

1 STATE OF NEW YORK: DEPARTMENT OF FINANCIAL SERVICES
2 FINANCIAL FRAUD AND CONSUMER PROTECTION DIVISION

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4 PUBLIC TITLE HEARING

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7 December 10, 2013

8 10:00 A.M.

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10 One State Street

11 New York, New York

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14 MINUTES OF TITLE HEARING

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17 BEFORE:

18 DEPARTMENT OF FINANCIAL SERVICES PANEL

19 ELLEN R. BUXBAUM, Associate Counsel

20 MARTHA LEES, Senior Policy Advisor

21 PETER DEAN, Deputy General Counsel for Insurance

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24 Reported By:

25 LINDA A. SCHILT

1 A P P E A R A N C E S:

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3 PANEL #1 - PAGE 6

4 FELICE K. SHAPIRO, TIRSA

5 MARVIN N. BAGWELL, Old Republic National Title Insurance Co.

6 TIMOTHY DWYER, En Title Direct Group Inc.

7 JOHN A. FRATER, Esq., Stewart Title Insurance Company

8 JOSEPH DeSALVO, First American Title Insurance Company

9 STEVEN G. DAY, Fidelity National Title Company

10

11 PANEL #2 - AGENTS - PAGE 118

12 TED DACEY, Thoroughbred Title Services LLC

13 BRIAN TORMEY, State Street Title Agency

14 KEN WARNER, Landstar Title Agency

15 DOUGLAS FORSYTH, Excaliber Agency LLC

16 THOMAS DeCARO, Benchmark Title Agency

17 JOSEPH WILLEN, Advantage Title Agency

18 JOHN KRUPSKI, Allied American Abstract Corporation

19 MICHAEL GIGLIOTTI, Allied American Abstract Corporation

20

21 PANEL #3 - PAGE 207

22 JOHN ROBERT HUNTER, Consumer Federation of America

23 BIRNY BIRNBAUM, Center for Economic Justice

24

25

1 MS. BUXBAUM: Good morning, and welcome to the
2 Department of Financial Services' hearing regarding the title
3 insurance industry. My name is Ellen Buxbaum. I'm associate
4 counsel with the Department's Financial Fraud and Consumer
5 Protection Division. I thank you for being here in light of
6 what is going on outside.

7 Joining me on the panel this morning are Martha
8 Lees, Department's senior policy advisor for insurance, and
9 Peter Dean, deputy general counsel for insurance.

10 The Department began this inquiry to gain a better
11 understanding of the expenses that are incurred in the course
12 of issuing a title insurance policy. Title insurance is
13 obtained in connection with the purchase of real property.
14 Buyers are required by their lenders to purchase a mortgage
15 policy for the full amount of the mortgage and they often
16 purchase owners' policies for the full amount of the purchase
17 price. Although the mortgage policy protects the lender, the
18 buyer is required to pay for both the mortgage policy and
19 owner's policy.

20 The purpose of acquiring a title insurance policy,
21 however, often is not understood by consumers. The policies
22 are not marketed to the insured and the homeowner does not
23 usually participate in choosing the title insurer or agent.
24 Rather, the insured's representative, usually an attorney, or
25 another real estate professional orders the title policy on

1 behalf of the insured and the title insurance industry
2 directs its marketing dollars toward those real estate
3 professionals and not the consumer.

4 We know that losses hover around five percent and
5 that the expense portion of the premium is very high. We
6 also understand that, unlike other lines of insurance, losses
7 are as low as they are because of the curative work that is
8 done before the policy is issued and there's significant
9 expense associated with the curative work. The Department
10 has been reviewing these and other expenses as part of the
11 inquiry.

12 We will focus on several topics today, including the
13 nature of the curative work done prior to issuing the policy
14 and the cost of that curative work; other services provided
15 by and charged to the consumer in connection with the title
16 of the real estate closing and identifying those expenditures
17 which are properly expensed using premium money, and those
18 nationwide expenses that are properly included in the New
19 York rate through allocation.

20 The hearing is intended to be fact-driven and
21 exploratory. The Department is eager to hear what each
22 witness has to say with regard to the industry and in
23 response to the specific questions posed to that witness.

24 Our first panel this morning includes TIRSA and five
25 insurers: Fidelity National Title Insurance Company, First

1 American Title Insurance Company, Stewart Title Insurance
2 Company and En Title Direct Group, Old Republic and TIRSA.

3 Our second panel will include seven agents:
4 Advantage Title Agency, Benchmark Title Agency, Excaliber
5 Title Agency LLC, State Street Title Insurance, Landstar
6 Title Agency, Thoroughbred Title Services LLC and Allied
7 American Abstract Corporation.

8 Our last panel will consist of J. Robert Hunter,
9 Director of Insurance at Consumer Federation of America, and
10 Birny Birnbaum, Consulting Economist, Center For Economic
11 Justice.

12 Martha Lees will now review the rules and procedures
13 for the hearing.

14 MS. LEES: Good morning. I do want to speak
15 briefly about the process that this hearing will follow.
16 Before witnesses are asked to speak, Ellen Buxbaum will
17 administer the oath to ensure the witnesses recognize that
18 their testimony is sworn and affirmed and must be truthful.
19 Each witness will have the opportunity to present an opening
20 statement for four minutes, and TIRSA is six minutes. The
21 members of the panel will then ask questions and, to avoid
22 confusion, witnesses should wait to be personally addressed
23 before responding to questions from the Department
24 representatives.

25 Documents used today will be marked and entered into

1 the record, although the Department does not intend to have
2 to enter documents into the record.

3 There will be a lunch break from about 12:30 to
4 1:30. Please return promptly from lunch and allow yourself
5 time to go through security on the first floor if you're
6 returning for the afternoon sessions.

7 There will be a 15-minute break between the second
8 and third panels.

9 I would appreciate it if everyone would take a few
10 moments now to silence your cell phones and your
11 Blackberries. Thank you and we will begin.

12 MS. BUXBAUM: Could you please raise your right
13 hand, those who will be testifying?

14 Do you solemnly swear or affirm that the testimony
15 you are about to give will be the truth, the whole truth and
16 nothing but the truth?

17 SPEAKERS: I do.

18 MS. BUXBAUM: Mr. Day, are you going to be giving
19 an opening statement?

20 MR. DAY: If I may, please.

21 MS. BUXBAUM: Please.

22 MR. DAY: Good morning. I am Steven Day. I'm
23 executive vice president and divisional manager of Fidelity
24 National Title Insurance. I'm here today with Jonathan
25 Richard, regional counsel for Fidelity National Title

1 Insurance of New York.

2 I'm pleased to be part of the panel this morning to
3 discuss the title insurance industry. I've been in the
4 industry for the past 32 years and proud of the role our
5 industry plays not only assisting with the American dream of
6 homeownership but also in the processing and underwriting of
7 sophisticated commercial transactions. The efficient, timely
8 and protected manner has been a key component of the
9 financial success of our economy.

10 I know the time is short and part of what I wanted
11 to touch on was already referenced but I think it's important
12 I touch on the one key area. The industry is criticized for
13 the percentage of premium paid for overall premiums collected
14 for the transaction. Most consumers are familiar with the
15 annual payments of only insurance, car insurance and life
16 insurance policies, and most receive payment for fender
17 benders, for flooded business and all experience a payment at
18 some time under the life insurance policy. The title
19 insurance is risk avoidance. We want to do everything we
20 possibly can to assure someone they have clear title to their
21 property and no one will challenge this. We're able to
22 accomplish this because we utilize our underwriting efforts
23 to analyze the status of title for the property, correct any
24 issues discovered and review and record the necessary
25 documents to transfer title. This accounts for most of the

1 efforts of the title professional and most of the one-time
2 premium payment is for these services.

3 But there's still a risk component. Part of this is
4 due to human intervention; someone makes a mistake and
5 doesn't do enough to protect the title. Most claims are due
6 to items, notwithstanding all of your efforts to prevent,
7 that cannot be uncovered. During the recent downturn there
8 is fraud, theft of title funds, missing index documents and
9 errors challenging why they were left out of the will.

10 So as you can appreciate, most, if not all,
11 consumers would prefer not to make a title insurance claim
12 and make sure they have clear title and possession to the
13 home, but similarly appreciate this backstop protection of
14 coverage should they ever need it.

15 So I'd ask the panel that in reviewing the
16 components of a title rate, it's important to note and
17 recognize the significant risk avoidance actions as well as
18 the risk reserved for this ultimate backstop protection of
19 the insurance policy. We're happy to expand on any of the
20 written testimony presented and answer any questions here
21 today. Thank you.

22 MS. BUXBAUM: Thank you.

23 Mr. DeSalvo?

24 MR. DeSALVO: Good morning. My name is Joseph
25 DeSalvo. I am vice president and senior operations counsel

1 for First American Title Insurance. I'm here today with our
2 Deputy General Counsel Timothy Kemp from -- he's with our
3 parent company, First American Financial.

4 First American has been active in the role of title
5 insurance here in the State of New York since 1967 having
6 first come here under the name of Northeastern Title
7 Guarantee in 1972. We changed our name to First American
8 Title Insurance of New York and thereafter in 2010 First
9 American Title Insurance Company of New York, which is a
10 wholly owned subsidiary that was merged into First American
11 Title and now issues title insurance as a dually licensed
12 title insurer under the California corporation.

13 So what I would like to do is -- I realize Steve
14 just took a lot of my thunder because of the fact he pretty
15 much covered what I would have covered as far as the industry
16 is concerned, as far as the insurance is concerned. I think
17 that at best what I should be saying right now is title
18 insurance is somewhat of a particular product. It has its
19 purposes and, as Steve has well put, those purposes are
20 significant in light of the fact that the risks that are
21 involved to the homeowner, the majority of people that come
22 to buy a house have no idea what they're getting themselves
23 into, especially the first-time buyers. And it is this group
24 of professionals at the level of the practitioners who
25 represent them and the title insurance companies to protect

1 them to make sure that they are in a first-lien position and
2 not subject to challenge. The worst thing that can happen to
3 the homeowner is to find out he has a dispute with a neighbor
4 because of the insurance maybe because of a fence or
5 something more dramatic.

6 We're not the -- the other thing that should be
7 recognized is that title insurance is a one-time premium that
8 is paid -- which is different than the other types of
9 insurance that you commonly deal with. All the services
10 which are performed by the title insurance is primarily done
11 upfront.

12 We do have low loss ratios, and one of the reasons
13 for that is not only the curative work but also the fact the
14 policy we issue is policy indemnification. People that
15 normally get a property and casualty insurance product would
16 put in a claim and expect to get paid. In our situation,
17 because of the indemnifications we provide, we provide the
18 defense both to prosecute and defend from adverse claims with
19 respect to titles. Those costs are there and not necessarily
20 reflected in the numbers paid out because of the fact we are
21 taking on the responsibility of defending those individuals.

22 I appreciate the time of being here. What I do
23 think you should be looking at from the standpoint of your
24 analysis of rates is that there is a delicate balance that
25 has to be here. What the Department should be concerned

1 about in addition to protecting the public is also make sure
2 you have solvent companies that are entitled to a reasonable
3 profit for the services that they provide. So this way they
4 are stable, they have the appropriate claim reserves and will
5 be there when in fact the claim does come in. Thank you.

6 MS. BUXBAUM: Thank you.

7 Mr. Frates. I assume not Julie Curlen.

8 MR. FRATES: Good morning. My name is John Frates,
9 executive vice president and general counsel of Stewart Title
10 Insurance Company, my employer. On behalf of Stewart Title,
11 we are a New York domesticated underwriter and we look
12 forward to working with the Department of Financial Services
13 on these questions.

14 I would like to mirror what my colleagues said. It
15 won't bear repeating because they already said it once. We
16 begin that any of the information that Stewart has provided
17 in our written responses we look forward to expanding upon,
18 so thank you.

19 MS. BUXBAUM: Mr. Dwyer?

20 MR. DWYER: I have no prepared opening comment.

21 MS. BUXBAUM: Mr. Bagwell?

22 MR. BAGWELL: Good morning, Mrs. Buxbaum, Ms. Lees,
23 Mr. Dean. My name is Marvin Bagwell. I am vice president
24 and chief underwriting counsel for Old Republic of New York.
25 I am pleased to be here this morning on behalf of Old

1 Republic. I've been in the title business for 28 years now,
2 much longer than I anticipated, much longer than I realized,
3 and I appreciate the opportunity to offer my thoughts
4 regarding New York's land title insurance as well as to
5 respond to any questions that you might have.

6 Pursuant to the Department's October and November
7 request for information and indeed your request going back to
8 November 2006, Old Republic has submitted written responses
9 to your questions. In the interest of time, I will not
10 reiterate our responses here, but I would like to offer a few
11 comments for your consideration and I will try not to repeat
12 what my colleagues have already presented to you.

13 People speak about title insurance and the land
14 title industry seldom with the understanding of the vital
15 role that our industry plays in ensuring that the great and
16 good people of the State of New York have clear ownership to
17 their homes which helps them to accumulate wealth and which
18 drives this State's economy, as well as that of our nation.
19 Per a recent study by the American Land Title Association or
20 ALTA, nationwide the land title industry helps consumers
21 sell, purchase and refinance at least ten million real estate
22 transactions which accounted for more than \$2 trillion
23 annually across the country. No other industry insures
24 people's ownership of real property. The title industry
25 directly contributes to U.S. economy by creating almost \$26

1 billion of goods and services a year and paying almost \$7
2 billion in wages and we employ approximately a 157 thousand
3 people nationwide.

4 The direct and indirect economic contributions of
5 the title insurance industry to the U.S. economy includes
6 more than \$50 billion in annual sales, economic activity and
7 12.7 billion in wages. Those wages support almost 320
8 thousand American workers. While title insurance is a
9 business, part of the industry has been pointed out by my
10 friends and colleagues, its core is comprised of people,
11 individuals like you and me, dedicated professionals who use
12 their extraordinary time, their efforts, their skill to
13 resolve title issues, reduce consumer's risk of not having
14 marketable title and to facilitate real estate transactions.
15 These professionals are title abstractors, clearance
16 officers, staff attorneys, title agents and title insurance
17 company personnel, many of whom are in this room today.

18 Recent study notes that approximately two thirds of
19 title agents, title abstract and settlement companies are
20 small businesses that do business in the same communities as
21 the properties sold, purchased and refinanced. Each
22 operation, and many of them are what we call mom-and-pop, may
23 include abstractors, examiners, attorneys, support personnel
24 without the experience and skill of those persons, property
25 rights, monetary investors of the individual homeowners would

1 be at risk.

2 MR. DEAN: Mr. Bagwell, your time is up. Please
3 wrap it up.

4 MR. BAGWELL: Thank you very much. I appreciate
5 the opportunity to address you.

6 MS. BUXBAUM: Mrs. Shapiro?

7 MS. SHAPIRO: Good morning. My name is Felice
8 Shapiro, executive director of the Title Insurance Rate
9 Service Association. I have been in this position for four
10 years and prior to that I spent 26 years in the industry.
11 TIRSA appreciates the opportunity to speak at this hearing
12 and assist our regulator, DFS.

13 As you know, TIRSA submitted written testimony to
14 the Department addressing five topics. The first four topics
15 dealt with TIRSA data call, and in particular they asked for
16 detailed information regarding expenses of TIRSA underwriter
17 member and agents. I would like to make a few general
18 comments about that.

19 The memorandum and decision opinion of the Insurance
20 Department on August 12, 1993 included a statement having to
21 do with the data calls. At the very end of it it said these
22 statistical systems track loss cost and experience --
23 sorry -- expense experience with specificity segregated on an
24 industry aggregate as well as individual insurer basis.

25 For the entire history of TIRSA, the Department

1 reviewed and approved the form of TIRSA's data calls. Prior
2 to each year's data calls being sent to our members, the
3 proposed data call is sent to DFS for review. Our last
4 examination done by the Department completed in March 2009
5 required a number of substantial changes to the data call
6 process. TIRSA was required at that point to use an
7 actuarial certification. All of these changes were properly
8 made and incorporated and each year since then we have
9 continued to make further refinements so that the data call
10 represents a true and accurate picture to you, our regulator.
11 TIRSA has even gone so far as to now have an actuary do the
12 data call.

13 In its questions, the Department has asked for
14 information from TIRSA that is not required under the current
15 data call procedures to be provided by TIRSA. It is asked
16 effectively for the detail behind certain categories of
17 expense and income, which TIRSA does not have this data.
18 While TIRSA embraces its role as the Department's statistical
19 agent, TIRSA never held itself out performing an audit
20 function and the State has never suggested that TIRSA be an
21 auditor. TIRSA and its actuary, in connection with the
22 annual data call process, do carefully review such data for
23 reasonableness and perform numerous reconciliations against
24 each company's form nine. These form nines, of course, the
25 Insurance Department has, but TIRSA only compiles the data.

1 We do not audit the data. The information provided by the
2 companies to -- into the data call is then submitted to the
3 Department.

4 Obviously TIRSA and its members believe the data
5 calls provide an accurate picture of profitability and status
6 of title insurance in New York. TIRSA further believes that
7 it has continued to follow the guidelines of the 1993
8 decision. TIRSA has tried to be responsive to the
9 Department's recent requests for more information relating to
10 expenses. In that regard, data call instructions for the
11 year 2012 asked that the underwriters request additional
12 detail relating to the expenses of their independent agents.
13 The results of that effort were included in a part two of the
14 agent U-4.

15 TIRSA would like to emphasize that the information
16 that is reported by TIRSA in the annual data call is exactly
17 what the Department has asked for. To the extent available,
18 TIRSA will of course cooperate and work with its actuaries to
19 ensure that the information requested is in the data call
20 and, if requested, obviously we will work with you to give
21 you additional information.

22 However, we must stress that it is important, to
23 avoid reluctance and problems, it is absolutely necessary
24 that the Department provide sufficient notice and lead time
25 so that TIRSA and its member companies can modify their IT

1 systems and their internal business processes with respect to
2 the data gathering that they must do. For example, in
3 Florida they have a 2015 data call and they have just now,
4 almost a year and a half before, started processing this and
5 getting people up to speed on it. TIRSA respectfully
6 requests that such notice be given at least one full year in
7 advance of the yearly data call.

8 In as much as public hearings on title insurance are
9 infrequent, I would like to attack a few other things in one
10 minute. I thought I had six minutes. We would like to
11 express our concerns to the Department over the Department's
12 failure to rule on the revised TIRSA rate manual. This rate
13 manual was submitted over 18 months ago, and it was a major
14 overhaul of a very substantial document. We looked at all
15 kinds of things and added into that document definitions,
16 examples, clearer language. We took out sections that might
17 have had ambiguities and we would like to work with the
18 Department to get this moving.

19 Furthermore, that rate manual is in a rate neutral
20 faction so that it does not affect the rates one way or the
21 other. It is pro-consumer with the largest changes to that
22 manual being in the form of a change in the refinance rates.
23 TIRSA respectfully requests that the Department address this
24 as well as the fact of our amendment to our certificate as
25 quickly as possible.

1 Very quickly, my conclusion. Finally, TIRSA would
2 like to welcome greater communication and cooperation with
3 the Department. We are open to discussing ways that the
4 regulatory relationship could be improved for TIRSA as well
5 as for the Department. In the past TIRSA had established
6 with the Department quarterly liaison group meetings which
7 were beneficial to both the industry and we believe to the
8 Department. We would like very much to request that these
9 liaison group meetings be reinstated.

10 Thank you for allowing TIRSA to speak today and I'm
11 happy to answer any questions you may have.

12 MS. BUXBAUM: Thank you.

13 MS. LEES: I'd like to start off the questions by
14 focusing a little on curative work and I will ask Mr. Day
15 first, but I'll also ask further panelists for their opinion.
16 Department understands that approximately one third of
17 transactions require curative work.

18 Mr. Day, is that an accurate estimate?

19 MR. DAY: Yes. In fact, I referenced before about
20 the study from ALTA and I confirmed with them their
21 continuing confirmation of that number, approximately a third
22 of all transactions require some form of curative work.

23 MS. LEES: Does that mean that in two thirds of
24 transactions you order the title search it comes back clean
25 and you send it to the insured's attorney?

1 MR. DAY: Well, when we talk about curative work,
2 it is separate and apart from analysis of the title. So it's
3 one of the areas I think as we go through and discuss the
4 question of what are the expenses that make up that majority
5 of the work in this underwriting process, I just want to make
6 sure that I will answer your question but I want to make sure
7 that I clarify that there is a significant amount of work
8 that is done in the underwriting process. Some of that leads
9 to a determination that there are curative functions that
10 need to occur. Sometimes they're very simplistic. It may be
11 an undischarged mortgage. Sometimes very complex. It could
12 be somewhere in the chain of title they missed that the
13 actual number of errors was six and not five and that the
14 deed then transferred forward.

15 So, yes, to answer your question, that two thirds of
16 the transactions, after going through the underwriting
17 process, there is nothing major relative to a sense of
18 curative but that doesn't say that the package comes in and
19 goes right on to the seller's attorney -- I mean, the buyer's
20 attorney. There is a lot under review, reading work that
21 goes on prior to that point.

22 MS. LEES: Do you send the results to anyone
23 besides the attorney for the buyer?

24 MR. DAY: Now, at this point I'm based in
25 Jacksonville, Florida. I have some base knowledge. I will

1 defer, if I may, John is here.

2 MR. RICHARDS: A report we send to a lender
3 counsel, if there is a lender involved in the transaction,
4 and a report can be sent directly to what will ultimately get
5 to the seller's attorney. Remembering in New York that
6 buyers, sellers and lenders are most always represented by
7 counsel.

8 MS. LEES: Mr. Day, you mentioned the work of
9 underwriting. How much on a given transaction would you
10 estimate is spent on the underwriting process?

