the findings were tied back to our financial statements for offices concerned. As processes were linked to financials, additional questions surfaced that ultimately produced the depth we needed to evaluate return on investment scenarios, and establish workflow compression targets.

After that, meetings were held with the same Alliance Title & Escrow associates mentioned earlier, to discuss changing the model. Facts produced in these brainstorming sessions were used to modify the model with supporting cost, duration and resource information.

Our company team now can see how to reduce title and escrow production costs by 25 percent. The required production software must be neutral to the process, being adaptable to present and future methods. Workflow centric is a mandatory characteristic for the new production software - - because the workflow required to support the myriad of future title products will be driven by transaction type; profitability will mean matching the right process to unique order requirements. These will change with time and must be supported by software that can be easily adapted to new processes without costly programming alterations.

In our workflow analysis, we found nearly all production processes--and therefore costs, turnaround time and fees- -are driven by two variables: transaction type and customer. Now on the horizon is whether we can streamline our processes to key off the type of order being processed, so we can dramatically affect financial results. Historically, those of us in the title business have been less concerned with making sure the amount of work performed exactly matches the type of order processed. Instead, a traditional title operation has been more likely to center on the title plant and the research related to a specific piece of real estate. In the new paradigm, many orders will no longer require property-related research.

Our future plans call for follow-up projects with InfoStream to tie costs to order type, tie order type to revenue, and ultimately profitability to specific customers so we can evaluate the value of a specified customer relationship.

In the meantime, we have launched two additional projects with InfoStream. The first will establish technical specifications for the integration of our production systems with the plant; the other will provide a thorough plan and project for making the technical transition to new production software later this year.

As we continue, discoveries are being made that workflow can be compressed by grouping related objects into one worker's hands, eliminating costly handoffs, the associated lost files, and the accountability for order turnaround. The traditional workstation-to-workstation production process that most of us build around can ultimately give way to a transaction-driven process where one person takes the order throughout. Title and escrow ultimately can be combined into a single process because the data required to produce and process a title order already are included in the escrow order.

Our future workflow process will build on value. Individuals at each stage will add value to the process--by making judgments, or by adding and editing new information. A workflow application provides an environment that both captures and moves information through a work process, assuring that each member of the work group can access those pieces of information required to perform an individual part of the job. Workflow systems also provide a context in which work is performed, allowing individuals to concentrate on the work at hand, rather than on the process.

By tying information directly to the business process, workflow software has the potential to return significant value on investments made in information technology. Without a formal workflow model, this would not be possible.

Workflow modeling, when tied back to the profit and loss statement, provides the foundation that historically was missing while removing a substantial portion of the risk associated with large technology investments.

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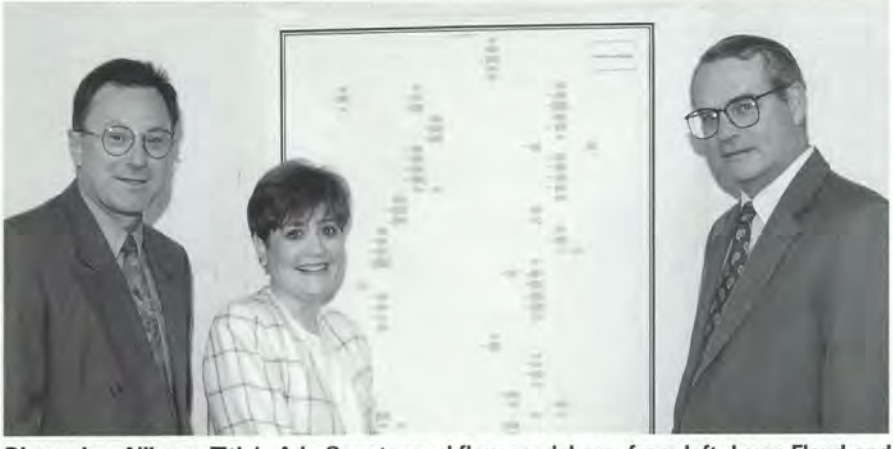
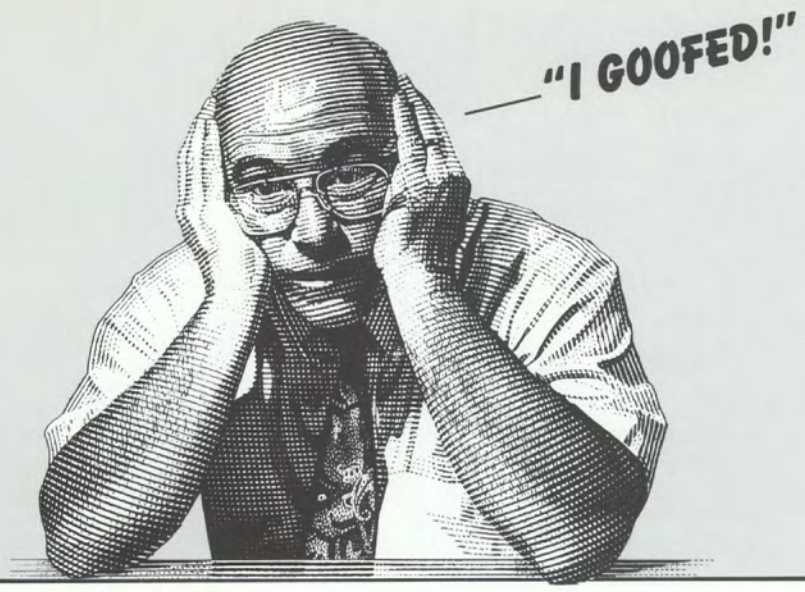


