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APPENDIX A

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

DOCKET NO. 2017-1517 DIVISION "L"

[DATE STAMP]
Barbara Gaude
VERIFIED
8/10/23

HENRY L. KLEIN, ET AL.

VERSUS

LEWIS TITLE INSURANCE COMPANY, INC., ET AL.

FILED: _____ _____
DEPUTY CLERK

FINAL JUDGMENT

This matter came before the Court on Thursday, August 3, 2023, upon the following motions: (i) a Request to Brief the U.S. Supremacy Clause filed by Plaintiffs Henry L. Klein, the Succession of Frederick P. Heisler, and Levy Gardens Partners 2007 LP ("Plaintiffs"), which the Court treated as a motion for reconsideration of its May 5, 2023 Judgment denying

Plaintiffs' requests for declaratory relief (hereafter, the "Motion for Reconsideration"); and (ii) a Motion for Dismissal with Prejudice filed by Defendants Lewis Title Company, Inc. and Liskow & Lewis, PLC (together, "Defendants").

PRESENT WERE: Nicholas J, Wehlen,
Counsel for Defendants

Henry L. Klein, pro se

Michael G. Bagneris,
Counsel for Plaintiffs

The Court having considered the law, the evidence, the memoranda and oral arguments of counsel:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Reconsideration be and it hereby is **DENIED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that. considering the Court's May 5, 2023 Judgment denying all relief requested by Plaintiffs in this action, the Motion for Dismissal with Prejudice be and it hereby is **GRANTED**;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all claims, causes of action, and requests for declaratory or other relief (collectively, "Claims") asserted in this Civil Action No. 2017-1517 by Plaintiffs, Henry Klein, the Succession of Frederick

P. Heisler, and Levy Gardens Partners 2007 LP, against Defendants, Lewis Title Company, Inc. and Liskow & Lewis, PLC, including but not limited to any and all Claims asserted or included by Plaintiffs in their Petition for Declaratory Judgment, be and they hereby are **DISMISSED WITH PREJUDICE**; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Final Judgment is a final judgment within the meaning of La. Code Civ. P. arts. 1841, 1911, 1918, and 1919.

New Orleans, Louisiana, this 11th day of Aug., 2023.

/s/_____
DISTRICT JUDGE KERN REESE
JUDGE KERN A. REESE

APPENDIX B

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

DIVISION "L"

NO. 2017-01517 SEC. 6
CW: 2017-0042

[DATE STAMP]
Galen D. Moore
VERIFIED
5-9-2023

HENRY L. KLEIN, ET AL.

VERSUS

LEWIS TITLE INSURANCE COMPANY, INC., ET AL.

FILED: _____ _____
DEPUTY CLERK

REASONS FOR JUDGMENT

This matter arises from a real estate closing. On October 7, 2008, the parties executed a real estate closing, which included the coverage of three title insurance policies. Plaintiffs allege that Defendants committed fraud by their practice of the agents

keeping a majority of the title insurance premiums and sharing kickbacks amongst themselves. Plaintiff requests the Court grant a declaratory judgment that the title insurance policies are fraudulent securities contracts subject to 10-year prescriptive periods. They further seek the Court declare that Defendants had a fiduciary duty to disclose the "common-split."

In its respective jurisdiction, a court "may declare rights, status, and other legal relations."[1] Declaratory judgments cannot be granted when there is an open objection to an action or proceeding on the same grounds upon which the declaratory judgment is prayed. Further, the existence of an alternate remedy does not preclude the granting of a declaratory judgment when it is appropriate. Such a declaratory judgment, has the full force and effect of a final judgment.

The sought judgment pertains to the insurance industry, an industry worth $1.4 trillion.[2] Black's Law Dictionary defines "insurance" as a contract, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by

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[1] La. Code Civ. Proc. Art. 1871

[2] Insurance industry at a glance (2022) "Insurance Information Institute." The Institutes. <https://www.iii.org/publications/a-firm-foundation-how-insurance-supports-the-economy/ introduction/insurance-industry-at-a-glance (Accessed: April 17, 2023)>.

specified perils.[3] Both state and federal laws regulate insurance and all that it entails. Federal law grants states the authority to legislate specifics of the insurance industry; but as public policy, it sets out restrictions.[4] Insurance in the State of Louisiana is regulated by Title 22 of Louisiana's Revised Statutes. Title insurance occupies Subpart R of Title 22. Louisiana defines "title insurance policy" as:

> [A] contract, including any affirmative assurances, enhancements to coverage, or endorsements, insuring or indemnifying owners of, or other persons lawfully interested in, movable or immovable property against loss or damage arising from any or all of the following conditions existing on, before, or subsequent to the policy date and not specifically excepted or excluded:
>
> (a) Defects in or liens or encumbrances on the insured title.
>
> (b) Unmarketability of the insured title.
>
> (c) Invalidity or unenforceability of liens or encumbrances on the insured title of the movable, where a title search is required for the purpose of registration,

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[3] Black's Law Dictionary, 5th Edition

[4] 15 U.S.C.A. § 6701.

or immovable property.

(d) Title being vested otherwise than as stated in the policy.

(e) Lack of a legal right of access to the land which is part of the insured title in a policy relating to immovable property.

(f) Lack of priority of the lien of any insured mortgage over any statutory lien for services, labor, or materials as specifically described in the policy.

(g) Invalidity or unenforceability of any assignment of an insured mortgage subject to certain conditions.

(h) The priority of any lien or encumbrance over the lien of the insured mortgage.[5]

Plaintiff seeks a declaratory judgment decreeing that ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 are not policies of insurance regulated by the Louisiana Insurance Code, Louisiana Revised Statutes, Title 22, but are retrospective Contracts of Warranty as to the title of the property and its permitted use as evidence by the public records of the jurisdiction where the property is located at the time the contract is issued and that all causes of action for

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[5] La. R.S, § 22:512(23)

breach are regulated by the 10-year prescriptive period set forth by Louisiana Civil Code Article 3499.

In the State of Louisiana a title insurance policy is an insurance policy. Insurance is defined above by Black's Law Dictionary, 5th edition. Louisiana codified its definition similarly in LA Revised Statute 22:46(13)(a).[6] As defined above, Louisiana's Insurance Code further defined "title insurance policy."[7] The two definitions mirror each other. Both "insurance" and "title insurance" indemnify another party.[8] Title insurance rates are adopted and approved by the rating organizations regulated by general Louisiana insurance organizations. The insurance rates are fixed at a certain amount as required for insurance.[9] Contingencies of title insurance policies are governed by applicable provisions of the Insurance Code's Title

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[6] La. R.S. § 22:46(13)(a) a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies. It shall include any trust, plan or agreement, popularly known as employee benefit trusts, not specifically exempted from state regulation under Public Law 93-406, except collectively bargained union welfare plans, single employer plans or plans of the state or political subdivisions. The term "insurance" shall not include any arrangement or trust formed under Subpart J of Part I of Chapter 10 of Title 23 of the Louisiana Revised Statutes of 1950.