11 MR. DAY: I don't know if I have that exact facts
12 here as far as -- again, it is determinate upon what is the
13 nature of the transaction. You may have a re-fi transaction
14 and so the transaction may move quickly. You could have one
15 where there is no current evidence of title that is
16 available, having a very lengthy title search, and the
17 underwriting process -- and John could be more detailed, if
18 you'd like -- is one where you need to -- unfortunately, we
19 don't have a system here in the east where you can just have
20 a computer run through the documents and produce a title
21 report. It is one of analyzing what was the status of the
22 documents coming forward. We have the issues of questions of
23 indexing or possibly misindexing, if the proper parties
24 signed a correct document. All of that is part of the
25 reading underwriting process.

1 Very often, especially when you're dealing with
2 commercial transactions, the underwriting has barely started
3 at the time you produce the title report because there is so
4 many facets of the title report that the potential purchaser,
5 the lender, various other parties may be engaged in are
6 looking on to confirm and verify. So that process -- in a
7 commercial transaction it could be hours upon hours. In a
8 residential transaction it can be very quick, and I can't
9 estimate whether that is 30 minutes or an hour. In
10 commercial it can be days upon days.

11 It is really a question and a factor of, you know,
12 what is the nature of it, and some members of the panel here
13 are local counsel so maybe they can expand upon it better
14 than I could.

15 MS. LEES: Sure. I'll turn to Mr. Frates.

16 Do you agree with the one third estimate that about
17 one third of the transactions are curative work?

18 MR. FRATES: I would say one third is probably a
19 conservative number. Again, the definition of curative is
20 going to be a very broad definition of what needs to be done
21 in a title report and what type of transaction requires
22 curative work. In our experience at Stewart, curative work
23 can be from the capacity of the person to sell the condition
24 of the real property, the analysis of the evidence found in
25 the county clerk's office and then you get to the actual

1 nature of the transaction, buy, sell, is this a refinance, do
2 we have other extraneous issues, such as is there an easement
3 affecting the property, do we have setback, covenants and
4 restrictions affecting the property.

5 Step back a second. The concept of curative work in
6 the underwriting in the abstract of title when it is produced
7 from the county clerk's office could be from five pages to a
8 hundred pages of title evidence, so it requires an individual
9 with a certain level of experience to actually take a look at
10 that title evidence and report it -- take that title
11 evidence, put it into a title report, which is essentially
12 the title company's opinion as to what conditions affect
13 title and how we're going to be able to effectuate that
14 title. So your title report or commitment, whatever we call
15 it, could be two pages to five pages. Again, I'm taking out
16 of that transaction your typical commercial deal, which could
17 be many, many, many pages.

18 So the one third estimate is probably a conservative
19 estimate. I would say on most transactions there is some
20 curative work that has to be done, some interaction between
21 the title company, its representatives and the buyer or
22 seller or the bank representative or even when we're
23 providing our title report to the various parties it could be
24 a mortgage broker, real estate broker that they want copies
25 of the title report to go to.

1 MS. LEES: Does curative work then, in your
2 definition of curative work, do you include the payoff of the
3 seller's mortgage?

4 MR. FRATES: One of the requirements would be the
5 payoff or taking an assignment, is there a consolidation,
6 refinance. The seller's attorney, seller's representative
7 would require to provide at closing or before the closing the
8 payoff statement, evidence of that payoff. So to the extent
9 they are asking questions, it's a requirement in our title
10 report that would be considered curative I would think.

11 MS. LEES: Are there transactions such as
12 residential transactions that are relatively simple?

13 MR. FRATES: There are relatively simple
14 transactions. Sorry, did you say are not relatively --

15 MS. LEES: That are.

16 MR. FRATES: I would say there are.

17 MS. LEES: What percent of transactions would you
18 say that is?

19 MR. FRATES: Again, that's a very difficult
20 question for me to answer.

21 MS. LEES: Let me ask Mr. DeSalvo. In your
22 testimony or First American's testimony, it indicated that an
23 underwriting attorney or underwriting assistant will perform
24 the curative work. Who would do the majority of the work?

25 MR. DeSALVO: It's usually done by the two of them.

1 One of the factors that comes into play is the volume of work
2 we're facing at the time. The New York office does a lot of
3 commercial work. So from that standpoint we are involved in
4 a tremendous number of complex and complicated transactions
5 where there is assistance which is necessary. They're all,
6 the assistant and the underwriting counsel, are both highly
7 experienced individuals. The difference being that usually
8 in our business model the greater majority of our
9 underwriters are attorneys. That is, I would say -- we
10 probably have two thirds, one third split, as far as
11 underwriters are concerned.

12 Underwriting assistants are almost quasi paralegals
13 because they are familiar with that situation, but they work
14 hand-in-hand and a lot of times what will happen is there may
15 be some mundane issues that have to be done that can be
16 assigned to the assistant to perform, okay, be it, let's say,
17 if there's a problem in the format of a satisfaction of
18 mortgage or release of a lien that has been presented to the
19 office. That person could then communicate with the attorney
20 saying this has to be corrected or something like that, while
21 the lawyer, the clearance officer working on that particular
22 file would be perhaps going into more involved situations.
23 But they kind of coordinate with one another.

24 MS. LEES: Do both persons work on all
25 transactions?

1 MR. DeSALVO: They work on the transactions
2 assigned to them.

3 MS. LEES: Are there transactions which only the
4 assistant is working?

5 MR. DeSALVO: No.

6 MS. LEES: So the underwriting counsel works on all
7 transactions?

8 MR. DeSALVO: Yes. When you talk about
9 underwriting counsel, it's underwriting counsel and also a
10 clearance officer, which I would look at being also -- there
11 are individuals in this industry who are extremely, extremely
12 well versed in real estate law who are not attorneys but who
13 worked as clearance officers and you would never -- with the
14 exception of the fact they don't have on their business card
15 counsel -- you would never know they weren't lawyers because
16 they're so well versed in the industry, in the work.

17 MS. LEES: On what percent of transactions would a
18 clearance officer work would you say?

19 MR. DeSALVO: That would be done equally. If a
20 particular transaction is coming to the office in the nature
21 of a complicated commercial transaction, obviously we would
22 put the most experienced underwriters that we have involved
23 in that and there may sometimes even be more than one working
24 on it. We had some very large deals where you do need that
25 expertise, you need the team approach with more than one

1 underwriter working on the file.

2 MS. LEES: The simplest transactions, who is
3 assigned to handle them, curative work?

4 MR. DeSALVO: Again, curative work being -- I would
5 say that probably the simpler the transaction, you would
6 probably have the clearance -- the compliance officer or --
7 not compliance officer. The clearance person, non-attorney
8 would probably do that.

9 MS. BUXBAUM: Mr. DeSalvo, what percent of
10 transactions are commercial that First American issues
11 policies for in New York?

12 MR. DeSALVO: I don't have that statistic. I can
13 get that for you.

14 MS. BUXBAUM: Mr. Day, do you know what percent are
15 commercial?

16 MR. DAY: I don't either. I don't either because
17 we have to go back to -- we issue a large amount of our
18 policy from our agency network so we have to analyze that and
19 compare it all.

20 MS. BUXBAUM: I'm asking about direct policies.

21 MR. DAY: Direct.

22 MS. BUXBAUM: Operations.

23 MR. DAY: I couldn't -- I could guess but I don't
24 have that statistic with me but, again, I can also supply
25 that.

1 MS. BUXBAUM: Mr. Frates, do you know what percent?

2 MR. FRATES: We would have to supply that
3 information also.

4 MS. BUXBAUM: Mr. Dwyer?

5 MR. DWYER: We do not write commercial.

6 MS. BUXBAUM: Mr. Bagwell?

7 MR. BAGWELL: We have a very small direct operation
8 in Albany, last year only insured 11 transactions and they
9 were all commercial.

10 MS. BUXBAUM: Thank you.

11 The cost of the curative work is the search and then
12 the overhead including salaries and rent and insurance and
13 that type of expense; is that right, Mr. Day?

14 MR. DAY: I would say generally that's correct.
15 There may be some miscellaneous expenses that might be
16 necessary to get some searches and other areas to clarify a
17 point but I would say that's generally correct.

18 MS. BUXBAUM: Does Fidelity own a title plan?

19 MR. DAY: Own a title plan, no. Back title
20 evidence is available to our operation but we do not own a
21 title plan.

22 MS. BUXBAUM: Do they have any interest in a title
23 plan or do they use independent searchers for that?

24 MR. DAY: For most of our work the greatest
25 percentage of the searches are done by independent searchers.

1 Our Albany operation tends to use in-house staff more
2 frequently for theirs, but Downstate we use independents to
3 be searching land evidence records, but we do take advantage
4 of what back title we have maintained in our operations to
5 try to get a jump on the process where possible.

6 MS. BUXBAUM: So you have a paper title plan, that
7 would be considered it, or not even?

8 MR. DAY: Yes. I just want to make sure from
9 definition because nationwide utilization of the term "title
10 plan" is much different. It denotes something more automatic
11 and sophisticated that is certainly not the process here in
12 the east. I think many operations, both on the agency side
13 and the direct side, maintain past title evidence on
14 transactions they engaged with and utilize that past
15 information as a starting point going forward, so we don't
16 have to go back a period of time for the search and advise
17 the outside examiners they can utilize it.

18 MS. BUXBAUM: Does that make the cost of the search
19 less expensive?

20 MR. DAY: Typically, no. The one situation where
21 it does is where it's pure continuation. Very often because
22 we're using outside examiners, they tend to average what
23 their charges are to us because sometimes we give them a
24 tough one and sometimes we give them an easy one. So our
25 cost for that, as we reported in our written testimony, there

1 is a range between it and some fluctuations, but typically
2 it's more when we asked an examiner to do more continuation
3 for three, five, ten years based on the evidence as opposed
4 to a 20-year start.

5 MS. BUXBAUM: Mr. DeSalvo, does First American have
6 a title plan?

7 MR. DeSALVO: We have a file system that we use.
8 We have paper -- if you're talking about a title plan being a
9 source where there is a series of back titles which there's
10 an index for which we can get access to? Yes, we have that.

11 We have secure storage facilities where it's kept.
12 In addition to that, we also have our electronic filing
13 system which is our fast system where all the documentation
14 which we're trying to keep or bring into the computer era
15 here is available to us, so it's easy for us to get it back.

16 MS. BUXBAUM: Has technology made issuing a title
17 policy easier over the years?

18 MR. DeSALVO: From the examination standpoint it
19 helped out somewhat. I can say that only because of the fact
20 I used to examine titles back in the '60s when I was in
21 college, and most of the jurisdictions are in grantor/grantee
22 index, which is a name indices and not like a block and lot
23 like we have here in Manhattan, so it's a tedious process.
24 Some municipalities, some counties are more electronic so
25 it's been able to facilitate the ability of at least getting

1 the documents, accessing the documents offline -- I should
2 say online. So its technology has helped out to a degree.

3 MS. BUXBAUM: Has technology made issuing the
4 policy any cheaper or less expensive for the underwriter?

5 MR. DeSALVO: Anything I tell you as far as that is
6 concerned would be pure guess on my part. I would say
7 there's probably some benefit that it does have.

8 MS. BUXBAUM: Mr. Frates, what's your opinion on
9 technology making the issuance of the policy less expensive
10 over the years?

11 MR. FRATES: Well, at Stewart we maintain
12 additional copies of policies and some title evidence dating
13 back to approximately 1995. It varies by location. Upstate,
14 New York, for example, where we have a number of offices, the
15 back titles are more in paper format so it requires someone
16 to find the file and come out of it and issue out of it.

17 In terms of technology, the concept of making it
18 cheaper for the underwriter, it has allowed us some economics
19 in terms of the issuance of the actual jackets, paper
20 jackets. It allows us some economies to accounting where
21 that data jacket went and something along those lines in
22 terms of keeping track of who is issuing the policies and how
23 they have been issued and how they have been paid. It has
24 afforded us some economics, some upfront costs in terms of
25 scanning documents, paper documents into digitized documents.

1 But it does allow our staff to go and see if we
2 actually issued that on that property before and pull that
3 prior evidence off and allows us to send that evidence to an
4 examiner in the county clerk's office or examiner to come out
5 of that particular title report.

6 MS. BUXBAUM: Mr. Day, we're aware that not all
7 county clerk's offices are automated, but as they become more
8 automated, does that result in the risk to the underwriter
9 being reduced?

10 MR. DAY: Our experience has been no, that it's
11 still -- the access becomes more available, it does not
12 reduce the chance of either an error in the documents
13 presented or misindexing at the time that it's placed with
14 the county clerk's office. It certainly assists with access.

15 And as we were commenting on the question of does
16 technology help, it helps to maintain the cost structure
17 because other things go up, as with the technology in
18 general. Technology helps stable cost factors. Certainly
19 having electronic access for the counties to move the process
20 along as that gets -- as we start to occur any issues we
21 find, I think down the road it is going to be very helpful,
22 but I think it's going to be an extended period and not in
23 the next three to five years.

24 MS. BUXBAUM: So at some point maybe a long time
25 from now but when the land records get fully automated, there

1 will be a record for the underwriters to be able to rely on?

2 MR. DAY: No, because until the point that you have
3 clear verification of each and every document that it has
4 legally accomplished what it is supposed to do. I will give
5 you several examples, fraud. A document could be effectively
6 presented to the clerk. There is nothing on its face that is
7 wrong. It is recorded. It shows the transfer of title but
8 it's a fraudulent document.

9 Until you can come up with a process to protect
10 against that, just a pure automation does not bring it to the
11 point where you can push a button and deal with title. We
12 also have questions as to what period of time can a defect in
13 title still impact the property, because unless you're going
14 to automate back for the period of time that someone can
15 still have a valid claim and cannot rattle off what statute
16 of limitations would limit, but certainly if there's a defect
17 of transfer of the property 80 years ago, that doesn't get
18 cured necessarily with time unless there's still going to be
19 issues relative to the title process that even with
20 automation we'll still have to deal with.

21 MS. BUXBAUM: Will risk go down?

22 MR. DAY: It's hard to say. Certainly -- you know,
23 it improves access. I can't say that -- we've had automation
24 now for a number of years and it hasn't changed and we can
25 get statistics for you as to the heard periods of claims

1 which we've had within the time line that is consistent with
2 what has been there for automation. Personally I don't see
3 where one would lead to another.

4 MS. BUXBAUM: Mr. DeSalvo, do you feel any
5 differently than Mr. Day about that, whether risk will be
6 reduced?

7 MR. DeSALVO: I really don't because I think as
8 technology keeps on moving, I really think it becomes much
9 easier for a fraud to be perpetrated. And unless and until
10 such time there are proper safeguards put into these systems,
11 there's always someone that is a little smarter than the
12 system itself. Those are the type of things that we will
13 have to protect everybody against. It's not going to be --
14 it's not just because we get the information, push a button
15 and we got the information and that's going to make life
16 easier.

17 I think the risks will always be there. People will
18 commit fraud, and that's one classic example. There will be
19 mistakes in documents that will be recorded. Depends upon
20 the nature of the clerks. Some clerks refuse to put
21 documents on the record unless they are 100 percent accurate.
22 Some clerks feel they don't have any responsibility and put
23 the documents on the record. These are things that have to
24 be evaluated.

25 MS. BUXBAUM: Do you know what percent of claims

1 deal with fraud?

2 MR. DAY: I would have to get that number for you.

3 MS. BUXBAUM: I would like to ask some questions
4 about the additional work charges in the rate manuals.

5 Mr. Frates, the rate manual states that additional
6 work charges may be imposed in especially difficult titles,
7 for unusual expenditures for travel, for attendance at a
8 closing that takes more than two hours and several other
9 circumstances. Does Stewart impose additional work charges
10 do you know?

11 MR. FRATES: Yes, at Stewart Title when, for
12 example, the property is a multiple chain search, for
13 example, meaning the policy will insure a piece of property
14 that consists of four or five different blocks and lots or
15 four and five different chains of title, there may be
16 additional work associated with abstracting, examining and
17 producing that report. So in those instances there might be
18 additional charges.

19 MS. BUXBAUM: Would that be considered a difficult
20 title?

21 MR. FRATES: Yes.

22 MS. BUXBAUM: Is there any other definition of
23 difficult title?

24 MR. FRATES: That is a fair definition.

25 MS. BUXBAUM: Is the insured told in advance of

1 these additional work charges?

2 MR. FRATES: Yes, or the insured's representative.

3 MS. BUXBAUM: The insured's representative meaning
4 the attorney?

5 MR. FRATES: Could be the attorney. Whoever is
6 representing the insured in that transaction or insured's
7 in-house counsel, depending on the circumstance.

8 MS. BUXBAUM: But that wouldn't be imposed on a
9 residential transaction for the most part.

10 MR. FRATES: For the most part, no, but
11 potentially, yes.

12 MS. BUXBAUM: Do you know if the consumer is aware
13 of the additional charge prior to the closing?

14 MR. FRATES: Typically when there is an additional
15 search charge, it's disclosed to the consumer upfront before
16 we go down that road of having to search all his property.

17 MS. BUXBAUM: And Mr. DeSalvo, does First American
18 impose additional work charges?

19 MR. DeSALVO: Yes, we do.

20 MS. BUXBAUM: Can you describe under what
21 circumstances?

22 MR. DeSALVO: Well, the situation that Mr. Frates
23 has just testified to is probably the classic example where
24 this would be imposed.

25 MS. BUXBAUM: What about attendance fees, are those

1 charged?

2 MR. DeSALVO: No. The fee for the -- the fee for
3 the title closer to attend the closing is paid for by the
4 company. It's not charged to the purchaser.

5 MS. BUXBAUM: Then what about if a closing goes
6 longer than two hours or beyond normal business hours?

7 MR. DeSALVO: I know that there is a fee structure
8 for additional. I know the company compensates the title
9 closer for that. Whether or not that is passed on to the
10 buyer, I am uncertain.

11 MS. BUXBAUM: Mr. Day, do you know if Fidelity
12 charges additional work charges?

13 MR. DAY: I do understand the rate manual allows for
14 some additional charges based upon certain circumstances, and
15 in those situations I would assume that, yes, we do.

16 MS. BUXBAUM: Do you know what a difficult title
17 would -- under what circumstances additional work charges
18 would be imposed for a difficult title?

19 MR. DAY: Personally I do not.

20 MS. BUXBAUM: Okay. Do you know if attendance fees
21 are charged to the consumer, to the insured?

22 MR. DAY: Attendance fees?

23 MS. BUXBAUM: The manual specifies that if the
24 closing goes for more than two hours or past normal business
25 hours, an attendance fee can be charged.

1 MR. DAY: I assume in that situation if it was
2 appropriate we, would institute the charge. It's not one of
3 the things we were asked to prepare specifically for this
4 program this morning, so I would have to go and see which
5 situations those occurs on a typical residential or
6 commercial transaction and if we do make that charge.

7 MS. BUXBAUM: Mr. Dwyer, are there any additional
8 charges that the insured has to pay when ordering from En
9 Title direct as opposed to an insured who orders from En
10 Title's agent in New York?

11 MR. DWYER: To the best of my knowledge, no, no.
12 There are no additional work charges or other charges.

13 MS. BUXBAUM: And En Title doesn't charge an
14 attendance fee for the closing?

15 MR. DWYER: Attendance fee, no. We have a pick-up
16 fee that we do charge and disclose on the HUD but nothing by
17 that nomenclature, attendance fee.

18 MS. BUXBAUM: What is the pick-up fee?

19 MR. DWYER: To retrieve the documents and bring
20 them back to En Title so we can settle and record.

21 MS. BUXBAUM: What is that fee?

22 MR. DWYER: What is the fee? I'm not sure. I'm
23 not sure what the fee is.

24 MS. BUXBAUM: Who is that paid to?

25 MR. DWYER: It is paid to the insurance company.

1 MS. BUXBAUM: I'm sorry. Can you just describe
2 again what the purpose of that fee is?

3 MR. DWYER: The purpose of the fee is to send that
4 representative, often times it's a notary, to the closing and
5 to retrieve the documents and get them back to En Title
6 Insurance Company's centralized operations in Pittsburgh and
7 Cleveland. Typically Pittsburgh.

8 MS. BUXBAUM: Mr. Dwyer, do you know whether
9 gratuities are paid at closings?

10 MR. DWYER: I'm not sure what you mean by gratuity.
11 To my knowledge the answer is no, there is no gratuity paid.

12 MS. BUXBAUM: Mr. Day, do you know whether or not
13 gratuities are paid at closings?

14 MR. DAY: It is my understanding there has been a
15 practice primarily in Downstate New York that a gratuity is
16 suggested by borrower's counsel to the independent closer who
17 attends the closing.

18 MS. BUXBAUM: Fidelity reported to the Department
19 ranges of gratuities. Are you aware of that?

20 MR. DAY: Was that in the October submission?

21 MS. BUXBAUM: It was in response to the original
22 3/'08 letter.

23 MR. DAY: Okay.

24 MS. BUXBAUM: Why should a consumer pay a gratuity
25 at closing?

1 MR. RICHARDS: What is commonly called gratuities,
2 yes, a gratuity paid above other charges but that's
3 usually -- not usually -- it's almost exclusively suggested
4 by the representative of the buyer or in the case of a lender
5 and is not something that title companies are involved with,
6 encourage. We simply are not part of that process. If a
7 title closer has done what an attorney for a buyer might
8 think is an extraordinary job because of the complexity of
9 the title, they may say to their client, look, let's give him
10 a little extra or her a little extra because they worked very
11 hard.