Discussing Alliance Title's Ada County workflow model are, from left, Larry Floyd and Dana Divin, title department manager and general manager, respectively, Ada County office, and C. T. Hemphill, president. Modeling was started at two sites simultaneously.



A mistake could cost you <u>everything</u>. That's why there's E & O Insurance from TAM.

Choose the program designed especially for the Title Industry.
The program that offers proven protection with features like these:

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Mid-Year Combines Updating, Relaxation

It was an unforgettable combination. Being brought up to date on title industry developments, expanding knowledge in the area of title business management, and soaking up the sun on the beaches and golf courses of Puerto Rico. As these photographs attest, the relatively short flight from the eastern seaboard to San Juan brought a wealth of informative and enjoyable experience during April's ALTA Mid-Year Convention.

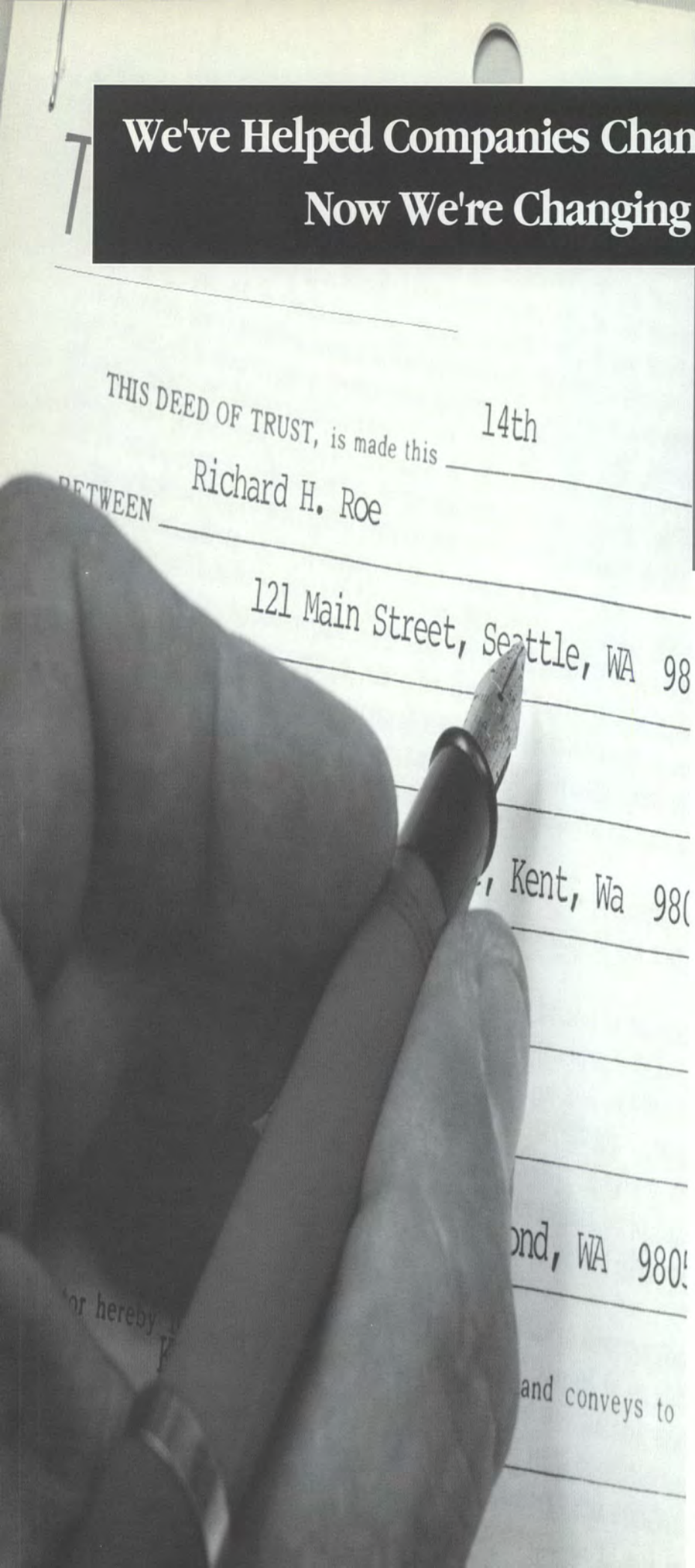
From opening registration and the first round of committee meetings to adjournment , it was clear that attendees found this journey to the Caribbean more than exceeded expectations for an excellent meeting program and needed relaxation.