[7] La. R.S. § 22:512(23)

[8] La. R.S. §22:46(13)(a). La. R.S. § 22:512(23)

[9] LA R.S.22:516(A) LA R.S. 22:46(13)(a)

22 of Louisiana's Revised Statutes.[10] Insurance policies in the State of Louisiana indemnify another upon determinable contingencies.[11] Satisfying the general requirements of insurance in the State of Louisiana, title insurance policies are insurance policies regulated by the Louisiana Insurance Code, Louisiana Revised Statutes, Title 22. This makes ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195, as title insurance policies, insurance policies. Therefore, Plaintiff's request for a declaratory judgment decreeing that ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 are not policies of insurance regulated by the Louisiana Insurance Code, Louisiana Revised Statutes, Title 22 is **DENIED**.

Plaintiff prays for a judgment declaring that as to ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195, any and all causes of action which may now be available to petitioners Henry L. Klein, the Succession of Frederick P. Heisler, and/or Levy Gardens Partners 2007 LP, or which may become available upon the entry of declaratory judgment(s) are not immunized by the McCarran-Ferguson Act, 15 U.S.C.A. § 1011, Mar. 9, 1945, c.20, § 1, 59 Stat. 33.

The McCarran-Ferguson Act applies to all three AL TA Contracts. The McCarran-Ferguson Act "declares that the continued regulation and taxation by the several States of the business of insurance is in

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[10] La. R.S § 22:534

[11] La. R.S. §22:46(13)(a)

the public interest. Silence on Congress's part does not limit, restrict, or prohibit the regulation or taxation in the States.[12] The ALT A Contracts, as discussed above, are insurance policies within the business of insurance, which are immunized by the McCarran-Ferguson Act. Therefore, Plaintiff's request for declaratory judgment that ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195, any and all causes of action which may now be available to petitioners Henry L. Klein, the Succession of Frederick P. Heisler, and/or Levy Gardens Partners 2007 LP, or which may become available upon the entry of declaratory judgment(s) are not immunized by the McCarran-Ferguson Act is **DENIED**.

Plaintiffs request a declaratory judgment that as to the October 7, 2008 Closing, wherein ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 were issued and/or sold to Levy Garden Partners LP, the conduct of that transaction was such that Lewis Title Insurance Company, Inc., Liskow & Lewis PLC, and the combination of the two is deemed to have been an affiliated business arrangement ("ABA") that, pursuant to HUD guidelines promulgated as 24 CFR Part 3500, Docket FR 3638-N-04, constituted the Liskow/Lewis ABA as a sham, subject to all regulations for the protection of the consumer as set forth by the Federal Real Estate Settlement Procedure Act (RESPA) and other federal and state regulations impacting sham ABAs.

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[12] 15 U.S.C.A. § 1011, Mar. 9, 1945, c.20, § 1, 59 Stat. 33.

The ALTA Contracts are subject are authentic and subject to Louisiana Insurance Code Regulations. Title insurance is subject to the Louisiana Insurance Code just as applicable provisions of insurance are subject to the Louisiana Insurance Code.[13] Title insurance is subject to the Louisiana Insurance Code's "rules, regulations, and directives, in accordance with the Administrative Procedures Act to implement the provisions" of title insurance.[14]

Title insurance is not subject to the Federal Real Estate Settlement Procedure Act (RESPA) and other federal and state regulations. Therefore, Plaintiff's prayer for the Court to declare ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 were issued and/or sold to Levy Garden Partners LP, the conduct of that transaction was such that Lewis Title Insurance Company, Inc., Liskow & Lewis PLC, and the combination of the two is deemed to have been an affiliated business arrangement ("ABA") that, pursuant to HUD guidelines promulgated as 24 CPR Part 3500, Docket FR-3638-N-04, constituted the Liskow/Lewis ABA as a sham, subject to all regulations for the protection of the consumer as set forth by the Federal Real Estate Settlement Procedure Act (RESPA) and other federal and state regulations impacting ABAs is **DENIED**.

Plaintiffs request a declaratory judgment

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[13] La. RS. § 22:534

[14] La. RS. § 22:535

declaring that Liskow & Lewis, PLC and their respective partners, agents, members and affiliates are not entitled to any of the defenses set forth in the Louisiana Legal Malpractice Act because by acting as a sham ABA and because of other egregious violations of the rights of petitioners Henry L. Klein, the Succession of Frederick P. Heisler and Levy Gardens Partners 2007 LP, any benefits under law are forfeited pursuant to the *Ex Turpi Causa* doctrine which provides that "... from a dishonorable cause no action arises ..."

Plaintiffs were not clients and therefore not entitled to any of the defenses set forth in the Louisiana Legal Malpractice Act. Plaintiff's requests for the defenses set forth in the Legal Malpractice Act are **DENIED**.

Plaintiff asks for a declaratory judgment that as to the Closing, wherein ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 were issued and/or sold to Levy Garden Partners 2007 LP, the conduct of that transaction was such that Lewis Title Insurance Company, Inc., Liskow & Lewis PLC, and the combination of the two is deemed reconstructed to bind defendants as if they had issued the Contracts of Warranty as to title of the property and its permitted use.

Title insurance is not a contract of warranty; therefore a party cannot be bound to the instrument as if it were a contract of warranty. As mentioned above, title insurance is subject to the Louisiana Insurance

Code just as applicable provisions of insurance are subject to the Louisiana Insurance Code.[15] Again, title insurance is subject to the Louisiana Insurance Code's "rules, regulations, and directives, in accordance with the Administrative Procedure Act to implement the provisions" of title insurance.[16] The ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 issued and/or sold to Levy Garden Partners 2007 LP are title insurance policies that are insurance policies in the same. Therefore, Plaintiff's request for a judgment declaring that the Closing, wherein ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 were issued and/or sold to Levy Garden Partners 2007 LP, the conduct of that transaction was such that Lewis Title Insurance Company, Inc., Liskow & Lewis PLC, and the combination of the two is deemed reconstructed to bind defendants as if they had issued the Contracts of Warranty as to title of the property and its permitted use is **DENIED**.

Plaintiff asks for a declaratory judgment declaring that as to the October 7, 2008 Closing, wherein ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195 were issued and/or sold to Levy Gardens Partners 2007, the conduct of that transaction was such that Lewis Title Insurance Company, Inc., Liskow & Lewis PLC were fiduciaries who owed Levy Garden Partners 2007 LP and its principals a duty to disclose the "premium-split" with

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[15] La. R.S. § 22:534

[16] La. R.S. § 22:535

Commonwealth and the fact of Commonwealth's Rehabilitation proceedings in the State of Nebraska and that all causes-of-action regarding that relationship are regulated by the 10-year prescriptive period set forth by Louisiana Civil Code Article 3499.