12 MS. BUXBAUM: In what way does the closer work
13 really hard?

14 MR. RICHARDS: They may have to prepare documents
15 or assist in the preparation of documents to help clear up
16 title problems. Often problems come up in what we call the
17 continuation, that's the gap between the search date and the
18 actual date of closing, which may require the intervention of
19 the closer to act as sort of the curative person to help get
20 the information that may be necessary to cure the problem or
21 to help attorneys draft affidavits that are satisfactory to
22 the insurer.

23 There is a lot of give and take that may take place
24 at a closing that a buyer's attorney might say, you know,
25 this person has done an extraordinary amount of extra work

1 and, therefore, we are giving him the gratuity. It's not
2 something the title company is involved with. We don't have
3 any rules requiring any such gratuities. We pay our title
4 closer the set fee we arranged with them and that's what
5 we're involved with. So gratuities are something purely
6 given by buyers maybe at the suggestion of their attorney to
7 the title closer for their extra effort.

8 MS. BUXBAUM: Does Fidelity condone the payment of
9 gratuities?

10 MR. DAY: It has become a practice as John is about
11 to say. It's a matter of the economics of the closer. It is
12 nothing that we comment generally either way. The closers
13 who we engage to perform the services and be our
14 representative are independent closers, and to the extent
15 that this has become a practice to allow them economically to
16 make a living at the recommendation of buyers, but it's not
17 something that we have taken a position on one way or the
18 other.

19 MS. BUXBAUM: Do you think that gratuities are paid
20 only in those situations when the closer has to do
21 extraordinary extra work?

22 MR. DAY: I think what John was referencing when
23 you reference the range of gratuities that we reported, that
24 may vary on the work. I can't tell you exactly the frequency
25 that a gratuity is paid but my understanding is that in the

1 Downstate marketplace it is a frequent payment and typically
2 suggested by the buyer's counsel to the consumer.

3 MS. BUXBAUM: Mr. DeSalvo, does First American
4 condone paying gratuities at closing?

5 MR. DeSALVO: The way you put it, again, we don't
6 have any control over it with the exception of the staff
7 closers that First American employs. We have a series of
8 closers who work out of our New York office who are employed
9 by us. They're employees, and the rules that go out to them,
10 they are not allowed to accept gratuities or pick up fees so
11 those individuals do not.

12 From that standpoint, yes, we're saying do not
13 accept a gratuity. It's improper to do that. Do not accept
14 a pick-up fee because you're a salaried employee. These are
15 the services you're performing for the company which you are
16 being paid for on an annual basis.

17 Independent closers, these are purely independent
18 contractors. We have no control of what they do or don't do,
19 except for the fact to make sure the quality of the work is
20 proper. We tell them how much we're paying for the closing.
21 There is a set fee for that and go to the closing table. If
22 I take off my hat being involved in the title insurance
23 company, I was an attorney for 20 years before I went into
24 the title business. 20 years ago I did a lot of
25 transactional work. I can probably count on one hand the

1 amount of times I did not recommend to my client that they
2 give a gratuity because of the fact I'm aware of what the
3 structure is and what the economics are. Title closer is
4 working at a closing for a minimum of an hour basically
5 performing every service that you can imagine, copying
6 checks, modifying documents, on the phone back and forth
7 trying to get curatives taken care of, trying to get payoff
8 letters and things like that. They are there working on a
9 regular basis. They help facilitate the closing.

10 In the event the title person was not there doing
11 that work, they would take much longer. Same thing, if you
12 go to the restaurant, your food does not come to the table if
13 the waiter doesn't bring it to you. If he brings it to you
14 in a good fashion, you normally feel a view to do something
15 for them. People do that at least because they understand,
16 at least the practitioners understand, how much money they
17 make and, therefore, assist them by giving them a gratuity.

18 MS. BUXBAUM: Why are they paid as little as they
19 are by the title insurers?

20 MR. DeSALVO: It is what the structure is to keep
21 the cost down. Isn't that a vicious cycle? If we are paying
22 them more, then the costs blow up and affects what the rates
23 might be.

24 MS. BUXBAUM: My understanding is the attendance
25 fee --

1 MR. DeSALVO: We don't charge that.

2 MS. BUXBAUM: -- is included in the premium?

3 MR. DeSALVO: But we don't charge a separate
4 attendance fee.

5 MS. BUXBAUM: So why should the insured have to pay
6 extra? Why should it be recommended to the insured to pay
7 extra at the closing?

8 MR. DeSALVO: We do not recommend that. I was
9 telling, again, my personal experience as a transaction
10 lawyer in the State of New York. I can tell you everyone I
11 am involved with in real estate, this is the same thing. We
12 have always recommended it. If we had a closer who was
13 horrible, okay, or was not performing his services, I
14 certainly would never recommend it. On top of that, I would
15 never tell my client how much to give them as a gratuity. I
16 would leave it to them.

17 If the client said "I don't want to give him a
18 gratuity," that's the client's business. I had situations
19 where the client has refused. As a practitioner where the
20 client says "I don't want to pay a gratuity," that's fine,
21 and I've taken the closer's side and paid for it out of my
22 own pocket if he's done a good job. That is the way I am and
23 there are plenty of other lawyers that do the same thing.

24 MS. BUXBAUM: They're supposed to do a good job and
25 supposed to be paid by the entity that sent them to the

1 closing. They're an independent closer but they're the agent
2 of the title company at that closing; isn't that correct?

3 MR. DeSALVO: Yes.

4 MS. BUXBAUM: So the insurer can dictate to its
5 agent what it can and cannot collect at the closing?

6 MR. DeSALVO: That's still not going to change the
7 scenario. It's not like it's common knowledge out in the
8 world as to how much a title closer is getting paid for a
9 closing. I had personal knowledge because at the time I used
10 to do work as a title closer, so obviously I knew what the
11 structure is. The fees have changed over the years.

12 By that same token, if you look at it and use my
13 comparison as a waiter in the restaurant, why do you give a
14 waiter a tip at the end of the meal? Shouldn't he be
15 adequately compensated by the restaurant for the services he
16 performs and shouldn't you have the ability to walk out
17 without paying a 15 to 20 percent gratuity? It's the same
18 argument, isn't it?

19 MS. BUXBAUM: Does Stewart Title condone the
20 payment of gratuities at closing?

21 MR. FRATES: At Stewart Title we do not have any
22 in-house closer so we don't control the payment of
23 gratuities.

24 MS. BUXBAUM: Do you give any direction to your
25 independent title closers as to whether they can or cannot

1 accept a gratuity?

2 MR. FRATES: No.

3 MS. BUXBAUM: Are you aware they are paid
4 gratuities?

5 MR. FRATES: I am aware they are paid.

6 MS. BUXBAUM: Do you know the amount?

7 MR. FRATES: I would say it ranges from \$25 on to
8 \$125.

9 MS. BUXBAUM: Is that in a residential closing or
10 commercial?

11 MR. FRATES: Residential closing.

12 MS. BUXBAUM: Is it a lot higher at a commercial
13 closing?

14 MR. FRATES: I see circumstances where it's several
15 hundred dollars in gratuities paid in a commercial closing.

16 MS. BUXBAUM: What about pick-up fees, are they
17 paid by the --

18 MR. FRATES: Fees are paid by the seller to the
19 title closer at closing.

20 MS. BUXBAUM: Why are those paid?

21 MR. FRATES: The pick-up fees are for the title
22 closer to verify the amount of the payoff, the accuracy of
23 the address, to put together the appropriate check, the
24 appropriate payoff documentation, to make sure that
25 documentation is overnighted or sent via whatever

1 transmission, how ever they need to get it to the payoff bank
2 in a timely fashion to ensure that the mortgage is paid off.

3 MS. BUXBAUM: Basically they take the payoff letter
4 that's been obtained, they get the check and they send it
5 overnight to the lender; is that correct?

6 MR. FRATES: Verifying the amount of payoff.

7 MS. BUXBAUM: They compare the amount of the check
8 to the number on the payoff letter?

9 MR. FRATES: I believe the practice is actually
10 verifying on the phone or verifying some other means the
11 accuracy of the payoff that that letter is still valid.

12 MS. BUXBAUM: What amount of money are they paid as
13 a pick-up fee?

14 MR. FRATES: I'm not aware what the range is. I
15 haven't been to a title closing in a while, but back when I
16 was a title closer, it was \$75 I believe. This is 25 years
17 ago.

18 MS. BUXBAUM: Mr. DeSalvo, do you know what amount
19 is being paid as pick-up fees?

20 MR. DeSALVO: Again, I could only probably testify
21 to what it was when I was doing title closings. I really
22 don't know what it is. Probably in the neighborhood of
23 around a hundred dollars.

24 MS. BUXBAUM: Mr. Day?

25 MR. DAY: Sorry, I do not know.

1 MS. BUXBAUM: Okay. That's per mortgage that's
2 being paid off so if the seller has two mortgages, they're
3 paying two pick-up fees; is that correct, Mr. Frates?

4 MR. FRATES: I don't actually know.

5 MR. DeSALVO: On that issue I know I'm aware of the
6 fact that concessions are made if there is more than one
7 pick-up fee. Closers, one pick-up fee will make a
8 modification in their pick-up rate. I know I did, and also
9 that was my experience.

10 MS. BUXBAUM: The seller has no choice in who the
11 closer is who shows up at that closing, correct? And they
12 don't know about this fee before they show up.

13 MR. DeSALVO: They are aware of the fee because of
14 the custom and practice that that fee would probably be
15 charged by a closer unless it is a staff closer. Again, like
16 I said, our customers are aware there is a staff closer.
17 There is no pick-up fee.

18 MS. BUXBAUM: Is that the same for you, Mr. Frates,
19 with Stewart, if it's a staff closer, that there's no pick-up
20 fee?

21 MR. FRATES: We do not have staff closers but, yes,
22 that would be the case at Stewart also.

23 MS. BUXBAUM: Mr. Day?

24 MR. DAY: I believe it is the same. If it is a
25 staff closer, there would be no pick-up fee.

1 MS. BUXBAUM: Mr. Bagwell, are you aware of
2 gratuities and/or pick-up fees?

3 MR. BAGWELL: I am aware in general, yes, that
4 there are gratuities and pick-up fees. However, our direct
5 operation does not -- closers for our direct operation are
6 employees so they do not pick up a gratuity and we do not
7 pick up fees either.

8 MS. BUXBAUM: Is that a directive from the company?

9 MR. BAGWELL: For our employees and in our direct
10 operation, yes, that is just a standard practice.

11 MS. BUXBAUM: Thank you.

12 MS. LEES: I have a few questions now on ancillary
13 searches. Mr. Bagwell, I'll start with you. What searches
14 are typically considered to be ancillary?

15 MR. BAGWELL: By "ancillary" are you referring to
16 municipal service searches?

17 MS. LEES: Yes.

18 MR. BAGWELL: Searches conducted are generally
19 determined by the lender; what do they want to know about the
20 property itself, the use of the property that is not covered
21 by the title examination. And in this day we have, of
22 course, environmental control board, housing preservation
23 liens, C of Os and the list can go on.

24 MS. LEES: Does your company perform patriot or
25 bankruptcy searches?

1 MR. BAGWELL: Yes, our direct operation performs
2 both.

3 MS. LEES: How exactly would a patriot search be
4 conducted? Would someone pick up the phone and make a
5 telephone call?

6 MR. BAGWELL: There are services that can perform a
7 patriot search for us or we can go online, look up ourselves
8 and run a particular name for a patriot search.

9 MS. LEES: How long would it take to order a
10 patriot search?

11 MR. BAGWELL: To order and review it, 10, 15
12 minutes.

13 MS. LEES: After the searches are completed, are
14 they sent to the purchaser's attorney?

15 MR. BAGWELL: The searches are made a part of the
16 title report or the title commitment. They are added to the
17 back of the report or the title commitment and there's a
18 statement that they are not covered by the title policy, they
19 will not be -- they are for information purposes only.

20 MS. LEES: Is that also sent to the seller's
21 attorney?

22 MR. BAGWELL: For our direct operation it is sent
23 to the seller's attorney as well.

24 MS. LEES: How do you send the results?

25 MR. BAGWELL: Well, we run the search for patriots

1 and bankruptcy before we issue the title report. Now almost
2 always a patriot search is going to come back no, does not
3 apply. This person is not on the office's list. The
4 bankruptcy search it could be hit or miss. This is also a
5 part of the curative process. If the bankruptcy search comes
6 back that, yes, one of the parties within the last ten or 15
7 years has been in bankruptcy, then that has to be cured. We
8 have to find out what happened to that particular bankruptcy.

9 MS. LEES: Is there other curative work that needs
10 to be done on any of the ancillary searches; municipal,
11 patriot?

12 MR. BAGWELL: It's becoming more complicated,
13 particularly Downstate and the City of New York. There are
14 some issues that we all used to believe were solely
15 municipal, solely departmental and does not pose any
16 liability to the title company. The courts and the city in
17 their actions have changed that.

18 If I may give an example?

19 MS. LEES: Yes, please.

20 MR. BAGWELL: Okay. It used to be the case in the
21 City of New York that environmental control board liens were
22 considered by the City to be liens only if the name of the
23 party owning the property and the property were the same.
24 You had to have one person owning the same property.

25 Recently within the last couple of years, the City

1 decided that environmental control board liens should be
2 treated the same as money judgments. Therefore, if a person
3 owns any other property in that particular county, that is
4 now a judgment lien and is covered by the environmental
5 control board liens.

6 Before we would assume that there's no lien, he or
7 she may own 20 other properties in the county, we're only
8 concerned about this particular property. Now we have to be
9 concerned with every property owned by that individual in the
10 county. So what used to be a municipal, just for reporting
11 purposes, has now become something that affects the entire
12 title policy. Therefore, it is in a grey area.

13 MS. LEES: Mr. Dwyer, do you also think of the term
14 or do you use the term "ancillary searches"?

15 MR. DWYER: We don't use the term "ancillary
16 searches" but we do order patriot and bankruptcy as a matter
17 of course when requested, and I believe with my colleague
18 it's part of the curative process, requires human
19 underwriting and understanding, the results and so forth and
20 is made part of the process.

21 MS. LEES: Do patriot searches typically require
22 curative work?

23 MR. DWYER: That is better posed to my chief
24 operating officer who is not here today, so I have to defer.

25 MS. LEES: How much time does it generally take to

1 perform curative work for an ancillary search or bankruptcy,
2 patriot, municipal search?

3 MR. DWYER: Varies. Could be -- it could be quick
4 if nothing came up in the search, it could be lengthy.
5 Bankruptcy search, for example, could be a couple of hours.

6 MS. LEES: Okay. So if it were on the quicker end
7 of things, how much time would that be?

8 MR. DWYER: Mrs. Lees, sorry, I would be guessing.
9 That would be better posed to my COO who unfortunately,
10 again, is not here.

11 MS. LEES: In the written testimony I believe your
12 company responded that the amount of time, labor, does vary
13 as you said, but generally averages about two and a half
14 hours of labor per transaction. Does that mean an average of
15 two and a half hours for curative work for ancillary searches
16 for every file?

17 MR. DWYER: When taking into account the totality
18 of the files, the average time spent is two and a half hours
19 so, yes. Some could be less, some could be more.

20 MS. LEES: What kind of curative work is done?

21 MR. DWYER: Again, I apologize.

22 MS. LEES: Still need to consult your COO?

23 MR. DWYER: Yes.

24 MS. LEES: Mr. Frates, ancillary searches, does
25 your company perform them?

1 MR. FRATES: Yes, we do our ancillary searches.

2 MS. LEES: And how exactly are the searches
3 performed? Are they done by telephone, done online?

4 MR. FRATES: At Stewart our patriot searches are
5 done online through our company database. Bankruptcy
6 searches are done online. Some people have PACER service it
7 is called. Municipal searches are ordered through a
8 municipal vendor and we have several vendors we use.

9 MS. LEES: How long does it take a house employee
10 to do a patriot?

11 MR. FRATES: I would say five or ten minutes, the
12 time to make sure it is entered into the computer and make
13 sure the order is transmitted correctly and the outside
14 vendor has received it.

15 MS. LEES: When you receive the search someone
16 would have to review it, correct?

17 MR. FRATES: When the search comes back it's
18 reviewed for accuracy; is this the correct name, correct
19 block and lot, is this the correct property address. It's
20 then met up with the actual title file. Data is uploaded
21 into the computer system, if it's not automatically done,
22 so -- and attached to a cover transmittal and sent to the
23 party requesting the order.

24 MS. LEES: How long does the review process take?

25 MR. FRATES: Again, speculative. Could be five

1 minutes or an hour. For example, a bankruptcy search on John
2 Smith could be hundreds of returns. Our practice is to
3 narrow them down and eliminate ones that are not applicable
4 to the actual name.

5 MS. LEES: So I believe and in your written
6 statement you state that curative work takes about 50 minutes
7 per file. Is that accurate?

8 MR. FRATES: That's what we responded, yes, as an
9 estimate.

10 MS. LEES: Would that be 50 minutes for every file
11 or just certain files?

12 MR. FRATES: Again, it's an average, estimation,
13 approximation, how many more conditions I can put on that
14 estimate.

15 MS. LEES: Do some files take less?

16 MR. FRATES: Some files would take less and some
17 files would take more.

18 MS. LEES: What percent of files require curative
19 work with respect to ancillary?

20 MR. FRATES: With my earlier testimony I was at a
21 50 percent number but it's probably greater than that because
22 we continue to expand the definition of curative.

23 MS. LEES: Mr. Day?

24 MR. DAY: Yes. Municipals?

25 MS. LEES: Does your company perform ancillary

1 searches?

2 MR. DAY: Yes. At the request of the parties,
3 lenders and their attorneys and for their purposes we request
4 a patriot search, bankruptcy search and municipal search.

5 MS. LEES: Is curative work necessary for that type
6 of search?

7 MR. DAY: That is the one area I would like to step
8 away for, curative. We had the discussion with the
9 Department for many years. These searches are not part of,
10 although as Marvin noted they're starting to work their way
11 into the title process. They're really at the request of the
12 other parties and for those purposes, and in fact we give
13 notice to the consumer to that extent. These are required by
14 parties to the transaction and are not part of the typical
15 title process.

16 So do we have involvement, yes. Would I say is it
17 in a broad sense curative, yes, in that there may be things
18 that are raised that have to be dealt with and the attorneys
19 turn to us and they're saying, okay, we got the municipals
20 and there was an extension to the house but there's no CO or
21 we see this lien, what can you tell me about it? Certainly
22 if we get a return, and I would agree with the rest of the
23 panel, a patriot return is not common and so it's order,
24 review, forward on.

25 Bankruptcy, you know, less so also but when it comes

1 up, now you're talking about a curative, considerable amount
2 of time, but it's infrequent where that becomes an issue of
3 that arising.

4 Municipal, it is very common and I think we stated
5 between ten and 30 minutes. That's probably on the majority
6 of transactions where something will be presented that the
7 counsel or lender will say tell me about this, but I just
8 want to make sure when we talk about curative that it's a
9 matter of us explaining, although it's not part of what is
10 the analysis of the underwriting process with regard to the
11 issuance of the title policy, with regard to the document we
12 have been requested to present, and we're still the party
13 they come back to to look for clarification.

14 MS. LEES: The term is not important, I agree with
15 you. The idea would be after performing the search are there
16 times when additional work needs to be done?

17 MR. DAY: Yes. In that regard I think our response
18 was correct, ten to 30 minutes, and it's pretty frequent
19 regarding the transaction, especially regarding municipal
20 findings.

21 MS. LEES: You mentioned the purchaser's attorney.
22 Would they work with the lender or seller's attorney on those
23 issues?

24 MR. DAY: The request could would come from all
25 three. There's a question as to the findings that needs to

1 be resolved. Seller's attorney will come in and either
2 contest that needs to be resolved or clarification, because
3 it's their responsibility to clear that matter up before they
4 can pass clear title to the purchaser. It could be any one
5 of the three parties engaged that raise the question back to
6 us.

7 MS. LEES: You mentioned these are generally
8 performed at the request of the buyer; is that right, or the
9 lender?

10 MR. DAY: Of the lender or buyer's counsel,
11 correct.

12 MS. LEES: Buyer's counsel. Do the search results
13 in any way affect the chain of title?

14 MR. DAY: Well, bankruptcy certainly will, as will
15 a patriot search, should either one come back positive.
16 Municipals typically have not, as Marvin noted, they are
17 starting to work their way in. So if it has an impact on
18 title and now we have to ship it over to deal with it, that
19 may become a lien on the property.

20 MS. LEES: Is any loss associated with municipal
21 searches generally?

22 MR. DAY: I couldn't answer that. I would
23 speculate the answer to that is no, but I have to go back and
24 see if there was ever a situation where our failure to
25 report, even though it was done at the request, very often we

1 will have claims for policies that are unfounded and still
2 means we have a loss because we have to defend, we have to
3 respond, so we could have an actual loss, even though it was
4 based on something that was not within the confines, we would
5 consider part of the title transaction.

6 MS. LEES: Are customers that order these ancillary
7 searches charged at cost or two to three times as much as
8 they cost?

9 MR. DAY: They're not charged the cost. I would
10 not speculate on -- there is an administrative fee added to
11 the cost for processing because it is a service which we're
12 providing.

13 MS. LEES: Mr. DeSalvo, I don't want you to feel
14 left out.

15 MR. DeSALVO: Thank you.

16 MS. LEES: Does First American order ancillary
17 searches?

18 MR. DeSALVO: Yes, we do.

19 MS. LEES: And how much curative work is required
20 for those?

21 MR. DeSALVO: Again, curative work, as I said in my
22 earlier response, I don't really look at service that is
23 provided as really being curative because of the fact these
24 are informational searches which are provided to the
25 particular parties to the transaction who asked for it.