ALTA President Dan Wentzel, left, welcomes R. K. Arnold of MERS to the Convention in the top photograph. At lower left are Title Industry Political Action Committee Chairman Mike Wille, right, and House Ways and Means Committee Member Jerry Weller (R-IL). At right, Jack Rattikin III, left, visits with Joe and Linda Parker, while John Casbon, right, talks with National Association of Mortgage Brokers President Jan Hicks.

Buckeye issues could well be the topic here for Roger Connor, right; Stanley Friedlander and Donna Shaw.

In second row, Nelson Lipshutz, left, and Ken Pond are in the photograph at left. Steve Evans, left, and Bill Margiotta enjoy a lighter moment, pictured at right. Mark Bilbrey, left, and Ted Volz discuss employee benefits as a recruiting/retention tactic, third row, left. Charlie Foster, right, and Gerry Faller find time for conversation, third row, right, as do Harold Bensch, left, and Jim Horner, fourth row, left. Loren Harrell, left, and John Stanley discuss developments in title automation systems in the photograph at bottom, right.

We've Helped Companies Change Titles Since 1987. Now We're Changing Our Own.



Advanced Escrow and Title Systems is now InfoStream.

A lot has changed since we started selling title and closing software in 1987. Today you have to work faster and more efficiently to maintain profitability.

At **InfoStream** (formerly Advanced Escrow and Title Systems), we're changing to help you meet these challenges. With flexible, new software tools and support services that deliver real results, now and in the future. But don't take our word for it. See some of these results for yourself in the article entitled **"Focusing Change With WorkFlow Modeling"** inside this magazine. Then come by our booth at the ALTA trade show.

And if you can't make it, just **call 1-800-877-7667**. We'll be happy to tell you how InfoStream can help your bottom line.

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NAMES IN THE NEWS


Dinkins


McCann


Zerwekh


John


Vaughn


Cox


Stopczynski


Owen

Michael Dinkins and **John P. McCann** have been elected to the Lawyers Title Insurance Corporation board of directors. **Dinkins** has more than 20 years in leadership and management positions, including service as chief financial officer for leading printing and real estate operations. **McCann is** chairman of the board, president and chief executive officer, United Dominion Realty Trust, Inc., a real estate investment trust.

Recently named senior vice presidents at Lawyers Title are **Edward J. Zerwekh**, Pasadena, CA (Pacific states operations manager); **James M. John**, also Pasadena (Pacific states sales manager); **Billy F. Vaughn**, Dallas (southwest agency manager); **Randall E. Cox**,


Marsh


Johnson


Persaud


Lanier


Saylors


Wenger


McCall


Ward


Bartolo


Brown


Salomone


Keiser


Reidel


Foo


Unkel


Weiner


O'Neill


Odorizzi


Webster


Jones

also Dallas (southwest operations manager); **Richard A. Stopczynski**, Chicago (midwest sales manager); **Ronald W. Owen**, Pittsburgh (northeast agency manager); **Mack J. Marsh**, White Plains, NY (northeast operations manager); **John R. Johnson**, Atlanta (southeast agency manager); and **Frederick R. Persaud**, Miami (southeast operations manager).

Also, at Richmond headquarters, new vice presidents are **David K. Lanier** (training and quality assurance) and **Pamela K. Saylors** (National Division). **Holly H. Wenger** has been named corporate counsel there. Others elected vice president are **J. Scott McCall**, Chicago (midwest agency manager); **Dana R. Ward**, New Orleans (southeast sales manager); and **Michael C. Ridgway**, Rockville, MD (northeast sales manager).

Brian J. Bartolo has joined Commonwealth Land Title Insurance Company and Transnation Title Insurance Company as vice president--national accounts for their Commonwealth OneStop network, Garden City, NY. New Commonwealth vice presidents are **Nancy N. Brown** (remains in charge of division claims), Philadelphia, and **Peter deWolf Smith** (also promoted to agency manager), Baltimore.