Plaintiffs were not clients and therefore not privy to the disclosure of the "premium-split" with Commonwealth. Plaintiffs' request for a judgment declaring that as to December 3, 2007, commitment to issue ALTA Contracts E-14-0005523, L-14-0005193 and L-14-0005195, any and all causes of action which may now be available to petitioners Henry L. Klein, the Succession of Frederick P. Heisler, and/or Levy Gardens Partners 2007 LP, or which may become available upon the entry of declaratory judgment(s) are matters involving abstracting duties regulating by the 10- year prescriptive period set forth by Louisiana Civil Code Article 3499 is **DENIED**.

Plaintiffs seek a declaratory judgment that any and all claims by Levy Gardens for overbilling are personal actions regulated by the 10-year prescriptive period set forth by Louisiana Civil Code Article 3499.

The claims pertain to title insurance. Title insurance is not regulated by the 10-year prescriptive period. Title Insurance rate filing is adopted and approved in accordance to Title 22 of Louisiana's Insurance Code. By adopting that of the State's regulatory authority for insurance, title insurance "shall not have its rates deemed to be excessive,

inadequate, or unfairly · discriminatory."[17] Therefore, Plaintiff's prayer for a declaration that the claims by Levy Gardens for overbilling are personal actions regulated by the 10-year prescriptive period set forth by Louisiana Civil Code Article 3499 is **DENIED**.

In 2017 the United States District Court for the Eastern District issued a judgment in this case under case no. 17-2205 *Klein, et al. vs. Lewis Title Ins. Co. Inc.* The case brought before the District Court requests for attorneys' fees pursuant to 28 U.S.C. § 1447(c) and sanctions for removal in bad faith. The Eastern District Court of Louisiana denied Plaintiff's request for attorneys' fees and declined to impose sanctions against defendants for removing the case in bad faith, This Court, taking notice of the distinct considerations asked of the Orleans Parish Civil District Court and the United States District Court for the Eastern District of Louisiana, decrees that this case is not *res judicata*.

This Court is also asked to consider the constitutionality of title insurance. To challenge a law constitutionally, the Attorney General must be a party. The absence of the Attorney General in this suit therefore, makes further adjudication of the constitutionality improper.

Most recently the matter came for hearing on the 31st day of March, 2023 on Defendant's Motion for

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[17] 17 La. RS. § 22:516(A)

Reconsideration of Order on *Ex Parte* Motion to Enforce LA R.S. 22:532, which this Court hereby declares the Motion for Reconsideration of Order to be **MOOT**.

REASONS READ, RENDERED, AND SIGNED in New Orleans, Louisiana this 5th day of May, 2023

/s/_____
Judge Kern A. Reese
Division "L" Section 6
Orleans Parish Civil District Court

APPENDIX C

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

DOCKET NO. 2017-1517 DIVISION "L"

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DISTRICT COURT

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VERIFIED
050823

HENRY L. KLEIN, et als

versus

LEWIS TITLE INSURANCE COMPANY,
INC., ET AL.
and
LISKOW & LEWIS, PLC

FILED: _____ _____

REQUEST TO BRIEF THE SUPREMACY CLAUSE OF THE UNITED STATES

CONSTITUTION

For the reasons that follow, Henry L. Klein, the Succession of Frederick P. Heisler, and Levy Gardens Partners 2007, LP ("the Levy Gardens Parties") respectfully request the right to brief the Supremacy Clause of the United States Constitution.

1. The Court recently announced that it would make a decision on the seminal question as to whether Title Insurance Policies are contracts of Insurance, *vel non*, by April 19, 2023.

2. The Liskow defendants posit that the Louisiana Insurance Code, created by Act 125 of the 1958 Legislature, is controlling and that because the Louisiana Legislature refers to Title Insurance as a subcategory of 'insurance", *that* legislative act is controlling and this Court is compelled to so declare.

3. On the other hand, the Levy Gardens Parties posit that the intent of Congress in passing the McCarran-Ferguson Act and the ruling of the United States Supreme Court in *Group Life & Health Insurance Company v. Royal Drug Company*, 440 U.S. 205 (1979) ("*Group Life*") and its considerable progeny is controlling and this Court is compelled to declare.

4. The Supremacy Clause of the United States Constitution provides, at Article VI, Clause 2, as follows:

This Constitution, and the laws of the

> United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

5. The tug-of-war between state insurance codes and congressional intent in the passage of McCarran-Ferguson, as articulated by *Group Life* must be resolved pursuant to the Supremacy Clause, not as a separation of powers principle.

6. Supreme Court decisions since *McCullock v. Maryland*, 17 U.S. 316 (1819) have ruled that "... federal preemption ..." applies whenever state laws are at odds with federal laws and their jurisprudential precedents, thus the term "... Supremacy ..."

7. The Levy Gardens Parties believe the delay in ruling may be the result of this Court's possible reluctance to overrule the Louisiana Legislature, which can be easily addressed pursuant to the Supremacy Clause.

8. Given the Court's request that no further pleadings be filed past April 19, 2023, leave is respectfully requested to brief the issue.

9. The proposed brief is provided as Exhibit A

hereto.

Respectfully submitted,

/s/
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henryklein44@gmail.com

Counsel for Levy Gardens and Succession of Heisler

and

/s/
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New Orleans, Louisiana 70112
(504) 493-779
bagneris@bpajustice.com

Counsel for Henry L. Klein

APPENDIX D

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 2017-1517 DIVISION "L"

[DATE STAMP]
VERIFIED

HENRY L. KLEIN, et als

versus

LEWIS TITLE INSURANCE COMPANY
and
LISKOW & LEWIS, PLC

FILED: _____ _____

BRIEF ADDRESSING THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION

Henry Klein, the Succession of Heisler and Levy Gardens Partners 2007 ("the Levy Gardens Parties") respectfully address the following question presented:

> Q. IS THE LISKOW DEFENDANTS' RELIANCE ON THE LOUISIANA TITLE INSURANCE ACT AT R.S.

22:511 PREEMPTED BY CONGRESSIONAL INTENT AND *GROUP LIFE v. ROYAL DRUG COMPANY*, 440 U.S. 205 (1979) PURSUANT TO THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION[1]?