1 More than likely as Mr. Day said, and as I'm sure
2 all my colleagues will agree to, it usually opens up a
3 dialogue when there is a problem and usually it is a title
4 company, they will ask who do I go to to resolve this issue?
5 What has to be done? What do you need from me? So from that
6 standpoint I guess you can call it curative because I look at
7 it more we're being asked to provide guidance to help the
8 parties to the transaction facilitate what needs to be done
9 so they can remove an issue which may be a contractual
10 obligation.

11 Most of our -- all of our contracts in the State of
12 New York usually require that the property -- that the seller
13 deliver certificates of occupancy, all the necessary
14 approvals that are related to any pertinent structures on the
15 property so, therefore, if there is an open building permit,
16 building code violation or something on the property that the
17 search did pick up, it would become the seller's
18 responsibility then to clear that. The people that will do
19 that will be the attorney for the seller or the seller
20 himself, depending on the sophistication of the seller.

21 MS. LEES: I know that, Mr. Day, you had testified
22 that obviously these are not charged at cost and,
23 Mr. DeSalvo, I think you agree with that as well, correct?

24 MR. DeSALVO: That's correct. The one thing you
25 must realize, especially when you get into the world of

1 municipal searches, historically I always like a referral.
2 When I was doing title work as during the Jurassic period,
3 the companies we would deal with, the vendors would actually
4 go into the building departments in the area and pull the
5 file from the building department file drawer and make copies
6 of all this material.

7 Over the years various municipalities -- I'm
8 speaking now not from New York but counties in Westchester
9 where a lot of the residential transactions occur -- over the
10 years the municipalities have not allowed them access and you
11 put in the request, name of the party, block, lot and we will
12 get it for you and there is a fee for that. That marketplace
13 is one that has been affected primarily by the local
14 municipalities in imposing various fees that they do now to
15 perform the service in order to get the search. The request
16 has to be made to them because they want to preserve the
17 integrity of their file system.

18 MS. LEES: The customer will be charged more than
19 the amount of the fee?

20 MR. DeSALVO: There's a slight service charge for
21 it, correct.

22 MS. LEES: You een sometimes double and triple the
23 amount of the cost.

24 MR. DeSALVO: Again, if a municipality is charging
25 us \$200, then the search would be \$200 plus whatever the

1 service fee is.

2 Again, getting back to what I said earlier, that is
3 where the variation will be. Some municipalities are much
4 higher than others and dictated by the particular
5 municipality that provides the search.

6 MS. LEES: Are these markups typically charged in
7 zone one do you know?

8 MR. DeSALVO: I'm familiar with zone one practice
9 but I cannot say whether or not -- I believe -- I can't
10 really -- no sense speculating.

11 MS. LEES: Do any of your co-panelists know?

12 Mr. Bagwell?

13 MR. BAGWELL: There are quite a fewer number of
14 municipal searches in zone one than zone two. It really
15 depends on the lender in either zone as to which municipal
16 searches will be required or requested. There are no
17 environmental control board searches in zone one and no HPD
18 searches for example and in some counties there are no CO
19 searches.

20 MS. LEES: Why would there be no CO searches in
21 some counties? Surely all counties have COs.

22 MR. BAGWELL: Not all. There are some very, very
23 large counties upstate in terms of area that have very, very
24 few people and they have not adopted CO standards yet.

25 MS. LEES: So in some cases these types of searches

1 wouldn't make sense because they don't exist in other words?

2 MR. BAGWELL: That's correct.

3 MS. LEES: Any other familiarity with zone one,
4 Mr. Day? Do you have a sense of that, whether these fees
5 would be charged to a consumer at a markup in zone one?

6 MR. DAY: My understanding is it is infrequent to
7 have a municipal search in zone one, not typically.

8 MS. LEES: What about patriot search?

9 MR. DAY: That I am not familiar with. I didn't
10 ask that question.

11 MS. LEES: Mr. Frates?

12 MR. FRATES: I'm not familiar with the practice in
13 upstate New York.

14 MS. BUXBAUM: We'll move over to marketing of title
15 insurance policies. Mr. Day, how does your company market
16 title insurance?

17 MR. DAY: Two ways. We have a very significant
18 agency base to which we provide support training and the
19 title insurance product to them for their customers. We also
20 have direct operations which market to basically the
21 representative of the insured. Be that a payer or borrower.
22 In New York that tends to be an attorney.

23 MS. BUXBAUM: You stated in your responses in the
24 hearing testimony questions that Fidelity does not segregate
25 its marketing expense between the insured and those who

1 represent the insured. Can you tell me what kind of
2 marketing is done towards the insured?

3 MR. DAY: Very little, although it was one of the
4 comments on the introduction relative that the consumer knows
5 very little about title insurance. You know, I would look to
6 correct that to say that every company as well as the local
7 and the national land title associations are striving very
8 hard to educate the consumer. So you can go on any of our
9 websites and it is open to the consumer to look for a number
10 of information, one of which was a prior discussion from the
11 Department which is really what instituted online rate
12 calculators which has now become standard pretty much across
13 the country to allow the consumer to go on any of the
14 websites and plug in the information and to determine what
15 the rate calculation or what the expenses might be with
16 regard to the transaction.

17 And the American Land Title Association has had a
18 buyer 101 program to help to educate and direct access so
19 just -- it is more general because the practice has been one
20 of and the term has been used for competition which gives a
21 negative connotation but shouldn't be. It's been relying
22 upon the professional representative of the borrower or
23 purchaser to make a determination of a service provider which
24 is pretty clear and important and hope we've been able to
25 raise here all the factors which are determinant in whether

1 or not you will have a clear title. It's difficult to relay
2 that to somebody who gets engaged maybe once in their life as
3 to determining that standard as opposed to an attorney who
4 deals with 20 transactions a month. They have a good feel
5 and understanding in representing their client as to the
6 selection process, but in New York there's no limitation on
7 which attorneys can act in representing the customer. So
8 it's inherent upon us to reach out and say this is what we
9 provide, these are the services available and so our
10 marketing efforts are directed towards those attorneys
11 because they are the ones making the selection process who is
12 going to be provider of the title insurance services.

13 MS. BUXBAUM: What do those marketing endeavors
14 entail?

15 MR. DAY: It could be sponsorship, it could be
16 advertisements, it could be promotional events, opportunities
17 to meet with the attorney to be able to discuss what we have
18 to offer, who our personnel are, what our qualifications are.

19 MS. BUXBAUM: In what context do you meet with the
20 attorneys to discuss what you have to offer?

21 MR. DAY: What do you mean by "context"?

22 MS. BUXBAUM: Does your marketing include meals and
23 entertainment of real estate professionals, mainly attorneys?

24 MR. DAY: Yes.

25 MS. BUXBAUM: How does that market Fidelity's

1 insurance product?

2 MR. DAY: It provides us the opportunity to meet
3 with the individuals who are making the determination as to
4 who is going to be providing the title services so we can
5 explain in full what is our qualifications both from the
6 personnel that we place on the transactions and the
7 qualifications of the company itself, it's solvency, strength
8 and the like.

9 MS. BUXBAUM: You spend millions of dollars on
10 meals and entertainment annually, correct?

11 MR. DAY: We spend -- yes, as far as promotional
12 activities which we are engaged in.

13 MS. BUXBAUM: Isn't the purpose of the meals and
14 entertainment to get the business from these real estate
15 individuals to induce business from them?

16 MR. DAY: I would not use the term "induce
17 business." The purpose is for us to have the opportunity
18 to -- as with any type of promotional marketing and
19 advertising, you have no ability to sell your product unless
20 you have the opportunity to meet and educate the person who
21 is going to make the decision.

22 MS. BUXBAUM: What about your website?

23 MR. DAY: What about my website?

24 MS. BUXBAUM: You mentioned that your website
25 contains a rate calculator that is good for people.

1 MR. DAY: The attorney, yes. That tells what is
2 the filed rate in New York. Any provider can provide that.
3 What we're trying to market and to present to the individuals
4 is that we bring a different level of service, different
5 level of focus that we have as in one of the reports, we have
6 individuals who engage in the curative process who have on
7 average 24 hours of title experience. We think that's an
8 important factor in presenting the consumer. We're not going
9 to be able to present that unless we have the opportunity to
10 meet with the individuals to engage them to explain that
11 situation.

12 MS. BUXBAUM: Do you think that the insured should
13 be paying for the millions of dollars in meals and
14 entertainment that you spend on their representatives?

15 MR. DAY: We're talking millions as a percentage of
16 what is reported. It's a relatively small percentage. It is
17 not dissimilar to any business or organization that has a
18 need to explain and describe their services for the benefit
19 of the party to be engaged in that. It is part of our
20 services, it's part of our expenses.

21 MS. BUXBAUM: Do you do that when you go to
22 sporting events with your clients, you promote all of the
23 qualifications of your company?

24 MR. DAY: Yes. Title insurance and the
25 relationship with the attorneys is very much an interactive

1 process. There are many players. You will be dealing with
2 many this afternoon of several good agents who are also
3 engaged in the practice. We have --

4 MS. BUXBAUM: That doesn't make it right because
5 they're engaged in it.

6 MR. DAY: But does it make it wrong to be having
7 the opportunity to -- because the alternative is to say to
8 the providers or the people looking to select, here is a list
9 of all of the licensed -- we don't have a licensed agent.
10 Here are all the underwriters and we think we can get a list
11 of agents who provide the service, go pick it. I'm not sure
12 that is in the best interest of the consumer.

13 MS. BUXBAUM: Aren't the attorneys already familiar
14 with both the insurers and the agents?

15 MR. DAY: Players in the marketplace change
16 frequently. I was going into that. Any attorney can be
17 engaged in representing a purchaser. This is their primary
18 focus but there is also others who shift from a will practice
19 to a real estate practice and we have to go and start all
20 over again.

21 MS. BUXBAUM: And you have to take them to sporting
22 events and expensive meals to familiarize themselves with
23 Fidelity, is that it?

24 MR. DAY: Most of them are frequently a \$20 lunch
25 or some engagements. When you talk about some of the

1 sporting events, a lot of that is focused on the commercial
2 practices and even higher level of sophistication and, yes,
3 it does take a considerable period of time to be able to
4 represent to them the services and the values which we bring.

5 MS. BUXBAUM: That goes on while the sporting event
6 is going on?

7 MR. DAY: Yes, it does.

8 MS. BUXBAUM: You think that should be part of the
9 premium that the insured pays?

10 MR. DAY: My understanding as far as marketing and
11 promotional activities, they are an appropriate expense for
12 parties to the transaction so as to have the opportunity to
13 fully describe and sell their services.

14 MS. BUXBAUM: What is that understanding based on?

15 MR. DAY: We've had discussions with
16 representatives, you know, within actuaries and dealing with
17 different businesses as to if the Department points to a
18 restriction in that regard, we'd be happy to discuss it.

19 MS. BUXBAUM: What about 64 MD?

20 MR. DAY: That is your term of inducement. 6409D
21 does restrict inducement relative to the placement of title
22 insurance but I don't feel the promotional activities is an
23 inducement.

24 MR. DEAN: Whenever you give tickets to somebody,
25 it's always in connection with a salesperson accompanying

1 them to a sporting event. You're never giving a pair of
2 tickets to an attorney who might be representing an insured?

3 MR. DAY: We, typical standards, want to have a
4 salesperson attend. I cannot tell you that a hundred percent
5 of the time that occurs but we do have a standard that the
6 salesperson attend in that event with the attorney who is
7 engaged.

8 MR. DEAN: It's not 100 percent. Do you know what
9 percent it is? Is it 10 percent, 50 percent?

10 MR. DAY: I don't. Of when they attend?

11 MR. DEAN: When it is just a gift, when you give a
12 pair of tickets to a Yankees game or Jets game?

13 MR. DAY: I don't know.

14 MR. DEAN: Do you keep track of that?

15 MR. DAY: We do.

16 MR. DEAN: How do you keep track of that?

17 MR. DAY: We keep track of all the expenditures of
18 the salespeople. We want to monitor effectively what their
19 activities are, who they are meeting with and what is the
20 purpose?

21 MR. DEAN: How would it show whether the
22 salesperson attended the sports event with the client?

23 MR. DAY: I think the office, and this is just a
24 few of the offices involved, that they do track that as part
25 of their report to list who -- what was the purpose and who

1 attended.

2 MS. BUXBAUM: Do the attorneys who order title
3 insurance on behalf of their clients, do they ever request
4 that you provide them with anything in exchange for ordering
5 title?

6 MR. DAY: No, no.

7 MS. BUXBAUM: Do they ever ask you to make
8 charitable contributions?

9 MR. DAY: Relative to the placement of orders, no.

10 MS. BUXBAUM: Do they ask you to make charitable
11 contributions?

12 MR. DAY: There are a number and it's more of an
13 industry base. I don't know if it's directed specifically
14 from an attorney but the industry has been engaged in
15 charitable activities throughout the marketplace here in New
16 York.

17 MS. BUXBAUM: Are those donations made in response
18 to a specific request from an insured's representative?

19 MR. DAY: I can't say that. I think most of them
20 are standard activities which we have been involved with year
21 over year over year. There is a lot of specific charitable
22 events where there is a lot of activity relative to the
23 industry. It gives us an opportunity to interact with other
24 industry representatives.

25 MS. BUXBAUM: Does Fidelity market to its agents?

1 MR. DAY: Yes.

2 MS. BUXBAUM: In what way does it do that?

3 MR. DAY: Little different. We are focused in that
4 regard. Many of the agents are familiar with the services
5 which we provide and with the nature of the company. They're
6 much more engaged in the industry, much more familiar with
7 the practices so we tend to be more active in coordination
8 with those representatives over time assisting them with
9 training, with supplies, discussions within the marketplace.
10 It's not as frequent, although there are many players who
11 come into the marketplace, but we do engage. That expense is
12 minimal relative to the overall expense.

13 MS. BUXBAUM: What do you mean by "minimal"?

14 MR. DAY: Less than a percent of the annual
15 expenditures.

16 MS. BUXBAUM: What are the types of activities you
17 engage in?

18 MR. DAY: Typically this would be more in the
19 standard of grabbing a breakfast or lunch with an agent to
20 talk about their current situations, what needs and services
21 we can provide.

22 MS. BUXBAUM: Do agents ever ask you for anything
23 in addition to the split of the premium that they retain?

24 MR. DAY: Sorry, kind of an open question. What do
25 you mean?

1 MS. BUXBAUM: Do they ever ask you for any
2 additional payments other than the split of the premium?

3 MR. DAY: Again, I don't know what you are
4 referring to. Contractually with our agents we have our
5 contractual arrangements as to the split that is our
6 financial agreement between ourselves and agents.

7 MS. BUXBAUM: Are you ever asked for additional
8 cash payments?

9 MR. DAY: No.

10 MS. BUXBAUM: Do they ever ask for payment of rent
11 or any other overhead?

12 MR. DAY: Not to my understanding. I would have to
13 check with our agency if that has ever been requested. I can
14 tell we never engaged in that.

15 MS. BUXBAUM: Have you ever heard of those type of
16 requests by agents to their underwriters?

17 MR. DAY: Truthfully I don't have a familiarity
18 with that, no.

19 MS. BUXBAUM: Mr. Bagwell?

20 MR. BAGWELL: Yes, ma'am.

21 MS. BUXBAUM: Old Republic testimony for the
22 hearings stated that Old Republic Direct does not entertain
23 persons who order title insurance. However, you have a
24 division of out-of-state salespersons who solicit nationwide
25 title insurance business, some of which may occasionally

1 become your title insurance business. For whom do these
2 salespeople solicit business?

3 MR. BAGWELL: In almost every situation it would be
4 from national vendors, national lenders. This would be
5 lenders who primarily do residential refinances or in some
6 case commercial refis.

7 MS. BUXBAUM: What type of expense is incurred for
8 that solicitation?

9 MR. BAGWELL: I am afraid that these operations are
10 divisions that work outside of New York State. I would have
11 to go back and have our accounting people check into that,
12 which I'll be more than glad to do.

13 MS. BUXBAUM: Do you know if the expense is
14 allocated to New York even if it doesn't result in any New
15 York business?

16 MR. BAGWELL: If I remember our written submission
17 to DFS correctly, we said that there's no way that we could
18 really pull that information out of the submissions. The
19 accountant -- it would be very, very difficult for us to
20 break out New York from a national operation when the
21 salespersons are visiting a national lender. It would be
22 very, very difficult to trace that visit back to an exact
23 transaction in New York State or Hawaii or Alaska for that
24 matter.

25 MS. BUXBAUM: That is why it's a non-identifiable

1 expense that gets allocated to New York, correct?

2 MR. BAGWELL: Again, that is an accounting
3 question. It could be allocated to New York. I'm not aware
4 of the formulas that are used. It's one of the reasons I
5 went to law school as opposed to becoming an accountant. If
6 you would like, I would try to find out if we can pull that
7 information, if it is available.

8 MS. BUXBAUM: Does Old Republic market to its
9 agents?

10 MR. BAGWELL: Yes, we do.

11 MS. BUXBAUM: In what way do you do that?

12 MR. BAGWELL: We primarily do that through trying
13 to offer the best possible underwriting and claim
14 serviceability we can. In the numbers we submitted to DFS,
15 our entire advertisement and marketing to our agents for 2012
16 came to about \$21,000, with purchasing Yankee tickets or
17 Super Bowl tickets or anything of that nature. Our
18 relationships are personal. They are based upon the service
19 that we can offer to our agents.

20 MS. BUXBAUM: Do your agents ever ask for any
21 additional payments over and above the premium split?

22 MR. BAGWELL: I never heard in my four years at Old
23 Republic that that has occurred.

24 MS. BUXBAUM: Thank you.

25 Mr. DeSalvo?

1 MR. DeSALVO: Yes.

2 MS. BUXBAUM: Does the entertainment expense that
3 First American incurs include taking its clients to
4 gentleman's clubs?

5 MR. DeSALVO: I would say that under the present
6 administration, no.

7 MS. BUXBAUM: Has it ever done that in the past?

8 MR. DeSALVO: I'm unfamiliar with it.

9 MR. DEAN: What is the present administration? How
10 far back does it go?

11 MR. DeSALVO: It goes back to 2008, I believe.

12 MS. BUXBAUM: I will represent to you that First
13 American produced to us documents which indicate that client
14 entertainment included going to Blush. Do you think that
15 that's a proper use of premium?

16 MR. DeSALVO: I wouldn't comment.

17 MS. BUXBAUM: First American also spends millions
18 of dollars in meals and entertainment for representatives of
19 the insureds, is that correct, on an annual basis?

20 MR. DeSALVO: That's correct.

21 MS. BUXBAUM: Can you explain how that expenditure
22 markets your product?

23 MR. DeSALVO: I think part was addressed, similar
24 to what Mr. Day has already testified to, but these are
25 networking events for the most part that we can have access

1 to clients. We use these formats as a venue wherein we can
2 have discussions with the client in a social environment and
3 at the same time discuss the benefits of putting their work
4 into First American.

5 MS. BUXBAUM: On all of those occasions, the
6 benefits of using First American is discussed?

7 MR. DeSALVO: It's part of the requirements that we
8 have in the office, or I should say suggested, is that a
9 salesperson, at least one salesperson be in attendance at
10 these events, whether it's tickets and things like that. If
11 it's networking, if it's an -- let's say it's an
12 entertainment where there would be more people involved there
13 to have discussions with customers, it's primarily a
14 networking event.

15 MS. BUXBAUM: Do your customers or clients or the
16 people who order title insurance on behalf of their clients
17 ask First American to make charitable contributions?

18 MR. DeSALVO: Firstly I don't know of it. I know
19 that we do -- I know that we do make charitable
20 contributions. Whether or not there's a specific request on
21 the part of an individual that that be made, I don't have any
22 knowledge of that.

23 MS. BUXBAUM: Do you think that the millions of
24 dollars that First American spends on meals and entertainment
25 should be included in the premium and the insured, in effect,

1 should pay for that?

2 MR. DeSALVO: To me itself -- this, again, is a
3 marketing vehicle which is utilized by the company. If it's
4 not entertainment, we would have to market our product in
5 some other fashion. So from that standpoint on any good
6 business model you have to, in order to promote your
7 business, you have to market it. So from that standpoint,
8 this is a vehicle that works out -- worked out well. It's a
9 common vehicle within the industry at the present time. We
10 do deal with -- First American does in fact do a lot of
11 commercial work so we have a different group of people that
12 we have to address. I feel it's just one of the effective
13 pieces of marketing that we use.

14 MS. BUXBAUM: And do you market in any way other
15 than meals and entertainment?

16 MR. DeSALVO: We basically will use situations where
17 continuing legal education courses will be available where we
18 put -- kind of can show the employees of our company they can
19 come forth and give a legal presentation on an educational
20 product. We also use advertising.

21 MS. BUXBAUM: What kind of advertising do you do?

22 MR. DeSALVO: There will be flyers that go into
23 advertisement, that goes into newspapers. There will be -- I
24 know I get mailers that go out to the legal community,
25 different things like that, announcements we can utilize, and

1 we go to the various businesses that are out there looking
2 for customers.

3 MS. BUXBAUM: Why isn't that sufficient in terms of
4 marketing First American's policies as opposed to the
5 millions of dollars that's spent on meals and entertainment?

6 MR. DeSALVO: Well, we'll talk about the 800 pound
7 gorilla in the room. This is the practice -- this is a
8 practice that's there, okay? We seek a level playing field
9 for competition purposes. Each one of our companies provides
10 a service, for a particular service we provide a product,
11 okay, and there are different ways that we market and
12 advertise.

13 Under the present system, that is the way that the
14 products have been marketed and advertised and we participate
15 in that fashion just like any other company to be competitive
16 within our market.

17 MS. BUXBAUM: If no company paid for meals and
18 entertainment would any fewer policies be written?

19 MR. DeSALVO: I couldn't say that. I couldn't --
20 that's pure speculation if that was it. If the model was
21 different then obviously the results would be different.