Beth L. Thomas has been promoted to Commonwealth assistant vice president, Philadelphia, while **Rocco Salomone** and **Judith Keiser** have been named senior title officer and escrow officer for the company, Linwood, NJ, and St. Paul, respectively. **Lynn M. Reidel** has been named county manager for Transnation Title, Tacoma.

Elliot S. Foo has been appointed vice president and general manager, Transnation Title Insurance Company of New York, a new subsidiary with headquarters in Rochester. **William T. Unkel** has been named president of another subsidiary, Commonwealth Land Title Insurance Company of San Antonio.

New vice presidents for the Chicago Title family of insurers include **Marc Weiner** (remains New York state counsel, Chicago Title Insurance and Ticor Title Guarantee); **Michael O'Neill**, **Michael Odorizzi**, and **John Webster**, all Chicago Title and Trust; and **Jeffrey Pallin**, Ticor Title Guarantee (remains full service district manager, Buffalo).

Jeffrey Meyer has been elected assistant vice president, Chicago Title, East Providence, RI (remains branch manager), and **Samuel Shiel** has been similarly promoted (remains National Business Unit counsel, New York). **Wanda Custer** and **Grover Ellis** have been named resident vice president, Chicago Title, Iselin, NJ, and Orlando, respectively, remaining New Jersey agency manager and underwriter.

Also at Chicago Title, **Rick Marsh** has been elected senior counsel, Arizona operations (remains assistant vice president) and **Sandy Miller** now is account servicing department manager, both Phoenix, while **Joanne Jones** is interim manager, San Francisco National Business Unit, and **Jeff Gross** is Loop residential closing department manager, Chicago.

Jon F. Reynolds, Jr., has been named vice president--regional claims counsel for First American Title Insurance Company in Arizona.

James Stipanovich, president, has

Second in a series of educational notices.

*Questions to ask **your** E&O insurance company:*

2. How long have you been insuring title professionals?

E&O insurers come and go. Here today, gone tomorrow! Two of the largest commercial insurers, in fact, ceased insuring title professionals in 1995 alone!

Naturally, this creates potentially serious coverage problems for title agents and abstracters. To solve this revolving door problem, the American Land Title Association (ALTA) created TIAC in 1987 to provide a stable long-term E&O market for title professionals.

Now entering our tenth year, we invite you to join hundreds of other leading title professionals in the only E&O insurer wholly owned and governed by title professionals! We very much appreciate those who have placed their confidence in us, and we invite other title professionals nationwide to make TIAC *your choice* in professional liability insurance.

Call us—we're here to serve *you!*

TIAC

Your Company **1-800-628-5136** ***Your Choice***

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Reynolds


Hunter


Hargrove

been named chief executive officer and president, Midland Title Security, Inc., Cleveland. He is a past president of the Ohio Land Title Association.

Robert J. Swadey, a founder of Midland Title and retiring CEO, continues as chairman of the board. **William N. Raeder** has joined the company as assistant marketing director, and **Mary Spinelli** is a new marketing representative for the organization.

Daniel J. Hunter has joined Ohio Bar Title Insurance Company, Columbus, as regulatory counsel.

New president of Stewart Title Services of Indiana is **Steven W. Hargrove**, who manages the operations in Hamilton and Marion counties.

Recent promotions at Investors Title Insurance Company include **Richard C. Owen**, to regional operations officer, and **Danita Minor** to marketing support manager.

Cindy Neugart has been named general manager, Deschutes County (OH) operations, AmeriTitle. **Lori Black** has retired after 20 years with the company.

1997 AFFILIATED ASSOCIATION CONVENTIONS

July

10-12 **Illinois**, French Lick Resort & Spa, French Lick, IN

17-19 **Utah**, Sun Valley Lodge, Sun Valley, ID

20-22 **Michigan**, Grand Traverse Resort, Traverse City, MI

August

7-9 **Montana**, Marina Cay Resort, Big Fork, MT

14-16 **Idaho**, Shore Lodge, McCall, ID

14-16 **North Carolina**, Williamsburg Lodge, Williamsburg, VA

17-20 **New York**, The Hershey Hotel, Hershey, PA

20-23 **Wyoming**, The Chutes Best Western, Douglas, WY

21-23 **Indiana**, Radisson At Keystone Crossing, Indianapolis, IN

21-23 **Kansas**, Topeka West Holidome, Topeka, KS

21-23 **Minnesota**, Radisson Arrowwood Resort, Alexandria, MN

September

4-6 **Missouri**, Holiday Inn Hotel & Convention Center, Joplin, MO

4-7 **Maryland**, Princess Royale, Ocean City, MD

7-9 **Ohio**, Holiday Inn, French Quarter, Toledo, OH

10-12 **Wisconsin**, The Regency Suites, Green Bay, WI

11-13 **Dixie**, Grand Hotel, Point Clear, AL

11-13 **North Dakota**, International Inn, Minot, ND

24-27 **Washington**, (to be held at Seattle Westin during ALTA Annual Convention)