A. YES.

The analysis begins with *United States v. South-Eastern Underwriters*, 322 U.S. 533 (1944), holding that the business of insurance was "commerce". Consequently, the prohibition of state taxation of interstate commerce threatened all states with the loss of substantial income. A review of 1945 Congressional comments is both illuminating and essential:

MICHIGAN SENATOR HOMER FERGUSON:

> "Some insurance companies had given notice to their states that they would not pay the tax which is being levied by those states, or that they would be paying under protest ... so it is advisable that the bill be passed quickly", *January 25, 1945 Congressional Record, at 479.*

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[1] This Constitution and the laws of the United States made in pursuance thereof ... shall be the supreme law of th eland; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

WYOMING SENATOR JOSEPH O'MAHONEY:

> "Does the Senator from Michigan desire that the bill be interpreted as an intention of Congress to permit monopoly to be established in the insurance industry?

MICHIGAN SENATOR HOMER FERGUSON:

> "No, by no means does the bill anticipate that any act would or should be passed that would create monopoly." *Id, at 480* ... "At the present time, every state rate-fixing authority violates the Sherman Act or the Clayton Act or both.", *Id, at 484.*

WYOMING SENATOR JOSEPH O'MAHONEY:

> "Prior to Southeastern, insurance companies had to escape state regulation ... the Congress proposes by this bill to secure adequate regulation and control of the insurance business", *Id, at 480.*

MISSOURI REPRESENTATIVE JOHN COCHRAN:

> "In my opinion, no honorable insurance company or honorable agent would want to be exempted from these acts. It will give an opportunity to fly-by-night insurance agents to indulge in all the

> false advertising they desire, and they will be exempt from prosecution if that provision in the bill stands." *February 12, 1945 Congressional Record, at 1027.*

ATTORNEY GENERAL FRANCIS BIDDLE:

> "Let me again emphasize the great desirability of speed; some of the taxes have been held up awaiting this issue ... but the main thing is the taxing ...", *February 18, 1945, at HR 1973, pp 4-5.*

TEXAS REPRESENTATIVE HATTON SUMMERS:

> "Congress expects the states to demonstrate their ability properly to govern the business of insurance. Insurance companies should do their best to remove from their practices anything that might be detrimental to the public interest.", *March 14, 1945 Congressional Record at Appendix 1190.*

1. Congress has spoken. The essence of the Supremacy Clause is to prohibit any state from passing legislation which conflicts with the will of the United States Congress. It provides that state courts are bound by, and state constitutions subordinate to, the supreme law, *The Priority of the Constitution over Federal Statutes – Mike Rappaport: Law & Liberty, April 13, 2012.* The Supremacy Clause is essentially

a conflict-of-laws rule specifying that certain federal acts take priority over any state acts that conflict with federal law. It is *the* cornerstone of the United States' federal political structure, deeply entrenched by Supreme Court precedent since *Marbury v. Madison*, 5 U.S. 137 (1803), *McCulloch v. Maryland*, 17 U.S. 316 (1819) and *Cohens v. Virginia*, 19 U.S. 264 (1821).

While the Louisiana Legislature may typically be considered "... the will of the people ..." of Louisiana, the Louisiana Title Insurance Act, 22:511, et seq. cannot overcome the violations of Congressional Intent in the passage of the McCarran-Ferguson Act, 15 U.S.C. § 1011 and the interpretation thereof by the United States Supreme Court in *Group Life v. Royal Drug Company*, 440 U.S. 205 (1979) and its considerable progeny.

2. The severance of title insurers from the rest of the industry. At the heart of all debate in 1945 was the "...public interest...", expected to be uniformly protected by all recipients of the McCarran-Ferguson *gift* of immunity from the antitrust laws, a necessary exchange of governmental responsibilities. Fiscally, the states needed the income from the taxation of insurance premiums to protect compelling state interests. *The quid pro quo* was that Congress would let the states keep the income if the states would regulate "the business of insurance" – a fair bargain that has worked relatively well in all aspects of the insurance industry but the *severed* segment that sells contracts selling false hope named "title policies". The ways and means by which the title

industry has been *severed* from the remainder of the industry has been bilateral: (1) all states but the enlightened State of Iowa have given the title industry a free pass from the rigor of filing Risk-Based-Capital Reports, the DNA of real insurers. The formulas, which would chase Pythagoras back to the Acropolis, look like this:

The Formulas

The formulas apply a covariance calculation to determine the appropriate risk-based capital. Simply stated, the covariance calculation reduced the aggregate amount of RBC because it is unlikely that all of the risk components will be impaired simultaneously.

Life Covariance Calculation = C0 + C4a + Square Root of $[(C1o + C3a)^2 + (Clcs + C3c)^2 + (C2)^2 + (C3b)^2 + (C4b)^2]$

P/C Covariance Calculation = R0 + Square Root of $[(R1)^2 + (R2)^2 + (R3)^2 + (R4)^2 + (R5)^2]$

Health Covariance Calculation = H0 + Square Root of $[(H1)^2 + (H2)^2 + (H3)^2 + (H4)^2]$

The levels of regulatory action are determined from the risk based capital after covariance. The covariance adjustment reflects the fact that the cumulative risk of several independent components is less than the sum of the

> individual risk. The formulas do not include the insurance affiliate equity investment risk and off-balance sheet risk inside of the covariance adjustment. The covariance adjustment follows the steps of adding together items that are believed to be correlated, leaving the balance of risks that not correlated. The covariance adjustment then squares these resulting groups, adds the resulting squares together and takes the square root of the sum of the squares. The covariance adjustment reduces the volatility of the smaller risks and increases the importance of the largest risks affected by the adjustment.

The list of "...free pass..." recipients is set forth in detail at ¶ 79 of the Petition filed in this case and is a matter of Judicial Notice. Other undisputed and indisputable statistics are set forth in the Complaint filed in *Klein v. ALTA*, Docket No. 12-1061 in the United States District Court for the District of Columbia, made *Exhibit A* hereto and incorporated herein fully and *in extenso*.

On the NAIC severance side, on December 13, 2013, the NAIC Title Insurance Risk-Based-Capital Subgroup disbanded because it could not create actuarial measures for filing RBC reports to regulators. That also eliminated title insurers from the inconvenience of adhering to the rigors of the Filed-Rate Doctrine pursuant to *Keogh v. Chicago &*

Northwestern, 260 U.S. 156(1922) and *Square D v. Niagra Frontier Traffic Bureau*. 476 U.S. 409 (1986), discussed in *Klein v. ALTA* at ¶¶ 49-60. Indeed, NAIC concedes in its formal publications that title insurance is not like any other type of insurance – an understatement for all ages.

3. The deepest cut of all "...agent retention..." Money injected into an economy has a fiscal effect economists call a "multiplier". But money *drained* from an economy also saps consumer spirit. The societal damage that the title industry exacts is immensurable. To begin with, title insurers pay less that 4% of premiums collected in claims. To a claimant who fights for years for the pittance, the return is less than 2% economically and sub-zero emotionally. But the fraud of "agent retention" is unprecedented in the annals of thievery. Demotech, Inc., the statistician of the title industry oligopoly, conceals "kickbacks" kept by closing notaries as "agent retention" without the consumer realizing that the underwriter will only receive 15% of the alleged premium paid. This *stealth* split of consumer dollars is a disincentive violating RESPA law, civil law, common law and moral law.