22 MS. BUXBAUM: Isn't a policy required on a real
23 estate transaction?

24 MR. DeSALVO: Yes.

25 MS. BUXBAUM: So the marketing towards the real

1 estate professionals --

2 MR. DeSALVO: You're talking though the back end of
3 the transaction. The policy is issued only after you've
4 gotten the transaction. You have to somehow or other be able
5 to advertise your product so the customer comes to you so
6 that you can then perform the service which ultimately
7 results in a policy for which you get a return on.

8 MS. BUXBAUM: I don't mean would it result in the
9 same number of title insurance policies written by First
10 American. I'm asking whether it would result in fewer title
11 policies being written in New York State.

12 MR. DeSALVO: Pure speculation. I know there are
13 states that have regulations that affect marketing and I
14 couldn't speculate. I don't know what the difference was
15 between before and after. Again, it's going to depend upon
16 the issuance of the policy or title work is going to depend
17 on what is required by the practitioners to the transaction.

18 MS. BUXBAUM: Why would an additional policy be
19 required after you solicited an insured's representative?

20 MR. DeSALVO: I don't think you understood what I
21 said.

22 MS. BUXBAUM: Perhaps not.

23 MR. DeSALVO: I'm not talking about that. If you
24 secure the individual, in other words, if you have a client
25 and you have a client relationship with a company, you

1 established a client relationship with a company, you will
2 get an order from a customer and in turn you will get -- you
3 will perform a service for that customer and for that
4 customer's client I should say. Customers are usually not
5 exclusive. They will deal with more than one. By
6 "customers" I mean lawyer, law firm. He can be dealing with
7 three or four title companies, two underwriters and three
8 agents, so he will spread his work around.

9 You are in a market to secure business to market
10 your product and service so that you have a fair shot at
11 getting some work from these people.

12 MS. BUXBAUM: So the meals and entertainment are to
13 induce business from --

14 MR. DeSALVO: No, no. It's part of a marketing
15 strategy. It's not a quid pro quo. It is not, you know,
16 I'll take you to dinner provided you give me a piece of title
17 work. It is a way we market ourselves.

18 MS. BUXBAUM: Does that ever happen?

19 MR. DeSALVO: Not to my knowledge.

20 MS. BUXBAUM: Mr. Frates, have you ever heard of
21 that happening?

22 MR. FRATES: Not to my knowledge, no.

23 MS. BUXBAUM: Mr. Frates, does the industry take
24 into consideration where in the real estate cycle you are in
25 terms of determining how much money to spend in meals and

1 entertainment? Or I'll restrict that to Stewart.

2 MR. FRATES: I'm not sure I understand the
3 question.

4 MS. BUXBAUM: Does Stewart take into consideration
5 the state of the economy in determining how much money to
6 spend on meals and entertainment?

7 MR. FRATES: I think any business takes into
8 account the state of the economy before deciding how much
9 money to spend on any type of marketing promotional activity,
10 Stewart not being exclusive of that so, yes, I would answer
11 the question, yes, we take that into consideration.

12 MS. BUXBAUM: In 2008 the statistical reports that
13 TIRSA submitted to the Department show that there was a
14 deficit of approximately three and a half million dollars
15 statewide. One company alone spent more than that amount of
16 money in meals and entertainment, and the industry in general
17 spent far more than that. So it would appear that perhaps
18 that's not taken into consideration as a factor, and
19 moreover, both that expense and that loss are considered when
20 proposing a rate and they both play off of each other.

21 Would you agree with that?

22 MR. FRATES: I would agree that in the event of a
23 down market you sort of want to address your marketing needs
24 more stringent, more effectively and you want to generate
25 more business. So to the extent that you may spend more

1 money in a down market as a percentage is just trying to
2 generate more business for your company.

3 MS. BUXBAUM: But that results in a loss to the
4 industry?

5 MR. FRATES: Under the current calculation, yes.

6 MS. BUXBAUM: Mr. Dwyer, does En Title market to
7 the insured?

8 MR. DWYER: We do. We do. Our marketing is
9 twofold. Our B to C marketing is primarily search engine
10 marketing when we market directly to the consumer. And our B
11 to B marketing is through business development employed
12 personnel with En Title Insurance Company that markets to
13 lenders nationwide and realtors nationwide.

14 MS. BUXBAUM: Mr. Bagwell, sorry, did you say you
15 were familiar with the zone one practicing?

16 MR. BAGWELL: Somewhat.

17 MS. BUXBAUM: Do you know if the practice of
18 incurring expense for meals and entertainment is commonplace
19 in zone one?

20 MR. BAGWELL: I'm just going back into my memory.
21 I don't believe that it is all that common in zone one. Now,
22 please understand that Old Republic has a very, very small
23 direct operation in zone one. We are not marketing to
24 attorneys in that area for new business. That operation
25 services business that has been in the company for quite a

1 few years.

2 MS. BUXBAUM: Is anyone else familiar with whether
3 this practice occurs in zone one?

4 MR. DAY: I can respond, yes, we also have
5 promotional entertainment in zone one.

6 MS. BUXBAUM: Do those include meals and
7 entertainment?

8 MR. DAY: We do.

9 MS. BUXBAUM: Is it the same proportion as spent in
10 zone two?

11 MR. DAY: No.

12 MS. BUXBAUM: Why?

13 MR. DAY: Expenses are cheaper in zone one.

14 MS. BUXBAUM: Other than that factor it is the
15 same?

16 MR. DAY: We made the distinction on the marketing
17 for the zone one and zone two. Our zone one is almost
18 exclusive residential type work.

19 MS. BUXBAUM: Anyone else familiar with zone one
20 practices?

21 MR. DeSALVO: One difference you do have in upstate
22 New York is the client base up there is predominantly
23 mortgage lenders. The work -- the type of work done up in
24 New York is done dramatically different than Downstate in
25 zone one, so you have the abstract of title is usually an

1 attorney's opinion. There is an overabundance of attorneys
2 that do not get fee policies for their clients because they
3 give a lender's -- they give an attorney's opinion of title
4 based on the abstract of title and then what will happen is
5 we get involved or the title company will get involved with a
6 lender who comes in because they will require mortgage title
7 insurance. But it is a dramatically different process up
8 there.

9 MS. BUXBAUM: So the meals and entertainment is
10 directed towards mortgage lenders in zone one?

11 MR. DeSALVO: Again, I did not answer that. I
12 don't know what our statistics would be in upstate New York.

13 MS. BUXBAUM: Mr. Frates?

14 MR. FRATES: We market directly to attorneys in the
15 upstate marketplace as well as mortgage brokers, mortgage
16 lenders. Primarily twofold. One is for total insurance and
17 one is for search work. Predominant revenue source is
18 providing abstract and search work.

19 MS. BUXBAUM: Does that include meals and
20 entertainment in zone one as well?

21 MR. FRATES: Yes.

22 MS. BUXBAUM: Mr. Frates, I'd like to discuss
23 expense reporting for a few minutes. Stewart reports
24 contributions as a marketing and promotional expense. That's
25 what Stewart has reported to the Department. Is there a

1 reason it's reported as a marketing expense?

2 MR. FRATES: I'm not aware of the reasons why it's
3 on that line item.

4 MS. BUXBAUM: Are you aware that the NAIC
5 instructions indicate that contributions should be reported
6 in the other category or miscellaneous category?

7 MR. FRATES: That should be a question specifically
8 to our accounting people. That's what you indicate. I will
9 agree with that.

10 MS. BUXBAUM: Mr. Day, Fidelity reports customer
11 entertainment under travel expense?

12 MR. DAY: Correct.

13 MS. BUXBAUM: What is the basis for reporting it
14 under travel?

15 MR. DAY: I think we detailed it in the response to
16 the Department but the guidelines -- I can go back to the
17 question and list. It is that the guidelines for the TIRSA
18 reporting is to follow the guidelines that are followed
19 relative to the NAIC reporting, and the company has
20 traditionally placed the entertainment expenses within the
21 travel and other expense. I believe NAIC has comparatively
22 listed that in the travel category as far as reporting in the
23 TIRSA data call.

24 MS. BUXBAUM: Well, as far as I read the NAIC
25 instructions for travel and travel items, the following items

1 are included; transportation, hotels, meals, postage,
2 telephone, telegraph, express and incidental living expenses
3 of employees while traveling, expense for transferring of
4 employees, mileage allowed for use of personal cars,
5 depreciation, repairs and other operating expenses of
6 automobiles, rent of automobiles, fees for automobile
7 registration and cost of insurance on rented automobiles.

8 So where would meals and entertainment for clients
9 fall into that category?

10 MR. DAY: I've not personally read the definition.
11 I work with the individual who handles statutory reporting
12 and who presented the information that was in response to
13 question five. I would have to go back to her as to why
14 there appears to be some level of inconsistency.

15 MS. BUXBAUM: There's no line item on the reporting
16 schedule for meals and entertainment, correct?

17 MR. DAY: With the TIRSA data call? That's
18 correct.

19 MS. BUXBAUM: Correct. Have you ever gone back to
20 TIRSA and asked why that's the case?

21 MR. DAY: No. I've not been so involved with TIRSA
22 in that regard.

23 MS. BUXBAUM: Mr. DeSalvo, same question. There's
24 no line item for reporting meals and entertainment on the
25 TIRSA data call, correct?

1 MR. DeSALVO: I believe so.

2 MS. BUXBAUM: Would that indicate whether that's a
3 proper expense or not?

4 MR. DeSALVO: You know, again, this gets into an
5 accounting question which I don't have any familiarity with.
6 I'd have to check with my people as to why it was presented
7 in that way.

8 MS. BUXBAUM: Same question, Mr. Frates.

9 MR. FRATES: I would have pretty much the same
10 answer.

11 MS. BUXBAUM: Mr. Dwyer?

12 MR. DWYER: Same.

13 MS. BUXBAUM: Mr. Bagwell?

14 MR. BAGWELL: Sorry.

15 MS. BUXBAUM: I need more than a nod.

16 MR. BAGWELL: I would agree with what my colleagues
17 have said. I believe that Old Republic -- let's strike that.
18 I will have to go back and find out exactly how we report
19 those items.

20 MS. BUXBAUM: Would you agree that expenses ought
21 to be reported in a uniform manner?

22 MR. BAGWELL: I think that would be helpful to both
23 industry and to the Department, yes.

24 MS. BUXBAUM: Mr. Frates, do you believe that
25 expenses ought to be reported on a uniform basis?

1 MR. FRATES: That would be helpful.

2 MS. BUXBAUM: That would helpful in establishing a
3 more proper rate would you say?

4 MR. FRATES: I would agree with that statement.

5 MS. BUXBAUM: Mr. Dwyer, would you agree with that
6 statement?

7 MR. DWYER: As a former accountant, yes, I would
8 agree with that.

9 MS. BUXBAUM: Mr. DeSalvo?

10 MR. DeSALVO: I would agree.

11 MS. BUXBAUM: Mr. Day.

12 MR. DAY: I also agree.

13 MS. BUXBAUM: Thank you.

14 MR. DEAN: Before we move on to some questions on
15 the allocation of non-identifiable expenses, I have a few
16 questions. Does Fidelity keep track of the best clients,
17 meaning attorneys who bring the most business to Fidelity?

18 MR. DAY: We have -- we can pull that information.
19 We don't as a general rule pull that information but it is
20 available, yes.

21 MR. DEAN: Do you know out of the tickets, the
22 meals, the entertainment, can you match that up to the people
23 who provide you the most business? In other words, do you
24 keep track of who all meals and entertainment tickets are
25 spent on?

1 MR. DAY: Yes, we do track that, but we don't then
2 categorize as to this person received this much and this
3 person received that much. We have to go back through the
4 various travel and entertainment reports of our salespeople
5 to extract the individual information and then match it up
6 against the list. We don't do that routinely.

7 MR. DEAN: Do you know offhand whether more money
8 is spent on travel and entertainment for soliciting new
9 business, lawyers that don't do business with Fidelity or
10 spent more on people who already have an existing
11 relationship with Fidelity?

12 MR. DAY: I don't track that.

13 MS. BUXBAUM: Mr. DeSalvo, same question. Does
14 First American keep track of the top attorneys, top clients,
15 best clients that it has.

16 MR. DeSALVO: I'm uncertain if they do. I know we
17 have an ability by going into the system of looking at the
18 law firms or clients that give us the business and can
19 probably extract it. Whether or not there's a rating system
20 or something internally, I don't believe there is one.

21 MR. DEAN: You don't keep track of who brings you
22 the most business in New York?

23 MR. DeSALVO: There's tracking by the sales and
24 marketing people who are the base players in the area.

25 MR. DEAN: Do you know the meals and tickets, are

1 they given more to people who bring in more business or
2 develop new business?

3 MR. DeSALVO: I couldn't answer the question as to
4 how it's allocated by the sales and marketing people. I
5 think probably there is a balance in there because we are in
6 the business of growing our business, growing our client
7 base, so as a result there would be a certain percentage of
8 this that would be directed towards new customers.

9 MR. DEAN: If we had follow-up questions, who would
10 we need to speak to about this?

11 MR. DeSALVO: If you have follow-up questions on
12 that you can go through me. I would have to get that done
13 through the sales and marketing people because there are
14 market records we do maintain.

15 MR. DEAN: Mr. Frates, does Stewart I should say
16 keep track of the attorneys, real estate agents, the other
17 clients who produce the most business for Stewart?

18 MR. FRATES: I believe we have the ability to keep
19 track.

20 MR. DEAN: Do you know how the meals, tickets,
21 entertainment and other items are given out to attorneys and
22 other people?

23 MR. FRATES: I don't.

24 MR. DEAN: Who would I talk to to find that out
25 from Stewart?

1 MR. FRATES: If the information is available we
2 have to extract it, so if it came directly to me, I can
3 direct that if necessary.

4 MR. DEAN: Mr. Dwyer, I forget, do you market
5 directly to attorneys?

6 MR. DWYER: We do not, sir.

7 MR. DEAN: Mr. Bagwell?

8 MR. BAGWELL: We do not.

9 MR. DEAN: I would like to move on to some
10 questions about the allocation of expenses and I know we're
11 running short on time so to set the stage in 2012, in the
12 TIRSA filing we noticed that nine percent of nationwide
13 premium was written in New York but 21 percent of the
14 non-identifiable expenses were allocated to New York. This
15 results roughly in about \$65 million in extra expenses over
16 the nine percent that is being allocated to New York, and we
17 would like to understand the method for allocation for each
18 company and try to understand the reason for this
19 discrepancy.

20 And, Mr. DeSalvo, I would like to start with you.
21 First American has the most complicated allocation formula
22 that we've seen. Can you explain to me the four categories
23 and how the allocation is performed for each one?

24 MR. DeSALVO: It's nice to know that someone else
25 thinks it's complicated.

1 There's a series of factors that are used from our
2 parent company. A lot of this has happened as a result of
3 the merger that occurred in 2010. Our record keeping is much
4 different than it used to be when we were just a subsidiary
5 so as a result the allocations, depending on the type of
6 services being provided or general services being provided
7 through home office, so to speak, okay, those are
8 attributable to certain areas. We use certain indicators as
9 to how they get allocated and there is a percentage.

10 So it's not like you would think, like -- it's not
11 as if to say you made a million dollars this month and it's
12 10 percent. There's various factors and what you have here
13 is what I tried to explain basically, those areas of how they
14 compute for each one of those particular items.

15 MR. DEAN: For each one there seems to be, for
16 example, allocation of corporate costs attributed to employee
17 head count. How is that divided between the various states
18 in which First American does business?

19 MR. DeSALVO: They're going to look at New York and
20 look at what the head count is in New York and go support
21 factor based on that.

22 MR. DEAN: So it's a question of how many employees
23 home office is supporting in New York?

24 MR. DeSALVO: That's correct.

25 MR. DEAN: Got it. Roughly a percentage of the

1 total employees in the U.S.

2 MR. DeSALVO: Tied into New York.

3 MR. DEAN: Got it. Then the revenue, what revenue
4 is used in calculating in the direct agency -- sorry --
5 information technology allocation?

6 MR. DeSALVO: Well, that's based, again, on the
7 revenue that comes from the direct operations revenue and
8 also the agency revenue.

9 MR. DEAN: So I assume it's pretty much the same
10 thing for the next answer, number three?

11 MR. DeSALVO: Yes.

12 MR. DEAN: Fourth point allocation of claims
13 administration based on claim settlement expense occurred,
14 can you explain that to me?

15 MR. DeSALVO: I would have to get a better
16 definition.

17 MR. DEAN: If you know the settlement costs
18 associated, it would be an identifiable expense. That is one
19 of the things I'm confused about. So you don't know the
20 answer?

21 MR. DeSALVO: I can expand on that.

22 MR. DEAN: Is this the same allocation method that
23 First American uses in all states in which it does business?

24 MR. DeSALVO: I can't answer that question. I can
25 find that information for you.

1 MR. DEAN: You don't know? Do you agree --

2 MR. DeSALVO: I just referred to my associate here.
3 It is the same -- pretty sure it's the same in all states.

4 MR. DEAN: Do you think to have a proper
5 calculation of a rate there should be a uniform allocation
6 used among all the different insurers that file rates in New
7 York?

8 MR. DeSALVO: I don't know if that would work.

9 MR. DEAN: Why not?

10 MR. DeSALVO: I think because there are
11 different -- I think there are different factors with
12 different -- and the way we do our business and how we
13 allocate. This, again, is pure speculation but I just don't
14 think you can put a cookie cutter on that type of thing.
15 We're dealing with an extremely large company. Smaller
16 company percentages may be different.

17 MR. DEAN: But are you aware of any distinction
18 between yourself and the other competitors that would make
19 using the same allocation improper? Are you just
20 speculating?

21 MR. DeSALVO: Pure speculation.

22 MR. DEAN: I forgot I had a couple of other
23 questions. In some of the allocation we see for First
24 American there's a couple of categories of allocation that we
25 don't understand. I don't know if you can explain them for

1 me.

2 Corporate allocation NSF, do you know what that is?

3 MR. DeSALVO: That is a code that they use and I
4 think that's -- yeah. I would have to get that information
5 for you. I don't have that.

6 MR. DEAN: There's two other categories, other
7 corporation allocation and production allocation. Do you
8 know what each of those are?

9 MR. DeSALVO: No.

10 MR. DEAN: You have to get back on that
11 information.

12 MR. DeSALVO: Yes.

13 MR. DEAN: How is this allocation calculated;
14 monthly basis, year-end basis?

15 MR. DeSALVO: My understanding is it's done
16 monthly.

17 MR. DEAN: You're not certain?

18 MR. DeSALVO: Almost certain, but I can get back to
19 you.

20 MR. DEAN: Would you get that for us, please?

21 MR. DeSALVO: Yes.

22 MR. DEAN: To move on to Mr. Day, in your written
23 testimony you wrote that certain items are not operating.
24 Income and expense, there is mandate as to how they should be
25 allocated. Are you familiar with the mandate by UFRP?

1 MR. DAY: I'm not familiar with the specifics. I
2 think our response is clear as to the methodology in which
3 we're using, I believe, as to the allocation. I just think
4 it's easier. The company historically allocated itself
5 non-identifiable expenses to each state, including to New
6 York, on the basis of each state's net premium as a
7 percentage of the company's country wide net premiums. That
8 has been the basis of the allocation of the expenses.

9 MR. DEAN: I believe before that within your
10 written testimony you note that the UFRP generally says it's
11 up to the companies to determine the allocation method except
12 for certain items of non-operating income and expense and
13 certain items on the balance sheet.

14 I'm asking more not a question of Fidelity's method
15 of allocation but what the UFRP mandates.

16 MR. DAY: I don't recall reviewing this
17 information. I wasn't aware that UFRP existed, and I
18 understand it is a document several years old and has been
19 providing guidelines in that regard so I would have to work
20 with accounting.

21 Is there a specific question in that regard?

22 MR. DEAN: I'm understanding the allocation method,
23 what the allocation method is. Is anyone else on the panel
24 familiar with this?

25 Then the same question for you. Does Fidelity use

1 the same allocation method in all the states they do business
2 with?

3 MR. DAY: They do.

4 MR. DEAN: Do you agree to have a proper rate there
5 should be a uniform methodology used by all the insurers?

6 MR. DAY: We as a company utilized consistent
7 methodology across the country. If the state were now to
8 mandate a different process and procedure, we would have to
9 now discuss what the impact would be as to the level of
10 consistency with other jurisdiction by utilizing a consistent
11 method across the country. It does preserve some continuity
12 as to that information.

13 MR. DEAN: Why do you think that -- why does
14 Fidelity think the net premium is the appropriate method for
15 allocation?

16 MR. DAY: I would have to check with statutory --

17 MR. DEAN: This is not a question. It's Fidelity
18 choosing how to allocate.

19 MR. DAY: I'm not a math wizard.

20 MR. DEAN: Neither am I. That's why I am a lawyer.
21 I will steal someone else's answer.

22 MR. DAY: I have to go back and see what the
23 difference would be to use gross as opposed to net premium.

24 MR. DEAN: It's not that type of question. Why is
25 that the methodology that Fidelity selected? Why do you

1 think allocated non-identifiable expenses based on net
2 premium is the appropriate methodology?

3 MR. DAY: As a percentage overall? It tends to
4 show respective activity in each of the states. If you are
5 supporting the operations and this percentage is being
6 generated out of New York, the procedure is that all of the
7 respective corporate overhead costs are being engaged in a
8 proportionate percentage relative to the premium without --
9 it is a consistent methodology.

10 Again, I would be happy to discuss that further.
11 This is a decision that has been engaged many, many, many
12 years ago, and from my understanding in talking with the
13 statutory people has stayed consistent throughout those
14 years. What my thought process was in determining that I
15 have to go back and ask.