October

8-10 **Nebraska**, Interstate Holiday Inn, Grand Island, NE

November

5-7 **Arizona**, (Site to be announced), Prescott, AZ

5-8 **Florida**, Ponce de Leon Resort, St. Augustine, FL

December

4-5 **Louisiana**, (Site to be announced), New Orleans, LA

Property Profiles Accessible Online

Commonwealth Land Title Insurance Company and Transnation Title Insurance Company are offering subscribers access to a full range of California and Arizona real property information- -24 hours daily, seven days a week- -through their NiteOwl web site on the Internet. The service is designed for real estate professionals including brokers, agents, lenders and attorneys.

NiteOwl is the first service to offer complete listing kits online, according to the companies, and at present is limited to California and Arizona subscribers. Transnation Title is an affiliate of Commonwealth.

Subscribers can request data from NiteOwl in a variety of formats, including property profiles, comparable sales, plat maps, street maps, demographics, local area service and data file downloads, according to an announcement from the companies. The information can be delivered by e-mail, fax, on-line view or a combination of all three.

NiteOwl also provides customers with the "Virtual" Order Desk, allowing them to open title orders; track orders processed; transmit their preliminary title reports, title commitments or title policies online and print them on their own printers, the announcement said. The service enhances the title companies electronic connectivity with customers, providing them with quick and convenient access to a variety of information arranged in an integrated format.

A major strength of NiteOwl, according to the companies, is providing complete property profiles online.

NiteOwl also provides links to related web sites, including those of real estate companies, lenders, Fannie Mae, Freddie Mac and multiple listing services throughout California and Arizona, the companies added.

The NiteOwl web site may be visited at http://www.niteowl.net, or the operation may be called toll free at 800-877-8007.

Third in a series of educational notices.

*Questions to ask **your** E&O insurance company:*

3. How ***committed*** are you to the title industry?

Large commercial insurers only ***dabble*** in E&O insurance for title professionals. Let's face it—there aren't that many of us! As a result you're probably not as important to them as all the butchers, bakers and candlestick makers they insure—there are a lot more of them!

At TIAC, we *only* insure title agents and abstracters, so you get the best service, coverage and claims handling there is!

Plus, we've been around longer than almost any other title professionals E&O insurer and we're the *only* E&O insurer wholly owned and governed by title professionals! Call us and find out what ***commitment*** really is! We invite title professionals nationwide to make TIAC *your choice* in professional liability insurance.

Call us—we're here to serve *you!*

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September 24, 1997 **Seattle, Washington**

Title Automation 2000

- Title Experts on Electronic Commerce
- EDS on the Future and Paperless Closings
- Microsoft: "Why should you upgrade from Windows 95 or NT?"

ALTA Technology Forum & Expo

Come hear what's happening with technology in the industry. Freddie, Fannie, MBA, Lenders, and Title Experts share strategies for planning systems for the 21st Century. Expo Vendors showcase products to keep you competitive and prepare your systems to capitalize on industry initiatives and innovations.

Orlando, Florida **February 1 - 3, 1998**

TECHNOLOGY*bytes*

New Event Announced: The 1998 ALTA Technology Forum/Expo!!

The ALTA Technology Forum and Expo is THE event to attend in 1998 for reliable and strategic technology information designed to help you put your company's systems on the cutting edge. ALTA will gather technology manufacturers, developers, and other experts together on February 1-3, 1998, in Orlando, FL. You'll get information from the real source--speakers from the Mortgage Bankers Association, Freddie Mac, Fannie Mae, EDS, and your customers in the lending community will share what you need to know to stay competitive and gain market share by planning for systems that will support pending technology initiatives like MERS and ACDS. Also, learn the best way to implement electronic commerce technology in your operation. Programming is still in development, so please contact kelly_throckmorton@alta.org with your session ideas and suggestions or for pre-registration and Expo vendor information.

Title Automation 2000 Program Shaping Up

Now that you've marked your calendar for Wednesday, September 24, 1997 - - **it's time to register!!** Title Automation 2000 is part of the ALTA Annual Convention at the Westin Seattle Hotel in Seattle. Your registration will include sessions on **electronic commerce** - - Why EDI may not be the best method for your company and customers; **ACDS** - - A demonstration of EDS's "Accelerated Closing and Delivery Service" and discussion of the possibility of paperless closings (see separate article, page 25, this issue of *Title News*); and **To Upgrade Or Not To Upgrade** - - A discussion answering the question, "Why upgrade from Windows 3.11 to '95 or NT?" Also included in your registration will be the opportunity to network at the ALTA Annual Convention's Ice-Breaker Reception and put your knowledge to work as you visit the Title Automation 2000 exhibit booths. Please visit the ALTA Home Page (http://www.alta.org) for 2000 Registration or contact kelly_throckmorton@alta.org with any questions.