FORTY-NINE MILLION DOLLARS A DAY

Based on statistics filed into the record without objection by the Liskow Defendants and without dispute as to accuracy, the title insurance industry fleeces the American consumer out of $49 million dollars every day; not counting the negative economic multiplier.

4. Judgment on the pleadings and the inevitable declaration. The Liskow Defendants have only one defense: The Louisiana Title Insurance Act calls the contracts made of dust "...insurance...", a national *ipse dixit*. The product before this Court has none of the irreducible features required by *Group Life*:

- ❑ no pooling of risks;
- ❑ no protection *a futuro*;
- ❑ no state regulation;
- ❑ no actuarial data;
- ❑ no RBC reports;
- ❑ no filed-rate doctrine obedience;
- ❑ no *Proctor* relationship with policyholders;
- ❑ no reliability;
- ❑ no adjustors who adjust;
- ❑ no claims agents who pay claims;
- ❑ no disclosure of kickback schemes;

and, *most obscene of all*:

- ❑ no redeeming social value, *Roth v. United States*, 354 U.S. 476 (1957).

5. **The "...Necessary and Proper Clause..."** Article I, Section 8, Clause 18 of the United States Constitution provides that:

> The Congress shall have Power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The Levy Gardens Parties close by citing the "necessary and proper" clause of the United States Constitution because this Court has oft-expressed a concept that this state-court jurist should defer to a federal court to make the landmark ruling that title policies are not "...contracts of insurance..." Respectfully, this Court has humbly erred: Federalism treats both judicial branches as equals, which is why Judge James E. Boasberg ruled that *Klein v. Mnuchin* was for this Court to decide. The Necessary and Proper Clause is the modern term for what is often called the Sweeping Clause, *e.g.*, Federalist No. 33 (Alexander Hamilton).

This Court's ability to make the declaration sought will enforce the Congressional intent for the McCarran-Ferguson Act, as articulated by Senators Ferguson, O'Mahoney, Representatives Cochran and

Summers and Attorney General Biddle. This Court cannot abdicate to the Louisiana legislature, whose meaningless *ipse dixits* defy the analysis in *Group Life* and its considerable progeny.

Article I, Section 8, Clause 18 of the United States Constitution has always advocated *consistent* interpretation of laws that control *national* conduct and governance as both "...necessary..." and "...proper..." This Court is not alone in recognizing that the contracts that ALTA markets are **false hope.**

The distinguished Professor at the Oklahoma School of Law and the author of the respected publication: *The Law of Title Insurance*, Joyce D. Palomar, has made the following observations in her scholarly works:

> [1] Title insurance, as opposed to other types of insurance, does not insure against future events, *Jourdanelle v. Old Republic*, 830 F.3rd 195; *Vestin Mortgage v. First American Title*, 101 P.3d 398.
>
> [2] Title insurance is protection against future loss because of past events, *Lawyer's Title v. Novastar Mortgage*, 862 So.2d 793.
>
> [3] Title insurance does not insure against future events, but against defects in title existing at the time when the policy was issued, *Foenrenbach v.*

German-American Title & Trust Co., 66 A. 561.

[4] A 1903 judicial assessment of title insurance that continues to be quoted today is that "...the risks of title insurance end where the risks of other kinds begin..." *Trenton Potteries v. Title Guarantee and Trust Co.,* 176 N.Y.65, 68 N.E. 132 (1903), *Exhibit B.*

Governmental studies in agreement with Professor Palomar include:

- 1977 Department of Justice: *The Pricing and Marketing of Insurance: A Report by the Department of Justice to the Task Group on Anti-Trust Immunities.*

- 1980 Peat Marwick Study conducted for the United States Department of Housing and Urban Development: *Proposed Rule to Improve the Process of Obtaining Mortgages and Reduce Consumer Costs.*

- April 2007 Government Accountability Office Report GAO-07-401: *Actions Needed to Improve Oversight of the Title Industry and Better Protect Consumers*

Louisiana Legislative *ipse dixits* deserve no deference whatsoever. Certainly not sufficient to displace the *Supremacy* and *Necessary and Proper* clauses of the United States Constitution, both of which are binding on this Court.

6. Iowa. In 1947, Iowa declared title insurance illegal. This Louisiana jurist can and should do the same. The detractors of this industry have waited long enough for the guillotine to fall.

Respectfully submitted,

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APPENDIX E

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS
STATE OF LOUISIANA

No. 2017-1517 DIVISION "L"

HENRY L. KLEIN, et als

versus

LEWIS TITLE INSURANCE COMPANY, INC.
and
LISKOW & LEWIS, PLC

FILED: _____ _____
Deputy Clerk

REQUEST FOR ORAL PRESENTATION AND FORMAL SUBMISSION OF EVIDENCE

On March 31, 2023, this Court announced its intention to conclude the "under advisement" status of the case on April 19. Plaintiffs respectfully request oral presentation and a date for formal presentation of evidence[1]. No single litigant since McCarran-Ferguson has amassed the compelling evidence in one case as

[1] Including documents with memoranda is not "evidence", *Brielle 's Florist & Gifs, Inc. v. Trans Tech, Inc.*, 74 So. 3d 833 (3rd Cir. 2011).

here. No single court of law has had before it the totality of facts and law as in the case at bar.

1. This case is not a stand-alone attack on the Title Insurance Industry. *Imprimis,* this Court is not alone. Plethoric prior cases have failed for just one reason: the lack of a declaration that "... it's not insurance ...", a fatal error for an industry protected by McCarran-Ferguson. *Klein v. ALTA, Klein v. Mnuchin*[2] and *Klein v. Lewis Title* have assiduously sought the declaration that "... it's not insurance ..." *first.* No prior case has maintained that discipline. No prior case included surveys of the NAIC as in the case at bar. No prior case gathered law from 49 states to establish that title insurance was *deregulated* by state law, a violation of the *quid pro quo* for McCarran-Ferguson[3]. No prior case established that title insurance (i) does **not** pool risks, (ii) does not file risk-based-capital reports with state regulators, and (iii) can **not** develop actuarial data for Filed-Rate Doctrine immunity, *inter-alia.*

The following cases provide a floor for this

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[2] *Klein v. Mnuchin* sought Mandamus against the Secretary of the Treasury to comply with *Dodd-Frank* by including the title industry in his annual reports on the business of insurance to the President, the Senate and the House. He wouldn't. Mandamus and Declaratory relief are treated interchangeably, *Haines v. The Secretary of the Air Force,* 453 F.2nd 233 {3rd Cir. 19710.

[3] We say "49" because Iowa declared Title Insurance illegal in 1947, *TITLE INSURANCE: **A FLEECING OF AMERICA,*** Exhibit A.