16 MR. DEAN: I'm curious to know why you think that
17 methodology is appropriate as the best method.

18 MR. DAY: Yes.

19 MR. DEAN: Mr. DeSalvo, do you know the reason why
20 Fidelity uses this four-step allocation, why they think that
21 is the appropriate -- First American. I said Fidelity.

22 Do you think that is the appropriate allocation
23 methodology?

24 MR. DeSALVO: I have no idea why I worked that out
25 as far as that is concerned. I have to find out why that is

1 used but it is a standard they use throughout the country.

2 MR. DEAN: Now, Fidelity would, because you use net
3 premium, you would be neutral on the analogy I noted at the
4 beginning in terms of nine percent of net premiums in New
5 York and 21 percent of the expense is allocated.

6 I'm actually going back to you, Mr. DeSalvo. Do you
7 understand why there is so much higher expenses being
8 allocated to New York over the net premiums written here?

9 MR. DeSALVO: I don't know why. I couldn't answer
10 that question. I would have to find out for you.

11 MR. DEAN: Is there someone we should be talking to
12 responsible for the accounting?

13 MR. DeSALVO: Again, through me, and I will get you
14 to the right people.

15 MR. DEAN: Mr. Bagwell?

16 MR. BAGWELL: Yes, sir?

17 MR. DEAN: Can you explain to me how Old Republic
18 allocates non-identifiable expenses to New York?

19 MR. BAGWELL: Sir, I've read our explanation
20 several times and, quite frankly, I don't understand it. I
21 would have to, through me, as my colleagues have said, refer
22 you to someone in corporate who could speak that language.

23 MR. DEAN: Do you know if that's the same
24 allocation methodology that's used in other states by Old
25 Republic?

1 MR. BAGWELL: I suspect that it is but I would have
2 to find out for you.

3 MR. DEAN: Okay.

4 I take it it's fair to say you have no idea why Old
5 Republic thinks that's the appropriate methodology for
6 allocation?

7 MR. BAGWELL: Well, that is correct. Old Republic
8 has been around for over a hundred years and there must be
9 some historical reasons, but I will have to direct you to the
10 right person.

11 MR. DEAN: You would have no idea whether this
12 methodology attributed to the discrepancy in premiums written
13 in New York and the allocation of expenses?

14 MR. BAGWELL: I'm afraid I don't have any idea as
15 to that.

16 MR. DEAN: Do you have any opinion as to whether
17 there needs to be a uniform methodology of allocation to have
18 a proper rate set in New York?

19 MR. BAGWELL: Well, I really do not have an opinion
20 as to that either, but as Mrs. Shapiro suggested earlier in
21 her presentation, if the Department does decide to go that
22 route, please give us, as underwriters, a few years to bring
23 our systems in line.

24 MR. DEAN: Thank you.

25 Mr. Dwyer, just out of curiosity, your written

1 testimony indicates En Title allocates all expenses based on
2 percentage of transactions. What does that mean, percentage
3 of the number of transactions, or can you explain that to me,
4 please?

5 MR. DWYER: The number of orders and closed
6 policies both. The volume relative to the nationwide.

7 MR. DEAN: Number of policies?

8 MR. DWYER: Yes.

9 MR. DEAN: Can you tell me why En Title thinks that
10 is the appropriate methodology?

11 MR. DWYER: We believe that the expenses follow the
12 volume and vice versa and so, therefore, the allocation is
13 done in that manner.

14 MR. DEAN: In other words, no matter what the
15 premium is written, basically the same level of expense for
16 every policy?

17 MR. DWYER: That's correct.

18 MR. DEAN: Do you use the same methodology
19 throughout the country?

20 MR. DWYER: We do.

21 MR. DEAN: Do you have any opinion as to whether or
22 not a uniform methodology should be used to have an accurate
23 rate set in New York?

24 MR. DWYER: It's an interesting question. The
25 concept is intriguing but with any concept, it's all about

1 employing the specifics. So it would be up to very, very
2 smart people with detailed knowledge of accounting and
3 finance to get the proper methodologies down.

4 MR. DEAN: Do you have any understanding as to
5 whether En Title's method of allocation contributes to this
6 discrepancy between the premiums written in New York and the
7 expenses allocated?

8 MR. DWYER: Do I know whether it contributes to the
9 discrepancy? I do not have an opinion.

10 MR. DEAN: Does En Title write a substantial number
11 of policies in New York?

12 MR. DWYER: Substantial relative to?

13 MR. DEAN: How many policies they write in New
14 York.

15 MR. DWYER: We write several thousand -- under ten
16 thousand.

17 MR. DEAN: Okay. Thank you.

18 Mr. Frates, you're off the hook because you only do
19 business in New York, correct? You have no allocation?

20 MR. FRATES: That's correct.

21 MR. DEAN: Between Old Republic and I guess First
22 American, the discrepancy that we identified would have to
23 come largely from you as I understand it because Mr. Day's
24 company uses the same net premium methodology that we use.
25 Mr. Frates doesn't have any impact on it, so we're curious as

1 to why the expenses are so much higher relative to the net
2 premiums written in New York.

3 MS. BUXBAUM: Mr. Frates, does your parent company
4 allocate to New York?

5 MR. FRATES: Does our company allocate expenses to
6 New York?

7 MS. BUXBAUM: Does your parent company allocate
8 expenses to New York?

9 MR. FRATES: No.

10 MR. DEAN: I want to switch over to talk -- go
11 ahead.

12 MS. LEES: Mrs. Shapiro, you have been very
13 patient. Now is the time where we get to ask you a few
14 questions. I would like to focus first on verification of
15 data.

16 Does TIRSA actuaries take steps to verify that data
17 reported to the Department is correct?

18 MS. SHAPIRO: They take steps to reconcile the
19 data. Again, in that 2009 last examination that was reported
20 in 2009, there were discrepancies that were found. There was
21 a lack of reconciliation of the data to the form nines. Data
22 was cleaned up. All of the data in the rate filing went back
23 and was reconciled for years that it had not been and on a
24 go-forward basis all data submitted is reconciled to each
25 company's form nine.

1 Now, when you say verify the data, again, that gets
2 into an auditing function. We are not auditors. What they
3 do, the actuaries, is that if there is something in their
4 spreadsheets, if it throws it out as a wild number, so to
5 speak, they will then go back to -- first of all, sometimes
6 they come to me first but they will also go back to the
7 individual companies and say you're out of a range for each
8 one of their spreadsheets and so on. There are ranges. If
9 they -- they will go back and look in the prior years and
10 say, well, they were in this range in the prior year. Why is
11 it out of whack for this year?

12 So in my mind I'm not quite sure that would be
13 verified data, but I believe they are reconciling it.

14 MS. LEES: Looking at the 2012 statistical report I
15 notice that premiums is recorded in a number of different
16 places, I think about five different forms, and each time a
17 different total was reported. Why is that?

18 MS. SHAPIRO: I have no idea. I can find out.

19 MS. LEES: If you can find out. We'd appreciate
20 that.

21 MS. SHAPIRO: On the actual 2012 data call the
22 premium is a different number in four or five different
23 spots.

24 MS. LEES: Yes, that's right.

25 MS. SHAPIRO: Okay.

1 MS. LEES: We also noticed a difference in the
2 numbers for premiums retained by agents on the income
3 statement and schedule U-1. I assume your answer would be
4 the same?

5 MS. SHAPIRO: Yes.

6 MS. LEES: Okay. The US-1N schedule authorized
7 unrated charges. Is that also a way of saying non-rated
8 revenue?

9 MS. SHAPIRO: Correct.

10 MS. LEES: Why do you have two different terms for
11 the same concept?

12 MS. SHAPIRO: I believe it's just historical and
13 that would be the definitive reason for that.

14 MS. LEES: Would you think it might be better to
15 use a uniform nomenclature?

16 MS. SHAPIRO: We're willing to use any nomenclature
17 you'd like us to use. We're willing to work with you guys on
18 that and consistently have done that over the past 20 years.

19 MR. DEAN: I would like to ask you questions about
20 expense reporting. Other than referring to NAIC guidelines
21 TIRSA doesn't give guidance as to how other expenses are to
22 be reported in the data call?

23 MS. SHAPIRO: Correct. As we stated, our actuaries
24 basically take the information that is given to them with the
25 idea that the companies are reporting it on their form nine

1 and all their other forms.

2 MR. DEAN: The NAIC guidelines, and I think this is
3 from your written testimony, says that for miscellaneous,
4 NAIC I think equates that to other, that the insurer is
5 supposed to list separately each category of other expense
6 for which there is no preprinted line.

7 Are you familiar with that?

8 MS. SHAPIRO: Yes.

9 MR. DEAN: Do you know whether the title insurers
10 provide the breakdown of the other expenses pursuant to the
11 NAIC guidelines on the other lines?

12 MS. SHAPIRO: I don't know if they do or not but we
13 can find out.

14 MR. DEAN: My understanding is they don't and are
15 you aware of TIRSA ever requesting them to comply with the
16 NAIC guidelines?

17 MS. SHAPIRO: No, no.

18 MR. DEAN: Do you have any opinion as to what
19 should be included in the marketing and promotional expenses?

20 MS. SHAPIRO: That is not TIRSA's role to determine
21 what should be in those expenses.

22 MR. DEAN: Is it surprising that tickets and gifts
23 are included within that or other expenses?

24 MS. SHAPIRO: I've been in the industry a long
25 time. I sat with these gentlemen where they are sitting.

1 MR. DEAN: You are shocked.

2 MS. SHAPIRO: I'm not shocked to find out anything.
3 Again, should you require TIRSA to change our forms and give
4 you more detailed information, all we request is time so that
5 our companies can comply with things, if they're able to.

6 MR. DEAN: Let me ask this way. Are there any
7 categories of expenses that TIRSA would believe are plainly
8 improper and shouldn't be included in the data call?

9 MS. SHAPIRO: Again, I don't believe that's TIRSA's
10 role to determine whether an expense should be put in. There
11 are certain expenses and certain income that were taken out
12 when the rate filing was compiled because they were not
13 premium --

14 MR. DEAN: Not rated.

15 MS. SHAPIRO: -- not rated premium, so they were
16 extracted and not used in the rate filing but, once again, if
17 you don't -- if you as our regulator do not believe that you
18 want to see certain expenses on those forms, that is
19 something we can work with you on.

20 MR. DEAN: You wouldn't look for an inducement,
21 something prohibited under 6409D and say this shouldn't be
22 included in the data call?

23 MS. SHAPIRO: I don't believe that is TIRSA's role
24 to determine that. We don't determine what an inducement is.
25 We are merely acting as your statistical agent and giving you

1 back the compiled information.

2 MR. DEAN: You're just getting the information,
3 putting it altogether and sending it to the Department?

4 MS. SHAPIRO: That's always been our role in the
5 past, yes.

6 MS. BUXBAUM: Just following up on what Mr. Dean
7 said, with regard to marketing and promotional there is an
8 instruction to agents to fill out the U-4 agent schedule,
9 correct?

10 MS. SHAPIRO: There was an additional schedule that
11 was requested last year by the Department. Unfortunately,
12 with not a lot of time given to the agents, they were given
13 no time to set up their systems that way. Within that we did
14 set up a schedule, separate schedule, trying to detail in the
15 four categories that was requested for the agents to complete
16 for those expenses, yes.

17 MS. BUXBAUM: But the general instructions to the
18 agent have definitions for each line item, correct?

19 MS. SHAPIRO: The reason for that was after the
20 first or second year that we were sending out the U-4 to the
21 agents, it was requested by one of our members that we give
22 as detailed an instruction as possible to the agent base who
23 never completed these forms. All the companies sitting up
24 here as well as all the companies not represented have been
25 taking part in these data calls for as long as they have been

1 licensed in New York, and I suggest when we have a new
2 company enter into New York, it takes an additional amount of
3 time and effort on the part of the actuary and a lot of
4 explanation. When it was suggested, can we give them some
5 descriptive material, and we did.

6 MS. BUXBAUM: Do you think that the instructions
7 that you gave to the agents for marketing and promotional
8 should be the same types of expenses that the insurers report
9 for marketing and promotional?

10 MS. SHAPIRO: I don't believe that's my position to
11 make. Again, if the DFS would like us to limit and give
12 those kind of instructions to our members, we're happy to
13 take part and do that.

14 MS. BUXBAUM: Well, if it's an expense schedule and
15 marketing and promotional is one of the line items, wouldn't
16 it make sense that the same types of expenses are reported by
17 both insurers and agents for that particular line item?

18 MS. SHAPIRO: I think as some of the gentlemen
19 explained, there are some different expenses that are
20 incurred on a direct situation and there are different
21 expenses that the companies incur in marketing to their
22 agents. So not necessarily -- would they necessarily be the
23 same.

24 MS. BUXBAUM: But you can have a broad definition
25 and that would include an amount of expenses.

1 MS. SHAPIRO: Again, we're happy to work with you
2 and all these forms are sent to DFS ahead of time with the
3 idea you, as your regulators, are working with us to modify
4 the form so they are the way you want to get them back.

5 MS. BUXBAUM: The definition for marketing and
6 promotional includes the cost of pens, pads, calendars,
7 training seminars, event sponsorship, cost of maintaining a
8 website, telemarketing, cost of newsletters and other
9 marketing materials distributed to customers. That would not
10 include meals and entertainment, would it?

11 MS. SHAPIRO: Not from that definition, no.

12 MS. BUXBAUM: So agents who report on the schedule
13 U-4, the agent should not be including meals and
14 entertainment on the marketing and promotional line; is that
15 correct?

16 MS. SHAPIRO: Again, this schedule and these
17 instructions were approved by DFS and we're happy to modify
18 them as well for the agent base.

19 MS. BUXBAUM: But it's not a question of approving
20 the instruction or not. It's a question of what is being
21 reported in accordance with that instruction.

22 MS. SHAPIRO: I agree.

23 MS. BUXBAUM: So do you think that insurers should
24 have any other marketing and promotional expense different
25 than what I just read was an instruction to the agent?

1 MS. SHAPIRO: Again, I believe the insurers are
2 using other sets of forms, showing this on their form nine,
3 and that is where this information is coming from.

4 MS. BUXBAUM: Have any of the insurers or agents
5 come to TIRSA to request -- other than requesting
6 instructions that you just mentioned -- to request guidance
7 with respect to filling out the expense schedules?

8 MS. SHAPIRO: Not that I'm aware of, no.

9 MS. BUXBAUM: The NAIC instructions call for
10 write-ins for the other expenses, correct?

11 MS. SHAPIRO: I believe so.

12 MS. BUXBAUM: Do any New York insurers provide
13 write-ins to TIRSA for what they include in other --

14 MS. SHAPIRO: I don't believe they do.

15 MS. BUXBAUM: TIRSA never required that?

16 MS. SHAPIRO: We have not.

17 MS. LEES: I have a couple of questions about
18 calculation of expenses. I was looking at the instructions
19 to the New York data call and I know that on page 23, column
20 four says, "Report all expenses neither incurred in New York
21 nor allocated to New York."

22 Why would expenses that are neither incurred nor
23 allocated to New York be included?

24 MS. SHAPIRO: I have no idea. I can find out for
25 you.

1 MS. LEES: Would you, please?

2 MS. SHAPIRO: What page is that?

3 MS. LEES: Page 23.

4 MS. SHAPIRO: Of the instructions?

5 MS. LEES: Of the instructions, yes, column four.

6 Do you know if these expenses get reported to other
7 states?

8 MS. SHAPIRO: TIRSA has nothing to do with other
9 states. The only place our data call goes to is you and to
10 our members.

11 MS. LEES: Understood. You wouldn't know whether
12 expenses that were neither incurred in New York or allocated
13 to New York might be included in other states' data call?

14 MS. SHAPIRO: No idea.

15 MS. LEES: Now I'm on page 27 of the data call
16 instructions. It states that we will be reviewing the values
17 of implied average salary for reasonableness and requesting
18 an explanation when the values do not appear reasonable.

19 How is that review done?

20 MS. SHAPIRO: From what I'm told from the
21 actuaries, they basically look at the head count and the
22 overall number and they figure it out. And, once again, if
23 it looks totally out of whack, they will make a phone call to
24 their person in the local -- in the office doing the work
25 just to get an explanation, and they do keep some notes of

1 this.

2 And I believe when the last examination was done by
3 the Department, your consultant RSC did go in and look at
4 certain types of notes kept by Milman.

5 MS. LEES: Are you saying that there are parameters
6 like a low and high for average salary?

7 MS. SHAPIRO: I don't believe -- I think they're
8 just looking to see if it's within a range and, again, I
9 don't know why that's been -- a lot of what's in this data
10 call started in 1992, and where we refined things as we were
11 requested to refine things, other things were just carried
12 through.

13 MS. LEES: Do you know what the high end of what
14 the range is?

15 MS. SHAPIRO: No idea.

16 MS. LEES: Can you find that out for us?

17 MS. SHAPIRO: Sure.

18 MS. LEES: Do you know whether anyone requested
19 explanation from an insured about the value not appearing
20 reasonable?

21 MS. SHAPIRO: Yes. I can tell you that questions
22 have been, well, if your head count is so small, why is the
23 number so big and thrown into it were different things, so
24 yes.

25 Again, I believe Milman does keep notes of this, not

1 something necessarily that gets put into the report but they
2 do keep notes of this.

3 MR. DEAN: I'm going to cut this down. You're the
4 lucky beneficiary of us running over. I want to ask you some
5 quick questions about allocation.

6 In your written testimony you say that you provide a
7 formula for performing the required allocation. Can you tell
8 me what that formula is?

9 MS. SHAPIRO: Formula is provided by our actuaries,
10 and I don't know it off the top of my head. If it was -- if
11 not, I can get you the formula but that is what is provided
12 by the actuaries.

13 MR. DEAN: Is it anything more than so many
14 insurers combining the rate and divided by the number of
15 insurers?

16 MS. SHAPIRO: I have no clue.

17 MR. DEAN: Page ten, TIRSA tests the allocations
18 for reasonableness.

19 MS. SHAPIRO: Yes.

20 MR. DEAN: Do you know how does it test the
21 allocation for reasonableness? What does it do?

22 MS. SHAPIRO: I believe they do it according to
23 actuarial standards and run them through, but we can get you
24 an actual definition.

25 MR. DEAN: You heard me talk about the nine percent

1 of net written premiums and 21 percent of the expenses. Do
2 you have any -- does TIRSA have any understanding as to why
3 it appears, that discrepancy?

4 MS. SHAPIRO: I'm sure TIRSA has no understanding
5 as to why there is the discrepancy. I think we report it as
6 it is going along the fact that we don't per se audit the
7 data.

8 MR. DEAN: But was it tested for reasonableness?
9 It must have been found to be reasonable since it was
10 reported but I'm curious if that was reviewed in any way.

11 MS. SHAPIRO: I will ask our actuaries.

12 MR. DEAN: Do you have any opinion on whether there
13 should be uniform allocation among all insurers to have
14 proper rates set in New York?

15 MS. SHAPIRO: I do not.

16 MR. DEAN: Do you have any opinion on what the
17 proper methodology for allocating non-identifiable expenses
18 is?

19 MS. SHAPIRO: No, I do not.

20 MS. LEES: Just a couple. I just have a couple of
21 questions.

22 Do you have an opinion about having all title
23 related charges, including ancillary charges, being made part
24 of the title insurance rate manual?

25 MS. SHAPIRO: Well, our revised manual did make

1 some changes to not necessarily the ancillary but it did
2 modify things, like the work charges and that section, and as
3 far as including the cost of the ancillary charges, it would
4 be absolutely impossible to try to do for all the reasons
5 that were discussed in that what may cost you one thing in
6 New York City, may cost something different in another
7 county. It also would probably be unfair to the zone one
8 people and it would raise the rate and so on.

9 MS. LEES: What about having municipal searches or
10 other ancillary searches referencing pass-through, would that
11 make it simpler?

12 MS. SHAPIRO: They presently are pass-throughs
13 with a service fee, but they presently are a pass-through.

14 MS. BUXBAUM: They're heavily marked up
15 pass-throughs. Pass-through cost, correct?

16 MS. SHAPIRO: Again, that's not a TIRSA issue.
17 It's not a part of the title insurance so it's not our
18 position.

19 MS. LEES: Just referring to having the New York
20 rate be all inclusive, which is effectively what we are
21 talking about, wouldn't that be beneficial to the consumer to
22 have one rate that includes all searches?

23 MS. SHAPIRO: From TIRSA's perspective we have a
24 problem talking about that because our license deals with
25 title insurance, and some of those issues are not title

1 insurance, and I think -- I do believe it's a problem for
2 TIRSA at this point.

3 MS. LEES: So you don't have an opinion one way or
4 the other?

5 MS. SHAPIRO: I don't, no.

6 MS. BUXBAUM: One last question. In other property
7 and casualty lines of insurance, the rate service
8 organization files loss cost and each individual insurer
9 files a rate; is that correct?

10 MS. SHAPIRO: I'm not familiar with other P and C
11 lines, no.

12 MS. BUXBAUM: Does TIRSA have an opinion on
13 limiting its rate development to lost costs only and having
14 each signor develop its full rates?

15 MS. SHAPIRO: TIRSA does not have an opinion on
16 that. The rate service organization part of our statutory
17 duty is to file rates.

18 MS. BUXBAUM: Do you think that would be a way to
19 instill competition in the rate in the title insurance
20 industry in New York?

21 MS. SHAPIRO: I have no opinion on that.

22 MS. BUXBAUM: Thank you. Thank you very much. We
23 appreciate you being here and sorry for running late. We
24 will start the next session at 1:45 p.m.

25 (A recess was taken.)