ALTA Systems Committee

The Committee met in Chicago June 19-20, and discussed programming for Title Automation 2000 at the 1997 ALTA Annual Convention and the new 1998 ALTA Technology Forum and Expo. Also on the Committee's agenda were industry technology initiatives like MERS and ACDS, plus trends in the **electronic commerce** arena. ALTA President-Elect Malcolm Morris will be meeting with the ALTA staff in Washington at the end of July to appoint the 1997-98 ALTA Land Title Systems Committee (and other ALTA Committees as well). If you are interested in serving, please write to President-Elect Morris at ALTA Headquarters, 1828 L Street, N.W., Washington, DC 20036, by July 18, or send your request by e-mail to kelly_throckmorton@alta.org.

Upcoming Industry Technology Meetings:

MBA EDI Work Group Meetings
September 15-19, Location To Be Announced

ASC X12 Committee Meeting
October 5-10, Los Angeles

Title Automation 2000
September 24, Seattle

New ALTA Event

ALTA Technology Forum and Expo
February 1-3, 1998, Orlando

QUESTIONS? COMMENTS? SUGGESTIONS?

Contact: kelly_throckmorton@alta.org, 800-787-ALTA (phone), 888-FAX-ALTA (fax)

CONCENTRATION
continued from page 18

the past decade is that financial institutions that do *not* go out to explore new territories are even *more* likely to get into trouble.

Many underwriters have learned that lesson, and more should , for two reasons. First, it may be the easiest way to grow. Second, even if you don't invade the other guy's territory, the other guy is going to invade yours. Increasingly, that invasion is going to be fueled not by marketing razzma-tazz, but by real cost and service advantages driven by scale economies. If you are going to be able to fight back effectively, you're going to need to be big enough to exploit the same scale economies.

Fortunately, the geographic diversification of the major originators is automatically providing the local underwriter and agent with much of the intellectual capital needed to match this expansion. Before re-engineering lost its status as the buzzword of the day, a story made the rounds to the effect that "An optimist says the glass is half-full; a pessimist says that it is half-empty; a process engineer says: Looks like you've got twice as much glass as you need. "It is just this kind of inversion of conventional thinking that applies here. It is a substantial amount of work to adjust to the procedures of a new lender or originator entering your market. But today the new lender more likely than not operates many other places too, and uses standard procedures company-wide. Your investment in learning the new procedures in your area, which you must make, can also be applied everywhere. Furthermore, as the documentation demands of the secondary market continue to explode, the proportion of your total work load which such lender-specific work constitutes is increasing.

There is another lesson to be learned from The Music Man. He didn't ride out into the wilds of Iowa in his own buggy -- he rode the train. One or the other local lender with whom you have established excellent working relations over the past years may turn out to be *your* train. The pressures for consolidation that are transforming the banking landscape are going to lead some of your best customers to expand their operations into new territories. Why shouldn't you expand at the same time so that you can continue to service that customer's operations in the new venues? If you don't have the requisite special expertise in the new locality, you can probably buy it or hire it.

CONCLUSION

The American title insurance industry evolved in an environment in which title insurance, like politics, was local. Title Insurance was a key factor in breaching the local dike for mortgage lending funds, and in creating a national secondary mortgage market. Now, economic forces are driving the primary lending market to a national basis dominated by large, national firms. The market for title insurance is sure to follow. The wise title insurer and title agent will follow the market.

NOTES

1. As measured by the implicit price deflator for the Gross Domestic Product. See *Economic Report of the President 1990, 1996*, U.S. Government Printing Office, Table B-3

2. Ibid., Table B-2

3. *Mergerstat Review 1993, 1997*, Houlihan Lokey Howard & Zukin, Part five- - Twenty-five Year Statistical Review

4. Board of Governors, Federal Reserve System, private communication

5. Amel, David F, "Trends in the Structure of Federally Insured Depository Institutions 1984-94," *Federal Reserve Bulletin*, January 1996, Table 1

6. Federal National Mortgage Association data. The author would like to thank Patrick Sullivan of FNMA for providing him with this data.