Court's inescapable conclusion that title insurers are not engaged in the "... business of insurance ...", provided in alphabetical order:

Carnation v. Pacific Westbound Conference, 383 U.S. 213 (1986);

Dolan v. Fidelity National[4], 365 F. Appx. 271 (2nd Cir.2010) (*)[5];

Group Life & Health v. Royal Drug Company, 440 U.S. 405 (1979);

In re: California Title Antitrust Litig., 2009 WL 1458025 (N.D. Cal. 2009);

In re: New Jersey Title Insurance Litig., 683 F.3rd 451 (2nd Cir.2012)(*);

In re: Penn Title Ins. Antitrust Litig., 648 F.Supp.2d 663 (E.D. Pa.2009);

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[4] Most "Fidelity National" cases included the industry (names slightly truncated): Censtar Title, Chicago Title Insurance, Chicago Title and Trust, Commonwealth Land Title, Delaware Title, Fidelity National Financial, Fidelity National Title, First American Title, LandAmerica Financial Group, Lawyers Title, Old Republic International Title, Old Republic National Title, Security Union Title, Stewart Information Services, Stewart Title Guaranty, TA Title, Ticor Title, Ticor Title of Florida, Transnational Title and United General Title, subsidiaries and captive Title Agencies.

[5] (*) Citation updated.

In re: Title Ins. Antitrust Cases, 702 F.Supp. 2d 840 (N.D. Ohio 2010);

In re: Washington Title Price Fixing Litig., 2:08-cv-0401 (W.D. Wash.2009);

Katz v. Fidelity National, 685 F.3d 588 (6th Cir.2012);

McCray v. Fidelity National, 636 F. Supp. 2d 322 (D. Del.2009);

McCray v. Fidelity National, 682 F.3d 229 (3rd 2012);

Proctor v. State Farm, 561 F.2d 262 (1977);

SEC v. W. J. Howey. 328 U.S. 293 (1946);

SEC v. National Securities, 393 U.S. 453 (1969);

Square D v. Niagara Frontier, 476 U.S. 409 (1986);

Union Labor Life v. Pireno, 458 U.S. 119 (1982);

United States v. South-Eastern Underwriters, 232 U.S. 523 (1944);

Wilton v. Seven Falls, 515 U.S. 277 (1995);

Winn v. Alamo, 2009 WL 7099484 (W.D. Tex. 2009).

During an oral presentation, the Court will be assisted in the application of all of the cases cited for purposes of a declaration long-overdue.

2. This Court will be in excellent company. Pursuant to statistics by Demotech, Inc. the title industry collects $47 million every day for a product that pays out less than 4% in claims versus premiums-collected (to be updated). This Court will have the sage company set forth at *Klein v. ALTA, Fidelity National First American, Stewart Title and Old Republic,* 12-1061 in the District of Columbia[6]:

> [42] The detractors waiting for the guillotine to fall include: *Title Insurance Fees Paid by Borrowers Include Referral Costs,* Jack Guttentag, March 21, 2005; *Banks as Title Insurance Referral Agents?,* Boyer & Nyce, *Scientific Series,* Centre Interuniversitaire, September 2002; *Suit Calls for Reform,* Wendy Brown, The New Mexican, March 30, 2006; *Top Four Title Insurers Pay About 80% of Title Insurance Premiums to Their Title Agents in Form of Commissions,* J. Robert Hunter, Title Insurance Costs and Competition, April 20, 2007 @p 11; and *Insurance Division Alleges Kickbacks,* Erin Johansen, Denver Business Journal, January 14, 2005, *The Truth About Title*

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[6] Certified copies of key pleadings from the District of Columbia will be introduced in evidence in the case at bar. Same for the District of Columbia Circuit and SCOTUS. All evidence from other jurisdiction will meet the rigors of 28 U.S.C. 1738 and 1739, "Certifications under the Act of Congress for Full Faith and Credit".

Insurance Needs To Be Told, The Iowa Lawyer, January 2003; *Inside America's Richest Insurance Racket,* Scott Woolley, Forbes, November 13, 2006; *Why Title Insurance?,* Albert Rush, Mortgage Banker, August 2000; *How Long Will the Good Times Roll?* Auden and Palowski Report, March 20, 2008; *Title Insurance: is it wanted here?* New South Wales Law Journal, November 2002; *Title Insurance: Getting Ripped Off?* Les Cristie, Good Morning America, January 2006; *Title Insurance Profits Excessive by Any Measure,* Bernard Birnbaum, Report to California Insurance Commissioner, December, 2005; *The Antitrust Suits and Public Understanding of Insurance,* George Priest, Vol 63, Tulane Law Review; *Despite Fines, Insurers Keep Giving Kickbacks,* Los Angeles Business Journal, November 1, 1999; *Fidelity Title to Refund $2.2M to Florida Residents, Fined $IM,* The Title Report, September 2005; *Major Players in Title Industry Stifle Reform,* Jack Guttentag, Inman News, July 2006; *The American Title Insurance Industry: How a Cartel Fleeces the American Consumer,* Eaton & Eaton, NYU Press, 2007; *The McCarran Act's Antitrust Exemption for the Business of Insurance: A Shrinking Umbrella,* 43 Tennessee Law Review 329 (1976).

3. This Court will have NAIC surveys never presented before. During oral argument in the United States Court of Appeals for the 3rd Circuit (I listened), retired Justice O'Connor asked Richard Hagstrom for the plaintiffs:

JUSTICE O'CONNOR:

Why do you say it's not insurance?

MR. HAGSTROM:

Because it's counter-intuitive.

JUSTICE O'CONNOR:

We need facts. not intuition.

The next day, undersigned counsel began surveying all 49 Insurance Commissioners. The most important survey was about regulation vs. deregulation:

ARIZONA
Title insurance is *exempt* from regulation;

ARKANSAS
Title regulation is *limited* to licensing;

CALIFORNIA
Regulation is *limited* to rates and rebates;

CONNECTICUT

Response *promised;*

DELAWARE
Response *limited* to available public records;

GEORGIA
Insured claims are *not* monitored;

HAWAII
No affirmative steps taken on *title* insurers;

IDAHO
No affirmative steps taken on *title* insurers;

ILLINOIS
Request for information denied;

INDIANA
No responsive records maintained;

IOWA
Title Insurance illegal;

LOUISIANA
Complaints are sent to insurer for a response;

MAINE
Insurance department will *not* be involved;

MARYLAND
Complaints sent to the insurer;

MASSACHUSETTS

Regulation *limited* to solvency;

MICHIGAN
Market Conduct Unit takes action[7];

MISSISSIPPI
Regulation *limited* to consumer complaints;

MISSOURI
Request for information denied;

MONTANA
No affirmative steps taken;

NEBRASKA
Will prosecute unfair trade practices;

NEVADA
Enforcement Section reports to NAIC;

NEW HAMPSHIRE
Reference to market competition report[8];

NEW MEXICO
Request for information denied;

---

[7] In all FIOA responses, Michigan stood head and shoulders above the rest of the states.