1 MS. BUXBAUM: Good afternoon. Welcome to the
2 afternoon session of the Department of Financial Services
3 hearing regarding the title insurance industry. My name is
4 Ellen Buxbaum, associate counsel with the Department of
5 Financial Services, Fraud and Consumer Protection Division.

6 I thank you all for being here. On the panel with
7 me are Martha Lees, the Department's senior policy advisor
8 for insurance and Peter Dean, deputy general counsel for
9 insurance.

10 I know many of you were here for this morning's
11 session so I won't repeat everything I said, except to say
12 that we will focus on the following topics: The nature of
13 the curative work that is done to issue a policy and the cost
14 of that curative work; other services that are provided by
15 the agent and charged to the consumer in connection with the
16 real estate closing and identifying those expenditures which
17 are properly expensed using premium money.

18 Martha Lees will review the rules and procedures for
19 this afternoon's session.

20 MS. LEES: Thank you. Before witnesses are asked
21 to speak, Ellen Buxbaum will administer the oath to ensure
22 the witness is recognized, that their testimony is sworn or
23 affirmed to and must be truthful. Each witness will have the
24 opportunity to present an opening statement for four minutes.
25 We'll remind you when you have one minute remaining and when

1 your time is up. The members of the panel will then ask
2 questions. And to avoid confusion, please wait to be
3 personally addressed before responding to questions.

4 If we use any documents today, we will mark and
5 enter them into the record, although we don't expect to use
6 documents.

7 I would just ask if everyone can take a few moments
8 now to silence your cell phones and Blackberries and we will
9 have a 15-minute break between this panel and the following
10 panel. Thank you.

11 MS. BUXBAUM: Mr. Willen, do you have an opening
12 statement?

13 MR. WILLEN: I do.

14 MS. BUXBAUM: Raise your right hands.

15 Do you solemnly swear or affirm that the testimony
16 you are about to give will be the truth, the whole truth and
17 nothing but the truth?

18 SPEAKERS: I do.

19 MS. BUXBAUM: Thank you.

20 MR. WILLEN: Good afternoon, ladies and gentlemen.
21 My name is Joe Willen and I'm president and CEO of Advantage
22 Title.

23 Thank you for giving us the opportunity to testify
24 before you today concerning our role in the title insurance
25 industry.

1 Brief history. I opened Advantage in December 1987
2 and have been in business for 26 years. I have 40 employees,
3 including six in-house counsel. We do both residential and
4 commercial title insurance.

5 My goal, together with the other witnesses in this
6 panel, is to explain what we do as title insurance agents in
7 the process of issuing title insurance policies and the
8 administration of the filing in our care.

9 Issuing title insurance requires a great deal of
10 skill, knowledge and judgment. Title insurance is a very
11 unique product, different than all other forms of insurance.
12 All other forms of insurance are forward looking while title
13 insurance is taking a long, hard look in the rearview mirror.
14 Other forms anticipate a loss in the future, whether talking
15 about an automobile policy, multi-peril, life insurance
16 policy. They all anticipate, with varying degrees of risk,
17 that a loss will occur in the future and a policy will be
18 called upon to pay for that loss. Actuaries predict the
19 likelihood of the loss and ascribe an economic value to the
20 policy benefits that will flow. Through that mechanism they
21 establish a premium after taking into account all the costs
22 of the insurance and fair profit margin to the underwriters
23 involved. In most cases, this premium is renewed every year.
24 Unlike title insurance. Title insurance is
25 retrospective. In issuing a title insurance policy we do a

1 careful examination of all the specific facts relevant to an
2 individual piece of property and the parties involved in the
3 transaction to determine whether title to the property is
4 marketable and who has the authority to grant a deed lease,
5 mortgage and easement. Rather than underwriting risk, as in
6 the case of all other insurance, the process of issuing title
7 is one that does mitigate risk.

8 After careful research and analysis, we apply our
9 skills relevant to the property under the examination. We
10 apply comprehensive, corporate and limited liability, company
11 law, partnership law and the laws of taxation judgments and
12 liens to analyze a property's title. We determine whether
13 title is fee simple, absolutely free and clear of all liens
14 and incumbrances, whether there are defects in the title. We
15 assist lawyers or use lawyers employed by us to take curative
16 steps as necessary to remove the title problems whenever
17 possible. We work with the owners, lenders and tenants to
18 cure defects in title and mitigate the risk.

19 Unlike the assumption made in other forms of
20 insurance, there will be a loss in the future and the amount
21 of recovery paid in connection with that loss, title
22 insurance anticipates that there will be no loss because the
23 identified defects have been eradicated. The only known or
24 potential risk factors are the problems hidden from you;
25 fraud, forgery and to a lesser degree, human error.

1 I'm going to cut this short. We're not GEICO.

2 A little about the process. We order abstracts. A
3 determination is made about the searches that need to be
4 ordered. Determination is made in part based on location of
5 the property and the property and type. We go back in many
6 cases 40 years, some cases even longer. We read and review
7 the abstract for judgments, liens, C and R, leases, et
8 cetera. We set up objections and we order bankruptcy and
9 patriot searches, surrogates, corporate taxes, run against
10 the parties to the transaction, read and review documents
11 relating to these proceedings for closer actions and other
12 court actions that effect the property.

13 Knowledge of estate and trust law for civil practice
14 law is required in order to determine if the procedure was
15 conducted in accordance with statutory requirements and if
16 any exception needs to be raised. It is not unusual
17 resolving three or four or resolving one problem in these
18 searches.

19 MS. BUXBAUM: Thank you.

20 Mr. DeCaro?

21 MR. DeCARO: Good afternoon. My name is Thomas
22 DeCaro and I'm president of Benchmark Title Agency LLC in
23 White Plains. Although I have a 30-year degree in title
24 insurance, I have only been the president of Benchmark since
25 2004. I do have an interesting background in the sense I

1 also worked for an underwriter for seven years, and prior to
2 that engagement I was also an agent for 20 years in White
3 Plains.

4 We cover mainly the Metropolitan area. We have a
5 staff of 25 people and represent all the major underwriters.
6 We do both commercial and residential business. We have
7 three counsel, clearance officers, processors, our accounting
8 department is large. We have -- a company our size, we have
9 three people in the accounting department. A tremendous
10 amount of money runs through a title insurance agency and it
11 takes a bit of time.

12 What I'm going to focus on today is the recording
13 process, the very back end of our business. Many people
14 think everything is finished the day it closes and they walk
15 away from the table. A title agent's work has just begun.
16 When I leave the table with a title bill, with \$10,000,
17 probably no more than \$2,000 of that stays with Benchmark
18 title. \$8,000 or 80 percent of every title I close goes to
19 various municipalities, taxes, recording and the like. It's
20 an awesome responsibility and we really take it very, very
21 seriously.

22 The process has changed quite a bit recently. I'm
23 not sure what caused it. I don't know if it's automation or
24 the downturn but the registrars and the county clerk's
25 offices in the Metropolitan area shifted all the data entry

1 to the title insurance industry. We used to be able to take
2 a deed and mortgage and bring it to the registrar's office
3 and hand it across the window and that document was recorded.
4 Now there is a whole process involved.

5 We have to prep documents before the closing. We
6 have to review the documents at the closing, and when we get
7 back to the office we have to do the data entry again for the
8 county clerks and the registrars. This is something that is
9 entirely new to our operations, but it's something there is
10 no turning back from it. We have been forced to do it. It's
11 a tremendous, tremendous burden. It's a tremendous
12 responsibility too because we need to get those documents on
13 record.

14 The two things I want to focus on are the
15 responsibility we have, not only to the consumer but to the
16 State of New York. In 2012 there were 500 thousand mortgages
17 recorded in the State of New York. The mortgage tax for
18 those mortgages was \$1.5 billion. Transfer taxes were almost
19 \$800 million. That is \$2.5 billion that goes through the
20 title insurance industry into the coffers of the
21 municipalities.

22 Something else underlooked, we payoff every single
23 mortgage in the State of New York. Those 500 thousand
24 mortgages paid were 500 thousand mortgages satisfied. If you
25 take an average mortgage at \$125,000, that is almost \$62

1 billion of funds that run through the title insurance coffers
2 and we're responsible for that. Can I say that not one
3 dollar has been lost as long as I have been in the industry;
4 not at my company or anyone else's in terms of those
5 fiduciary responsibilities we have.

6 I would just like to end my comments here. I want
7 to thank you for having us here. I have been in this
8 industry a long time. We haven't had a lot of interest from
9 our regulators over the years. I just have some
10 recommendations for you. The first one, I would like DFS to
11 work with New York State County Clerk's Association to review
12 and standardize the recording process. The fee structure is
13 ridiculous. We pay by the page. I would like DFS to review
14 the payments of JV and competitive business in landscape in
15 New York. The recession caused a real increase.

16 I would like to encourage transparency in the title
17 insurance companies who do business in New York. I think you
18 should create standards for title insurance agency websites
19 that requires who their underwriters are and who their
20 principals are and what their credentials are.

21 Second to last is I would like you to encourage more
22 of a collaborative dialogue with our industry. I think
23 there's much more we can do together working in tandem, not
24 in a public like hearing.

25 And of course the last thing, I wouldn't be proper

1 if I didn't ask you to consider approving a rate increase.
2 Last time there was any rate action was 2006 when there was a
3 decrease of 15 percent. Prior to that I think there was a
4 rate increase ten years ago, and I think that is important
5 for feasibility and strength in our industry.

6 Thank you very, very much.

7 MR. FORSYTH: Good afternoon. My name is Doug
8 Forsyth, and I'm the founder of Excaliber Title Agency. I
9 want to thank the Department for the opportunity to address
10 the issues it is examining concerning the title insurance
11 industry in New York. I would like to help in any way I can.

12 Excaliber is jointly owned by myself and Title Vest,
13 a large full service title agency. We offer title insurance
14 related services to real estate professionals on complex
15 commercial transactions. Excaliber is a policy issuing agent
16 for five of the underwriters. I have been in the real estate
17 and title insurance industry for 18 years. And I have formed
18 Excaliber four years ago. We have four employees, including
19 myself, and are located at 44 Wall Street.

20 I also wanted to mention, because I have been
21 listening and paying attention to some of the various
22 products that title insurance companies do and produce, and I
23 wanted to mention a couple that haven't been mentioned. You
24 heard from some other witnesses from title agencies as to
25 what we do. There are many areas of commercial real estate

1 in New York that are highly complex, arcane and unfamiliar to
2 many people. As part of a full range of real estate related
3 services that we offer, we assist purchasers, sellers and
4 potential purchasers and sellers of these areas, such as the
5 analysis of transferable development rights and zoning lot
6 mergers, preparation of zoning lot development agreements,
7 sometimes called ZLDAs, easement agreements, declaration of
8 covenants and restrictions, subdivisions, the formation of
9 condominiums, co-ops and homeowners' associations.
10 Foreclosure related services such as foreclosure searches,
11 questions and lien clearance advice, special products
12 relating to UCC collateral and cooperative apartments and
13 answering questions regarding the investigation process and
14 resolution of title claims.

15 Each commercial real estate transaction is different
16 and some are more complex than others, but I believe we've
17 covered most of the major services a title agent must provide
18 to close a real estate transaction. I'm happy to answer any
19 of the questions the Department has. Thank you.

20 MS. BUXBAUM: Thank you.

21 Mr. Warner?

22 MR. WARNER: Thank you. My name is Ken Warner.
23 I'm principal and counsel of Landstar Title Agency. I'd like
24 to thank you, the Department, for the opportunity to offer
25 testimony here today.

1 My opening remarks will focus on an area that the
2 Department has indicated particular interest in, and that is
3 the increasingly labor intensive and complex title clearance
4 and curative process. As a practicing real estate attorney
5 with over 20 years of transactional experience, I have
6 participated in the title curative process from the
7 prospective of buyer's attorney, seller's attorney, lender's
8 counsel and currently as clearance counsel for Landstar Title
9 Agency.

10 At Landstar I'm the partner primarily responsible
11 for clearance and curatives. Based on my frequent
12 discussions with real estate professionals, I've come to
13 believe there is widespread misunderstanding regarding the
14 scope of the curative process, which is often extensive and
15 requires expertise, knowledge and judgment. While some
16 correctly point out there are a percentage of titles which
17 require little curative work, at Landstar we've seen the
18 number of required curatives and the amount of work required
19 to retain them steadily increase over time. Expectations
20 regarding which party to the transaction will proactively
21 obtain curatives has also shifted, and this is very
22 important, from the property owner or seller's counsel, as it
23 was in previous years, to now the expectation that the title
24 company will obtain curatives and clear title proactively.

25 People familiar with title insurance are typically

1 aware that curative work are required for items in schedule
2 B. What is not common knowledge, what is often overlooked,
3 is the extensive curative work performed on the schedule A,
4 certification, the legal description and, as the Department
5 touched on earlier this morning, the municipal searches which
6 are not part of the title insurance but also require
7 substantial curative work.

8 Time limits prevent me from embarking on an
9 extensive review of the myriad of curative tasks in order to
10 cure schedule B exceptions. For me personally the tasks
11 ranged from simple but time consuming tasks, like chasing
12 down a dozen judgment tax lien payoff letters to more complex
13 matters such as clearing historical party wall agreements or
14 extending a title search back to the Governor Andros patents
15 of the 1600s in order to eliminate rights of municipalities,
16 except for lands under water.

17 Title companies do not bill extra for standard
18 curative work and at least Landstar Title does not. It is
19 part of the included services which are expected from our
20 industry in exchange for premium and the municipal search
21 charge of which a service charge is added.

22 Curative work is not only a valuable service to the
23 insured, it also helps maintain an accurate and complete
24 public record. Whether the clearance and curatives on a
25 particular title report are commonplace or unusually

1 expensive, the attorneys and clearance officers employed by
2 our industry provide a high level of service and expertise,
3 which is widely recognized and frequently acknowledged by
4 major law firms in this area. The value of our curative
5 services should not be minimized or diminished.

6 Thank you very much for your time.

7 MS. BUXBAUM: Thank you.

8 Mr. Tormey?

9 MR. TORMEY: Good afternoon, members of the
10 Department of Financial Services, my colleagues and the
11 public. Thank you for having me and the opportunity to
12 speak. My name is Brian Tormey, and I will be testifying
13 today concerning State Street Title Agency LLC. I have been
14 involved in managing State Street since its inception in
15 2006.

16 We're a small title agency with an office in
17 Manhattan. We focus principally on properties in New York's
18 five boroughs and in Westchester, Suffolk and Nassau
19 Counties. We're also involved in transactions outside of New
20 York State.

21 Although State Street is small, it's a fully
22 operational title insurance agency. Our work in the title
23 business ranges from large commercial properties to
24 single-family residential properties.

25 The Department's letter to State Street stated that

1 it would take testimony at this hearing about various topics,
2 including closing costs and expenses. Many people outside of
3 the industry are not fully aware of the numerous steps and
4 complexities involved in the closing process and issuing a
5 title insurance policy. So I would like to take a few
6 moments at this time to say a few words about the closing
7 process.

8 There are several complex components to the closing
9 process. As an initial part of the closing process, State
10 Street reviews the transaction history. This includes a
11 review of the correspondence and documentation relating to
12 the initial title report issued, subsequent modifications,
13 documentation provided during the clearance and curative
14 process, and the title report. The purpose of these reviews
15 is to ensure that the most recent title report accurately
16 reflects the state of title and to confirm that all raised
17 exceptions have been properly handled before the closing can
18 be scheduled.

19 Next, we perform title and tax continuation searches
20 prior to each closing. In some cases we have to perform this
21 task numerous times for adjourned closings to determine no
22 new judgments, conveyances, encumbrances, or other matters
23 were entered after the initial title report and searches.

24 State Street additionally corresponds with the
25 necessary parties to ensure that all remaining open liens,

1 encumbrances and other matters will be dealt with prior to or
2 at the closing. Where there are open liens that were not
3 previously paid off by the seller, we confirm that they will
4 be dealt with at the closing, either by paying off the lien
5 itself prior to the closing or by confirming that available
6 closing funds will be sufficient to pay off the liens, and
7 that all necessary paperwork to effectuate the release of the
8 lien is available to be exchanged for the lien payoff. It is
9 worth noting that these are not one-step undertakings.
10 Often, resolving one open matter can mean numerous phone
11 calls, e-mail threads, series of document reviews, plan of
12 action formations, escrow agreement drafting, review and
13 finalization, and other time-consuming tasks.

14 If the parties to the transaction include entities,
15 then as part of the closing process, State Street collects
16 and reviews the relevant entity formation, operation,
17 authorization and good standing documentation. Where State
18 Street identifies errors, inconsistencies or gaps in these
19 documents, we work with the entity's counsel to obtain
20 corrected documents prior to closing.

21 State Street also coordinates with the parties to
22 the transaction to confirm that proper transfer tax
23 documentation and other conveyance or encumbrance
24 documentation are prepared and in good, recordable and
25 insurable form.

1 In advance of the closing, State Street also drafts
2 the title policies and affidavits. We draft the schedule A,
3 laying out the parties and property being insured and the
4 amount of insurance coverage. Within schedule B, we review,
5 draft and lay out any exceptions that have been excluded
6 under the policy along with affirmative coverage which may
7 pertain to the exclusions.

8 Finally, we analyze for inclusion the requested and
9 applicable endorsements. These address matters for the
10 policy for which the lender, owner or their respective
11 counsel has requested additional levels of coverage.

12 After this preparation and review, State Street
13 prepares a comprehensive title bill, a process which includes
14 validating all premium and transactional tax fees with
15 multiple sources. Thereafter, we prepare and send a complete
16 closing package to our closer, including the policy, title
17 bill, affidavits, one or more escrow agreements as needed,
18 and the title report with title and tax continuation
19 searches.

20 Before, during and after the time of the closing,
21 State Street's director of operations, Adam Grunstein, makes
22 himself available to deal with issues which may arise during
23 the closing process.

24 Each transaction that State Street handles obviously
25 has its own nuances and different levels of complexity. We

1 do these comprehensive and rigorous processes for closings of
2 transactions containing lengthy mortgage chains, large
3 commercial buildings with multiple leases, as well as for
4 single-family condominium units. In every transaction, State
5 Street works diligently and comprehensively to meet the title
6 needs of the insured, counsel for the associated parties, and
7 the underwriter it is representing.

8 We're happy to answer your questions and look
9 forward to cooperating with the Department's inquiry.

10 MS. BUXBAUM: Thank you.

11 Mr. Dacey?

12 MR. DACEY: Good afternoon. I do what they do, in
13 the interest of time.

14 I'll introduce myself. My name is Ted Dacey. I've
15 been in the title industry for 38 years. Right after I
16 finished up graduate school, I worked in Boston and have held
17 management executive positions in nine other states. I've
18 owned several title agencies and am presently working as the
19 president of a wholly owned subsidiary of a real estate
20 brokerage, the 11th or 12th largest real estate brokerage in
21 the country. I believe they are one of the three oldest real
22 estate brokerages in the country.

23 I'm here to answer any questions and delighted to
24 help.

25 MS. BUXBAUM: Thank you very much.

1 Before we start, I just wanted to ask if anyone is
2 here from Allied American?

3 Off the record for a minute.

4 (A discussion was held off the record.)

5 MS. BUXBAUM: Would you like to make an opening
6 statement?

7 MR. GIGLIOTTI: Michael Gigliotti from Allied
8 American Abstract Corporation, upstate New York, and I'm here
9 with John Krupski. Allied American was established in 1982.
10 I was an employee there for 30 years until just recently when
11 we purchased the company.

12 We are title agents in upstate New York where we
13 have to contend with descriptions dating back to the 1800s.
14 Describing property as it runs southwesterly to a beer can or
15 running southeasterly to a snow bank, as you can see it's
16 hard to insure this type of legal description. How do you
17 inform your client who is purchasing a home where his
18 boundary line is when in July the snow bank used has finally
19 melted. We have to insure such bad descriptions on a daily
20 basis. Although I have thousands of examples after 30 years
21 in the industry, our time is limited here.

22 A more specific example which we insured recently
23 was of an individual who purchased a vacant lot at a tag
24 sale. The individual did not obtain title insurance prior to
25 said purchase and erected a home on the premises. Two years

1 later the individual's attorney came to us asking for a
2 mortgage policy as the individual is looking to withdraw
3 equity and needed to obtain a mortgage policy. We discovered
4 that the homeowner built his home partly on his lot and
5 partly on two adjoining neighbors' lots as well. Thankfully
6 the situation was that the neighbors were amicable to selling
7 to him, we insured the strips necessary to widen his lot to
8 include his entire home. Our insured couldn't thank us
9 enough and was skeptical when his attorney told him
10 originally when he purchased the land to get title insurance,
11 he was a skeptic no more.

12 Title insurance protects against errors made by the
13 county clerk and various municipal searches. Although the
14 county clerk endeavors to provide accurate information, they
15 do not guarantee the records so we have to insure our clients
16 against the many errors in the clerk's records and municipal
17 searches, such as county tax, town tax, city tax, water
18 searches. We are constantly paying out for unpaid tax that a
19 tax search failed to provide.

20 One example is we ordered a water search on a small
21 strip shopping center with about five storefronts. We
22 ordered a search on the entire property and someone at the
23 water board sent one search, which is typical for such a
24 small strip shopping center. The landlord usually pays all
25 the charges. There was a total of five water meters on the

1 premises and the water board clerk's response was, sorry, I
2 didn't realize you wanted all five meters. We paid the water
3 charges totalling less than a couple thousand dollars.

4 We have paid many unpaid taxes over the years,
5 usually less than a ten dollar deductible. The error and
6 omission insurance policies we carry, in over 30 years we
7 filed one claim on our errors and omissions since it has to
8 be a claim over \$10,000. Most every claim we have is under
9 \$10,000.