7. Amel, loc.cit., Table 6

8. *Horizontal Merger Guidelines*, U.S. Department of Justice, Antitrust Division, and the Federal Trade Commission

9. Klemme, Kelly, "Has Consolidation Reduced Competition in Texas Banking?", *Financial Industry Issues*, Federal Reserve Bank of Dallas, Third Quarter 1995

10. Amel, loc. cit., Table 7

11. Klemme, loc.cit., Table 1

12. Selz, Michael, "Financing Small Business," *The Wall Street Journal*, April 8, 1977, pg. B2

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MEXICO
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cases, permits, use certificates, granted and certified concessions or affidavits would be required. It would be incumbent upon the seller to satisfy the commitment requirements for the benefit of the buyer in order to obtain title insurance.

Good Title Can Be Elusive in Mexico

With certification from the notario and recordation by the public registry, real estate purchasers in Mexico perceive they have good title.

The fiduciary responsibility and obligations of the notario:

- Performing the title search, no obligation to render a title opinion
- Customarily, examine a short conveyance history, i. e., current and previous deeds in the chain of title 10-20 years; examination to the sovereign is non-existent in Mexico
- Examination of the certificate of no liens from the public registry, upon which the notario relies strongly
- Preparing the escritura and binding the certified original into the notario's registry book; testimonios are given to the seller, the buyer, and to the registry for recordation

The characteristics of the public registry:

- Holds all title documents on a district by district basis (states have a central depositor or public registry)
- Does not provide any guarantee or means of recourse for recording errors, clerical staff errors or gaps in ownership
- Document recordation in the registry is mandatory to produce effects against third parties

Just as in the United States, recourse must be sought from the seller in Mexico if there is loss because of a title defect- -unless *title insurance is in effect.* In Mexico, no other individual or entity besides the seller has the obligation to pay in the event of loss- -not the notario, not the public registry. The notario may assist if there is a loss but has no legal obligation unless fraud can be proved. No guarantees are provided by the notario.

Correcting Misconceptions

Marketing of title insurance in Mexico largely has been an educational process for Stewart Title thus far. People involved on both sides of the border simply did not realize the coverage exists, what the title process involves, what can be insured or where, and what the cost would be. At the heart of the challenge on both sides of the border has been overcoming a perception of how real estate conveyancing and title assurance traditionally have been handled. If those involved on behalf of the title company had a dollar for every time we were told title insurance was unnecessary because the notary was going to acknowledge and "sign off" on all aspects of a transaction- -or that Mexico has few title problems and hence the coverage is not needed- -we would have a very profitable operation.

On the American side, real estate brokers and attorneys have been very receptive to company educational activity designed to familiarize them with Mexican transactions. In Texas and Arizona, both groups have approved Stewart Title's course, "Real Estate in Mexico Today," for professional education credit. Over the past 18 months, more than 2,000 professionals in these two states have taken the course.

After this substantial effort, Mexican attorneys and developers are beginning to realize there can be a reliance on a process and an expertise provided by American title insurers with over a century of experience- -and that this assurance provides highly valued security for foreign real estate investors who mean a great deal to the future prosperity of our neighbor south of the border.

St. Joseph Title Becomes Meridian

Effective June 1, the name of St. Joseph Title Corp., South Bend, IN, has been changed to Meridian Title Corporation.

Company President Mark T. Myers explained that, besides the location in St. Joseph County, the company has offices in the Indiana counties of Elkhart, LaPorte, Marshall, Fulton and Stark- -as well as in Michigan's Cass and Berrien counties. All of those outside St. Joseph County previously had separate names before the decision to consolidate all under the Meridian Title banner.

Myers said he expects the name change to bring continuity in planning for future growth and acquisitions by the title and escrow company.

In 1940, the company was incorporated as Abstract Company of St. Joseph County, Inc.

Grabas President In New Jersey

Joseph A. Grabas, Investors Title Agency, Inc., was elected new president of the New Jersey Land Title Association during the 75th annual convention of that organization.

Other new officers include Terry Gupko-Swope, Lawyers Title Insurance Corporation, Parsippany, first vice president; Allen Exelby, First American Title Insurance Company, Iselin, second vice president; and Lawrence C. Bell, Old Republic National Title Insurance Company, secretary- treasurer.

Laurence J. Usignol, First American, was designated Certified Title Professional by the association. CTP recipients must demonstrate exceptional ability in the field of title insurance, as well as a notable dedication to NJLTA and the title profession. Candidates are reviewed by peers before recommendation for a final vote is made to the association board of governors.

Utah Acquisition By First American

First American Title Insurance Company has acquired Hillam Title Agency from its owners, Brent Kirkland and Brad Mortensen, to expand its operations in Utah.

Until further notice, the company is known as First American Title Company of Utah d.b.a. Hillam Title Agency. The company's 15 employees are continuing with the operation, according to the announcement. Hillam Title serves Box Elder and Cache counties.

VALUE
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strategy often by using innovative reinsurance structures on a cost effective basis. As a source of capital, reinsurance is more attractive and cost-effective when raising capital in the equity markets is difficult or expensive for primary companies. If properly employed, third-party reinsurance is not a cost but an opportunity.