[8] The 2008 report concluded that "... there is not a reasonable degree of competition in the New Hampshire Title Insurance Marketplace ..."

NEW YORK
Request for information denied;

NORTH CAROLINA
No affirmative steps taken;

NORTH DAKOTA
No evidence of affirmative action apparent:

OHIO
Request for information denied;

OKLAHOMA
Request for information denied;

OREGON
Prompt and Fair Settlements Statutes;

PENNSYLVANIA
Request for information denied;

SOUTH CAROLINA
No proactive investigation of claims;

SOUTH DAKOTA
Request for information denied;

TENNESSEE
No affirmative steps taken;

VERMONT
Regulation *limited* to approval of forms;

VIRGINIA
Claims submitted to title insurer;

WEST VIRGINIA
Request for information denied;

WISCONSIN
Reference to Wisconsin general statutes;

WYOMING
Complaints reviewed annually.

4. Judicial Notice of laws *deregulating* title insurers. In addition to the 49 surveys from NAIC members, the following laws were presented to (i) the District Court in *Klein v. ALTA,* (ii) the Court of Appeals for the D.C. Circuit at Docket 13-1560 and (iii) the United States Supreme Court at Docket 14-929. None of these laws are contested. The rulings in *Klein v. ALTA* were all based on Clayton Act standing, not the merits of the question "...is it insurance ...", taken from ¶ 79:

> [79] Rather than being "... regulated by state law ..." the industry obtained RBC reporting *exemptions* from every state or rode the coattails of the NAIC to pick up its $18 Billion annual net profit, Exhibit R:
>
> Alabama: Alabama Code § 27-3-7;
>
> Alaska: AS.A. 21:09.070;

Arizona: R.S. § 20-1561(C);

Arkansas: Ark. Code Ann. § 23-63- 302(8)(B)(iii);

California: RBC not mentioned (just not done);

Colorado: RBC not mentioned (just not done);

Connecticut: Insurance Code § 38a-72-1(h);

Delaware: Title 18, § 5801(7);

Washington D.C.: DC Statutes § 31-2001(10);

Florida: Title XXVII, Chapter 624.4085(j);

Georgia: Georgia Code § 33-56-1(8);

Hawaii: RBC not mentioned (just not done);

Idaho: Insurers Act § 41-5401(8);

Illinois: 215 I.L.C.S. § 5/35A-5;

Indiana: Indiana Code § 27-7-3;

IOWA: Title Insurance illegal;

Kansas: RBC not mentioned (just not done);

Kentucky: 806 K.A.R. 3: 190 § 7;

Louisiana: La. R.S. 22:6(9);

Maine: Title 24-A, M.R.S. § 6451(6-A);

Maryland: RBC not mentioned; (just not done)

Massachusetts: 211 C.M.R. § 20.01;

Michigan: RBC not mentioned; (just not done)

Minnesota: M.S.A. § 60A.60(8);

Mississippi: Miss. Code Ann § 83-5-401(g);

Missouri: Title 18 § 5801(7);

Montana: M.C.A. § 33-2-1902.210(iii)(b);

Nebraska: Stock § 44-214, Risk Based Capital Act C;

Nevada: RBC not mentioned; (just not done)

New Hampshire: NH R.S.A. § 416-A;

New Jersey: N.J.S.A. § 17:468-10.1;

New York: NY Insurance Law § 1324;

North Carolina: RBC not mentioned; (just not done)

North Dakota: RBC not mentioned; (just not done)

Ohio: response delayed;

Oklahoma: O.S. Title 365 § 203-5;

Oregon: NAIC regulations apply;

Pennsylvania: NAIC regulations apply;

South Dakota: S.D.C.L. § 58-4-48;

Tennessee: TCA § 56-35-112 ;

Texas: 28 TAC § 7.401(a)(2);

Utah: RBC not mentioned; (just not done)

Vermont: NAIC regulations apply;

Virginia: VA Risk-Based Capital Act § 38.2-5500;

Washington: R.C.W. § 48.05.340;

West Virginia: W.Va. Code § 33-3-5b;

Wisconsin: RBC not mentioned; (just not done)

Wyoming: W.S. § 26-48-101(a)(iii) & (iv).

5. The NAIC Disbanding of its Title Insurance RBC Subgroup. No court of law has addressed the December 13, 2013 surrender before the case at bar. The undisputed facts are set forth in the

following paragraphs in *Klein v. ALTA:*

> [80] At the December, 2013 Fall Meeting of the NAIC at the Wardman-Park Hotel in D.C., Chairman Alan Seeley of the Title Insurance Risk-Based Capital Subgroup *conceded* that developing RBC requirements for title insurers was not feasible for two stated-reasons, Exhibit S[9]:
>
> 1. The development of Title RBC would, as an initial condition, require uniform statutory accounting requirements among the states. This is currently not the case, as the accounting standards for statutory premium reserves and known claim reserves vary by state; and
>
> 2. Even if the states were to adopt such uniformity, the amount of work needed to develop an RBC methodology for title insurers would likely exceed the resources of the Subgroup and also would take numerous years to develop.
>
> [81] In what has to be a complete and unconditional surrender, the NAIC Title Insurance RBC Subgroup "... threw in the towel..." on that fateful Friday the

---

[9] References to Exhibits will be separately submitted into evidence as appropriate.

Thirteenth as follows:

Since the Mission of Our Subgroup Appears to Have Been Accomplished, We Respectfully Request Permission to Disband.

[82] The decision to "... disband ..." and thereby "... give up ..." on state regulation had a *double* impact on the suspect *title* insurance industry, eliminating McCarrran Ferguson immunity and Filed-Rate Doctrine protection, which can be traced back to a duo of significant Supreme Court decisions. *Keogh v, Chicago & Northwestern*, 260 U.S. 156 (1922), and *Square D v. Niagra Frontier Tariff Bureau,* 476 U.S. 409 (1986).

6. Additional compelling factors are availavle to this Court in this case.

[91] GAO Report 07-401 at p. 17:

Congress Must Do Something to Remove or Sharply Reduce the Financial Incentives for Title Insurance Companies, Title Agents and Other Intermediaries to Engage In Reverse Competition Through

Kickbacks.[10]

[92] Should this Court declare that the title industry is *not* protected by McCarran-Ferguson, Section 5 of the FTC Act would apply to Commonwealth's deceptive publication: "... 21 Reasons

---

[10] The Liskow/Lewis ABA fails HUD standards in at least the following respects, at RESPA 29258:

> (1) the consumer must receive a written disclosure of the nature of the relationship and an estimate of the affiliate's charges;
>
> (2) the consumer is not required to use the controlled entity; and
>
> (3) the only thing of value received from the arrangement, other than payment for services rendered, is a return on ownership interests.