Get with THE Program!

Hesitate in today's fiercely competitive real estate industry, and you'll get trampled. Surge ahead of the competition with innovative escrow and title software from ACS. Leading edge programming, proven faxing capability, familiar WordPerfect 6.0 text editing, and seamless transaction posting. Call now for exciting details. You have nothing to lose but your competition.

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MODELING
continued from page 32

Benefits Noted

What have we attained at Alliance Title & Escrow, now that a workflow model is in place and linked to our profit and loss statements?

- Specific segments of the workflow can be targeted for cost and performance improvements that ultimately could lead to a 25 percent cost reduction, at minimum. This will require new technology, better and more productive roles, and better training.

- Visualization now is possible as to how our workflow and that of our customers might be integrated to achieve our targeted efficiency and cost breakthroughs.

- We now have a sound basis for developing the production processes, costs and fees for each new type of product or service we provide.

- Our selection of the correct production software now can proceed with confidence. What is acquired must integrate the concept of transaction type, with order entry, escrow closing, title production, trust accounting, documents and reporting completely integrated around the same data model- -ultimately extending this into the plant and general ledger systems. We now understand why this system must be completely open architecturally, comply with ODBC (open database connectivity) standards, support X.12, have a published data dictionary, and be supported by a vendor that agrees to quickly change the system when necessary to meet our needs. Over the years ahead, this support of the software will determine our ability to prosper in the new marketplace.

- Our confidence is well established as to making a successful technical transition to a new system through use of the visual tools created during our workflow modeling exercise. If these same visual tools are central to our production systems and training, our prospects for success are promising indeed. This will simplify the process of change and increase the speed with which our financial returns can be captured.

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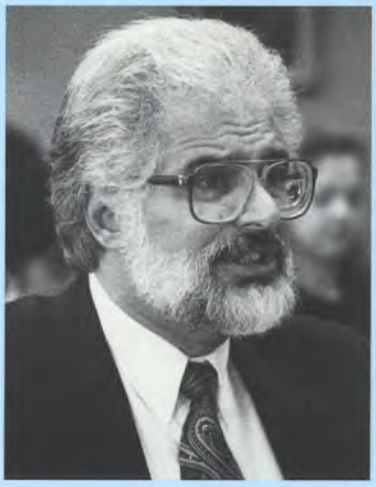

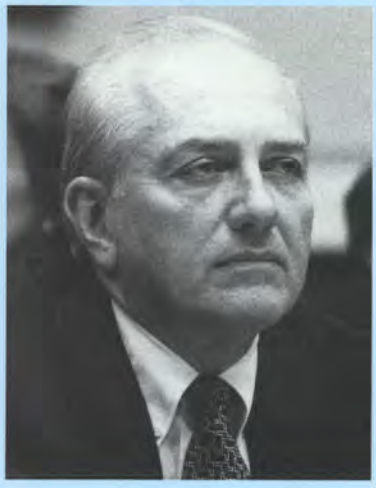

Recent weeks have seen ALTA active in Congressional hearings on title industry issues, as these photographs attest. Association Title Insurance Forms Committee Chairman Joe Bonita, Chicago Title Family, left, recommends U. S. Bankruptcy Code amendments to the House Judiciary Committee's Subcommittee on Commercial and Administrative Law that would substantially reduce a recently emerging risk of title loss that could severely impact the availability of credit in real estate lending and investment.

Bonita said the amendments are necessary to address an incorrect reading of the Code's Section 549(c) by the Federal Ninth Circuit Court of Appeals in In re McConville, a 1997 decision.

In the other photograph, ALTA President Dan Wentzel, North American Title, prepares to deliver testimony at House Banking Committee hearings on bank powers in insurance, where he called for a legislative amendment that would preserve state regulation of insurance through absolute functional regulation, maintain adequate consumer protections now in state law and regulation, and prohibit national banks from engaging directly in title insurance activity while allowing business of this nature through a bank holding company structure, to discourage the elimination of competition.

Later, Banking Committee Member Rick Hill (R-MT) offered an amendment containing the ALTA-backed provisions during a committee markup session, which was approved. After being reported by the Banking Committee, the bank powers legislation including these provisions at this writing had moved to the House Commerce Committee.

MARKETPLACE

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1997 CALENDAR OF MEETINGS

(For the latest updates on ALTA meeting information, visit the Association Home Page at http://www.alta.org)

September

7-9 **ALTA Reinsurance Conference**, Disney's Yacht Club Resort, Orlando

24-27 **ALTA Annual Convention,** Westin Seattle Hotel, Seattle

November

2-4 **Title Counsel Meeting**, San Diego

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