An Affiliated Business Arrangements ("ABA") is defined thus:

> **The capitalization, ownership and payment structure, ownership in separate 'divisions' is a method in which ownership returns or ownership shares vary based on referrals made and not on the amount contributed to the capitalization of the company. In cases where the percent of ownership interest or the amount of payment varies by the amount of business the real estate agent or broker refers, such payments are not bona fide returns on ownership interest, but instead, are an indirect method of paying a kickback based on the amount of business referred.**

for Title Insurance ...", providing liability for deceptive practices through the use of interstate commerce, Exhibit U. Our response follows, to be supported by testimony from Plaintiff Henry L. Klein:

21 REASONS TITLE INSURANCE IS WORTHLESS

One:	It's not insurance;
Two:	Premium prices a fixed;
Three:	Premium prices are bloated;
Four:	ALTA writes Contracts for the benefit of the Four Families, not the Insured;
Five:	ALTA only writes Contracts of Adhesion;
Six:	The "Amount of Insurance" is not the amount of insurance;
Seven:	The Company will not defend its Insured;
Eight:	If the Insured makes a claim, the Company will attack its Insured with mega-lawyers;
Nine:	If the Insured hires a lawyer, the mega-lawyers will attack the lawyer;
Ten:	If the Insured wants to meet, the Insurer won't;

Eleven: If the Insured wants an adjuster, no adjustor comes;

Twelve: If the Insured needs to be paid, the Insurer will not pay;

Thirteen: If a Lender needs to be paid, the Insurer will force the Lender to foreclose first, then fight;

Fourteen: If a Lender needs to be paid, he must first sue the Insured as a stepping-stone;

Fifteen: If the Lender really needs to be paid, he must exhaust all remedies, and then exhaust the victim;

Sixteen: If the Loan is well past-due, it won't matter;

Seventeen: If the Insured is broke and broken, it won't matter;

Eighteen: If the Insured takes his case to court, the language of the policy will change;

Nineteen: If the Insured appeals, the Insurer will last longer;

Twenty: If the Insurer is in "run-off", he runs off;

Twenty-one: The Proctor test, *infra.*

7. The Group Life Headnotes. The following selected headnotes from the controlling law at *Group Life,* provide support:

> **[5] Monopolies. It does not follow that because an agreement is necessary to provide insurance, the agreement is also the "business of insurance" for purposes of the McCarran-Ferguson Act ...**
>
> **[6] Insurance. For purposes of determining whether a contract Involves the element of "risk underwriting" that is an indispensable characteristic of insurance, there is an important distinction between "risk underwriting" and risk reduction; by reducing the total amount it must pay policyholders, and insurer reduces its liability and thus its risk but unless there is some element of spreading risks more widely, there no "risk underwriting".**
>
> **[9] Monopolies. It would be plainly contrary to the language of the McCarran-Ferguson Act, which exempts from antitrust laws the "business of insurance" and not the "business of Insurance companies" to Interpret the Act so that every**

business decision of an insurance company could be the "business of insurance".

Notably, the Supreme Court in *Group Life* understood why insurers needed to exchange actuarial data for purposes of rate-making – a process that was always missing because of title industry deregulation, *supra* – but conceded on Friday the thirteenth of April, 2013:

> The theory of insurance is the distribution of risk according to hazard, experience and the laws of averages. These factors are not within the control of insuring companies in the sense that the producer or manufacturer may control cost factors .... Because of the widespread view that it is very difficult to underwrite risks in an informed and responsible way without intra-industry cooperation, the primary concern of both representatives of the insurance industry and Congress was that cooperative rate-making efforts be exempt from the antitrust laws [price fixing]." *Id.*, at 221:

At bottom, the industry can **not** deny what all economic analysts describe:

(i) the title insurance industry is *oligopolistic,* (ii) demand for title insurance is *inelastic,* (iii) price competition is *nonexistent,* (iv) product costs to the

consumer are *excessive,* (v) the market relationship between insurers and title agents is *captive*, (vi) title agents are RESPA shams, (vii) title insurer profits are *supernormal,* and (viii) kickback schemes result from *reverse competition.* To use the Roth test (no disrespect intended), the Title Insurance Industry has no "... redeeming social value ...", *Roth v. United States,* 354 U.S. 476 (1957). It is no hyperbole to suggest that a $47 million daily fleecing of the American consumer is "obscene".

> **Title insurance firms rake in $18 billion a year for a product that is outdated, largely unneeded-and protected by law.**
>
> Scott Wooley, *Inside America's Richest Racket.*

8. The Proctor Test. Because industry agents keep 80% or more of the insureds' premiums – concealed at closing – the test required by the Court of Appeals for the District of Columbia Circuit seals the title industry's fate. In *Proctor v. State Farm,* 561 F.2d 262 (1976) the Court provided the litmus test for the "... business of insu**rance**..."as opposed to the "... business of insu**rers** ...", worthy of substantial emphasis in a different hue:

> ***Whatever the exact scope of the statutory term, it is clear where the focus was: it was on the relationship between the insurance company and the policyholder. Statutes aimed at***

> ***protecting or regulating this relationship, directly or indirectly, are laws regulating the business of insurance.***

The significance of the Proctor Test is magnified when the United States Supreme Court decision in *Union Labor life v. Pireno,* 458 U.S. 119 (1982) is considered, identifying three indicia of what constitutes the "business of insurance".

> "First, after noting that one 'indispensable characteristic of insurance' is the 'spreading and underwriting of a policyholder's risk, the Court observed that parts of the legislative history of the McCarran-Ferguson Act 'strongly suggests that Congress understood the business of insurance to be the underwriting and spreading of risk,"

"Risk" means *exposure to the chance* of injury or loss; a hazard or dangerous *chance;* the degree of *probability of loss,* Random House Dictionary of the English Language. "Chance" means the *possibility* or *probability* of anything happening, *Id.*

When a *title* policy is issued, there is no "... risk ...."

The condition of a title is based on existing public records "... history ...".

History is not a risk.

The second criteria in *Union Labor Life* provided:

> Second, the Court identified the contract between the insurer and the insured as"[a]nother commonly understood aspect of the business of insurance". The Court noted that, in enacting the McCarran-Ferguson Act, Congress had been concerned with the "relationship between insurer and insured, the type of policy which could be issued, its reliability, interpretation, and enforcement – these were the core of the business of insurance." *SEC v. National Securities,* 393 U.S. 453 (1969).

9. Conclusion. The die is cast. This Court is in a position to make an immeasurable difference in this epoch of lawlessness.

Respectfully submitted,

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