10 The Department here has to look into errors and
11 omissions insurance where we pay a yearly premium of \$20,000.
12 Over the 30 years that is well over half a million dollars
13 and we only filed a claim of \$20,000. All I will say is
14 title insurance is one of, for the average American, a home
15 is the biggest asset he will ever purchase. Title premium
16 average is no more than \$500. That is a one-time premium for
17 as long as you own the home. If you live at the home for 30
18 years, it breaks down to \$16 a year. That is a very small
19 price to pay knowing you have good and marketable title to
20 your greatest asset.

21 Thank you.

22 MS. BUXBAUM: Thank you, Mr. Gigliotti.

23 MS. LEES: Thanks, everyone.

24 I will start out on a topic that has already been
25 mentioned here, curative work. I'll start with Mr. Willen.

1 What percent of transactions that Advantage Title
2 participates in require curative work would you say?

3 MR. WILLEN: I would say all of them.

4 MS. LEES: So you're saying no simple transactions
5 that require --

6 MR. WILLEN: Certainly some transactions are
7 simpler than others but, I mean, again, I heard many
8 definitions of curative today so, you know, I sort of define
9 curative as straight from the application right through
10 closing. So there are so many decisions along the way that
11 our staff is making and analyzing the product that I think
12 every file has some curative. Some more than others.

13 MS. LEES: Let me ask you this. Are there some
14 transactions where after you perform the title search you
15 don't find any problems and then is additional work
16 performed?

17 MR. WILLEN: I'm not understanding exactly.

18 MS. LEES: I assume you will have some situations
19 where you will do a title search on a transaction, there is
20 no problem that's turned up and then you will do no
21 additional work; is that correct?

22 MR. WILLEN: I assume that's possible. On occasion
23 there's no additional work to the title insurance research.
24 It comes out clean but there is a whole process obviously.

25 MS. LEES: Maybe you can help me a little bit by

1 defining what you think of as curative work. I don't mean to
2 let the terminology trip us up.

3 MR. WILLEN: I kind of gave you my definition
4 already.

5 MS. LEES: I think you said everything from
6 application --

7 MR. WILLEN: That is my understanding of curative
8 work.

9 MS. BUXBAUM: What about if we would define curative
10 work as curative in the sense of a defect in title as opposed
11 to the underlying -- maybe underwriting that goes on in the
12 review of the title search? Would that change your answer?

13 MR. WILLEN: Can you repeat it?

14 MS. BUXBAUM: Curative work meaning curing a defect
15 in the title.

16 MR. WILLEN: So now what's your question? I
17 understand what you just said.

18 MS. BUXBAUM: Would that change your answer, that
19 every file requires some work in that regard?

20 MR. WILLEN: I don't know. I really don't. I
21 don't quite understand what you're asking.

22 MS. BUXBAUM: What is the purpose of curative work?

23 MR. WILLEN: To issue a clean policy in order to be
24 able to be marketable and to close.

25 MS. BUXBAUM: How does that differ from

1 underwriting that's done on the file?

2 MR. WILLEN: I'm not sure.

3 MS. BUXBAUM: So you believe that those terms are
4 synonymous?

5 MR. WILLEN: Let me back up and say why I think
6 you'll be relying on my colleagues more than me for more than
7 these questions. I'm neither an attorney or title officer.
8 I never cleared or read a title. I only attended closings on
9 my own closing. I am an entrepreneur and business grower and
10 I really do not participate in the process of reading or
11 clearing a title, nor have I ever. So there are some
12 questions you will ask me that really can be answered in a
13 better way by somebody, for example, Tom. I'm not trying to
14 put Tom under the bus, but Tom and/or counsel, their title is
15 counsel. They're transactional. That is not what I do.

16 MS. BUXBAUM: So you have no idea how many files
17 require curative work; is that correct?

18 MR. WILLEN: I could not put a number on it but I
19 would say I think most do.

20 MS. LEES: What's the average amount of time
21 required for those files, for most of the files you're
22 referring to?

23 MR. WILLEN: You're talking about for more than one
24 employee through the process and the average time in hours?

25 MS. LEES: Mr. Warner, you spoke of curative work.

1 First I ask you what you think of when you use that term?

2 MR. WARNER: How much time do you have here?

3 MS. LEES: Short and sweet.

4 MR. WARNER: When I think of curative work I think
5 when a title report is produced, curative work is anything
6 that we do to clear up discrepancy or eliminate exceptions
7 which would be problematic to a mortgagee or property buyer
8 that was looking to get marketable title.

9 MS. LEES: That's my understanding too, sort of as
10 Ellen said, fixing a problem, fixing a defect. What percent
11 of transactions would you say require curative work at this
12 time?

13 MR. WARNER: Well, I don't know the exact
14 percentage. I would have to compute that. I don't know.

15 MS. LEES: Would it be more than 50 percent?

16 MR. WARNER: It would be more than 50 percent, yes.

17 MS. LEES: Would it be more than 60 percent?

18 MR. WARNER: Like I said, I'd have to compute it.
19 I wouldn't want to testify off the cuff, but an average
20 that's not been computed, but I will say is that as I just
21 stated, I believe it's the majority of files.

22 MS. LEES: For the minority of files that don't
23 require curative work after a title search is done, is there
24 additional work that is required before closing?

25 MR. WARNER: Yes. The only additional work, and

1 you can argue, it's actually part of the curatives, if even
2 in the event that the title comes back where there are no
3 objections that need further curative work, there still needs
4 to be an affidavit of title drafted. Depending on the
5 jurisdiction and the nature of the property, there are
6 administrative proceedings and off record matters that we
7 want the property owner to attest that he hasn't received any
8 notices or he's unaware of.

9 So the additional work would be in drafting of the
10 affidavit on a clean marketable title that didn't require any
11 other curatives.

12 MS. LEES: Is there other work that would have to
13 be done besides that drafting of the affidavit?

14 MR. WARNER: As far as?

15 MS. LEES: For those transactions.

16 MR. WARNER: Within the definition of curatives?

17 MS. LEES: Sorry, are you including that drafting
18 of the affidavit within the definition of curatives? I
19 thought you were not.

20 MR. WARNER: We are not. What other work would
21 there be done?

22 MS. LEES: Right.

23 MR. WARNER: Well, it starts from, you know, the
24 application, ordering the searches, confirming the
25 information on the order, then the abstract comes back, the

1 searches come back. These abstracts and searches have to be
2 read, reviewed, underwritten, instructions are given to a
3 data entry person who prepares a report. That report has to
4 be reviewed, quality controlled. There are cover letters
5 written describing the contents of the report. It's got to
6 be shipped and delivered.

7 And then, you know, in connection with the closing,
8 you have to verify the closing information, names of the
9 parties. We have to prepare an invoice which takes into
10 account all documents that are going to be put on record in
11 connection with the transaction, verify the amount of
12 insurance, verify the premiums, then we have a closing which
13 is scheduled. We assign a closer who conducts the actual
14 closing, issues the title policy, collects the premiums and
15 the affidavit, brings the closing package back to the office
16 at which time the documents are cover paged, submitted for
17 recording.

18 In the recording process we sometimes prepare
19 recordings within a municipality's computer. Now,
20 E-recording is now commonplace, which is additional
21 processes, and we're called upon to revoke and restore, to
22 record and return those documents back to the recipients and
23 provide recording information.

24 Then after all that is done, there is, you know,
25 remittance to the underwriter where they get a copy of the

1 policy issued and the percentage of the premium and
2 endorsements.

3 MS. LEES: So you're saying that has to be done for
4 each transaction?

5 MR. WARNER: Yes.

6 MS. LEES: Excluding the time at the closing, which
7 I imagine could be an hour or two or more, how much time
8 would be spent on the average transaction such that does not
9 require curative work?

10 MR. WARNER: In all those things I described? It
11 would vary depending on property type and jurisdiction. I
12 wouldn't want to give an answer that is too general.

13 MS. LEES: What are the parameters that it would
14 vary in? What is the lowest amount of time and highest
15 amount of time?

16 MR. WARNER: It's an interesting question in that,
17 you know, in our business we kind of view things from
18 compartments, how much in the application process, how much
19 in reading, how much in clearance, how much in quality
20 control. To think of that altogether is something I really
21 haven't thought about. I hate to give just an off-the-cuff
22 remark.

23 I will say this, that even with no clearance,
24 several hours are spent in the whole process, several man
25 hours, as that would be defined by different people

1 throughout the process, and that transactions of scope and
2 complexity can often overtake the office and require dozens
3 and dozens of hours, even if there's little or no curatives
4 involved. Many of the buildings in this very area we're
5 sitting in have very complex structures, and just evaluating
6 the documents and underwriting and putting together a report
7 and structure chart is a very time consuming and complex
8 process.

9 MS. LEES: Let me ask you for a matter that does
10 curative, and you say it's very time consuming plus. How
11 long would you say it would take?

12 MR. WARNER: When we're talking about the curative
13 process, I can answer a little more precisely because this is
14 kind of the way we think about time spent. Time spent in
15 this area, time spent in this area, time spent on curatives.

16 On a typical residential transaction, an average
17 time spent on curatives can be an hour to two and a half
18 hours. In a commercial transaction it could be any amount of
19 time depending on the complexity and what's been shown up to
20 dozens of hours.

21 MS. LEES: What type of employee or staff member
22 would perform curative work?

23 MR. WARNER: Well, at Landstar Title only attorneys
24 actually perform and sign off on the curative work, although
25 we do have non-attorney coordinators to assist with those

1 functions, but every time there are curatives involved, there
2 is a paid attorney on Landstar's staff involved with
3 obtaining the curatives and evaluating them.

4 MS. LEES: And on a matter transaction that did
5 require curative work, you mentioned some things. What would
6 you say are the classic things that might have to be done?

7 MR. WARNER: I have to tell you people, when you
8 think about curative work, everybody focuses on the schedule
9 B. That's the schedule of exceptions but, you know, in
10 absolute hours, the mortgage schedule has become the biggest
11 source of clearance work for many people. You know, you have
12 decades of phonetic refinance activity, followed by bank
13 failures, mergers, foreclosure, crisis. It's really left the
14 State's records, as far as mortgages, in an absolute mess.

15 So the majority of our time and absolute hours is
16 spent clearing up the mortgage schedule, that is finding why
17 subordinations are missing and defective, finding why
18 assignments are missing and defective, finding why
19 consolidation agreements are not recorded, finding why
20 satisfactions are not recorded. These are extremely time
21 consuming things, especially when you are dealing with
22 defunct banks that can't be reached, dealing with banks that
23 are enforcing Gramm-Leach-Bliley rules where they will only
24 talk to their customers without a written power of attorney
25 or authorization.

1 So it's time consuming clearing these problems with
2 the mortgage schedule, and we really do need to clear them
3 because unless the mortgage schedule is correct and complete,
4 people can't perform a consolidation and extension that they
5 need to refinance their homes without paying the mortgage tax
6 over again.

7 In commercial transactions some of the consolidated
8 mortgage chains go back to the very early 20th century and
9 are pages and pages long, and we need to go through them and
10 engage in curative work to make sure they are correct in
11 order to be consolidated.

12 So without going on, on and on, that's a part of it.

13 MS. LEES: So clearing a mortgage schedule would
14 occur in residential transactions?

15 MR. WARNER: And commercial.

16 MS. LEES: What percentage of transactions require
17 the clearing of a mortgage schedule?

18 MR. WARNER: Again, I don't want to speculate on an
19 exact percentage. I'm not sitting here computing from
20 statistics. I would say a substantial percentage.

21 MS. LEES: More than 50 percent?

22 MR. WARNER: Not more than 50 percent but a
23 substantial percent.

24 MS. LEES: Other than overhead expense, are there
25 other expenses that are required in doing the curative work?

1 MR. WARNER: Well, it's interesting because most of
2 our curative work is performed by Landstar employees who are
3 on the payroll, are well compensated with benefits and their
4 time is taken performing these curative works. Sometimes
5 there are additional expenses. We have often sent people to
6 municipal offices to check on records. There are, you know,
7 there's time for mileage and gasoline, meeting surveyors at a
8 property site, going to a building department to go over
9 building plans. There's this sort of emergency running
10 around which often results in additional expenses and
11 sometimes, you know, the help of professionals is sought.
12 We'll bring in architects or help from our municipal search
13 company or map from an expeditor. These things, if they are
14 substantial, of course, these professionals will be retained
15 directly by the client. If it's just a question of needing
16 some additional assistance, we'll engage people we know to be
17 knowledgeable to help us with the curatives.

18 MS. LEES: Let me see if my colleagues have
19 something.

20 Mr. Gigliotti, does Allied work exclusively in zone
21 one?

22 MR. GIGLIOTTI: Correct.

23 MS. LEES: Allied issues policies and does abstract
24 and search work as well?

25 MR. GIGLIOTTI: Correct.

1 MS. LEES: What types of searches does Allied
2 perform in order to issue a policy?

3 MR. GIGLIOTTI: The requirement upstate New York is
4 a 40-year search going back to a warranty deed starter, so we
5 have to go back 40 years. Sometimes we have to go back
6 further if we run into a quick claim deed. We have to run
7 back to a warranty deed. A lot of times we're going back 60
8 years, warranty deed starter and run forward.

9 MS. LEES: Do most transactions involve an abstract
10 rather than an owner's policy?

11 MR. GIGLIOTTI: Virtually all transactions are with
12 abstracts. Very seldom we get a request for an owner's
13 policy. Attorneys are involved in the real estate
14 transaction and a lot of times they will examine the
15 transaction themselves.

16 MS. LEES: Is the abstract updated every
17 transaction?

18 MR. GIGLIOTTI: Yes, it is updated for new liens
19 and judgments.

20 MS. LEES: How is that done?

21 MR. GIGLIOTTI: The attorney representing the buyer
22 or seller will send the abstract in for a redate or update if
23 the client is selling, and we update that search and send it
24 back to the seller's attorney and charge the seller for that
25 service.

1 MS. LEES: So the seller does typically pay?

2 MR. GIGLIOTTI: Seller is responsible. If it's a
3 sale, if it is a refinance, then the homeowner.

4 MS. LEES: Do you use examining counsel?

5 MR. GIGLIOTTI: Yes, we do have certain examining
6 counsel in our area.

7 MS. LEES: What do they do?

8 MR. GIGLIOTTI: Basically take our place as title
9 examiner, examine the title and charge us a fee for that.
10 And basically, you know, they get paid a fee for doing their
11 title exam or whatever they do, if they go to the closing,
12 they examine the title, get the curatives, whatever they do
13 they charge us.

14 MS. LEES: What do they charge you?

15 MR. GIGLIOTTI: Ranges. Certain examining counsel
16 will charge 40 percent because they only want to attend the
17 closing. Certain ones want to do the title exam and charge
18 us 65. We have one agency that charges us 75 percent.

19 MR. DEAN: I want to go back to additional work
20 charges. Mr. Gigliotti, I would like to start with you since
21 you have the microphone already and you have some experience
22 in zone one, which we didn't get a lot of this morning.

23 Does Allied charge for attendance fees for any
24 closings that take longer than two hours?

25 MR. GIGLIOTTI: No.

1 MR. DEAN: Generally in zone one do closings tend
2 to take longer than two hours?

3 MR. GIGLIOTTI: It's pretty common. Homeowners
4 start to fight over the hot water tank and we're there four
5 or five years.

6 MR. DEAN: What about for difficult title charges,
7 I understand that a difficult title can be charged for?

8 MR. GIGLIOTTI: If there's additional chain of
9 title, rate manual allows us to charge. If we have ten
10 abstracts, normally you examine one abstract, that's the
11 deal, but if there's ten abstracts as it comes out of ten
12 different rates of title, it allows us to charge. Depends on
13 the client. A lot of times we eat that. Sometimes we charge
14 an extra \$100.

15 MR. DEAN: When you say "the client," you mean the
16 attorney represents --

17 MR. GIGLIOTTI: If it's an attorney that only used
18 us because it's the bearer of the title, obviously we want to
19 pick up \$100. If it's one of our regular attorneys, he has
20 this one bearer of a title and uses us regularly, we have
21 some attorneys who come to us and otherwise they will use
22 another agent for whatever reason.

23 MR. DEAN: How do you determine how to charge for a
24 difficult title?

25 MR. GIGLIOTTI: Really there's no real

1 determination. It just depends on the time involved I guess.
2 If I got an additional hour, it might be -- usually each
3 title will take me to examine two hours. So if I have a
4 title and there's ten different abstracts, the most I like to
5 charge on that, even though it can take me a week to examine
6 the title, would be an extra hundred bucks.

7 MR. DEAN: Okay.

8 MR. GIGLIOTTI: Just a good client, so...

9 MR. DEAN: What about gratuity, we talked about
10 that a lot this morning. Are gratuities paid in closings in
11 zone one?

12 MR. GIGLIOTTI: Just to reiterate on that other
13 topic, we get a lot of backlash from attorneys any time it's
14 over the minimum rate. They have a big problem with that and
15 go back to their client. If it's a bank attorney, they have
16 to go back to the bank. If it's an owner's attorney, he has
17 to go to the owner, and people don't understand title
18 insurance so they certainly don't understand additional fees,
19 so we try to just charge the minimum rate.

20 MR. DEAN: Switching to gratuities, are gratuities
21 paid in zone one?

22 MR. GIGLIOTTI: No.

23 MR. DEAN: What about pick-up fees?

24 MR. GIGLIOTTI: I don't understand what a pick-up
25 fee is. There is no such thing.

1 MR. DEAN: Okay.

2 MR. GIGLIOTTI: We go to a closing, pick up
3 documents and bring back documents to the county clerk's
4 office.

5 MS. BUXBAUM: To pay off the seller's mortgage?

6 MR. GIGLIOTTI: We don't charge anything for that.
7 We pay off a lot of mortgages, do a lot of running around, go
8 to city hall to pay off taxes. There is no additional fee
9 for that, just something we have to do to keep the client
10 happy, which is the attorney.

11 MR. DEAN: Are closings attended by Allied
12 employees or independent contractors who handle the closings?

13 MR. GIGLIOTTI: If it's an EC situation, it's
14 examining counsel typically. If it's something we do
15 in-house and examined the title ourselves, we would attend
16 the closing.

17 MR. DEAN: You don't use independent contractors?

18 MR. GIGLIOTTI: No, we have a full-time girl in the
19 office. She does closings.

20 MR. DEAN: Thank you.

21 Mr. Dacey, does Thoroughbred use independent agents
22 to close title or is it your own employees?

23 MR. DACEY: Independent closers.

24 MR. DEAN: Do you have any of your own employees
25 who handle --

1 MR. DACEY: We do.

2 MR. DEAN: Roughly do you know the split between
3 how many are handled by closers?

4 MR. DACEY: 80 percent are done by independents.

5 MR. DEAN: How much do you pay independent closers
6 to close?

7 MR. DACEY: It's a flat fee.

8 MR. DEAN: Is it a flat fee no matter where the
9 closing is?

10 MR. DACEY: Correct.

11 MR. DEAN: What's the flat fee?

12 MR. DACEY: Typically 50 or \$55.

13 MR. DEAN: Are you aware of gratuities being paid
14 in connection with closings?

15 MR. DACEY: I am.

16 MR. DEAN: Do you have any policies against an
17 agent using -- accepting gratuities?

18 MR. DACEY: I do not have a policy against it, no.

19 MR. DEAN: Just to clarify. Does Thoroughbred
20 instruct independent closers to refuse gratuities?

21 MR. DACEY: We do not.

22 MR. DEAN: What about pick-up fees or pick-up fees
23 charged by independent closers?

24 MR. DACEY: They are.

25 MR. DEAN: What is the pick-up fee usually charged?

1 MR. DACEY: It has gone up over the years. I think
2 presently it may be 175 per mortgage. We do not tolerate
3 gouging or if there's three mortgages, we would certainly not
4 encourage them to charge or, you know, be pleased if they
5 charged for three mortgages. I know some do. It's not a
6 regulated part of our business. It's not something I
7 personally pay attention to. The operation manager certainly
8 looks at it. I don't perceive we have a problem though.
9 Nobody has seemed to have complained about our independent
10 closers.

11 MR. DEAN: So operating --

12 MR. DACEY: I'm sure I would have heard of it if
13 they were.

14 MR. DEAN: Operations reviews the files to see if
15 there is more than one pick-up fee charged for one case?

16 MR. DACEY: Oh, yeah.

17 MR. DEAN: The flat fee paid to independent
18 closers, does that come out of premium charged for title?

19 MR. DACEY: Does it come out of the premium?

20 MR. DEAN: Yes, component of the premium.

21 MR. DACEY: Yes.

22 MR. DEAN: Do you have any understanding as to what
23 the range is of gratuities paid at closings?

24 MR. DACEY: I think, as mentioned earlier today, it
25 probably varies in the range of 25 to, on a commercial

1 commercial, I've seen it as high as three or four or 500.

2 MR. DEAN: Do you have any understanding as to what
3 the general range is, the average?

4 MR. DACEY: I would think on a purchase in
5 Westchester it may be 75 to a hundred dollars. Again, I
6 don't do closings and that's not something we monitor but I
7 heard this. It's probably 50 to a hundred dollars.

8 MR. DEAN: Do you think the payment of these
9 gratuities are appropriate?

10 MR. DACEY: I was a little shocked when I first
11 found out about it, as I mentioned when I introduced myself.
12 I been in the business in a number of other states. I didn't
13 know what a pick-up was. I certainly didn't know what a tip
14 was with respect to a closing, but just sort of went with the
15 flow.

16 MR. DEAN: So go ahead. Sorry.

17 MR. DACEY: I don't have a comment or opinion about
18 it. It is what it is.

19 MR. DEAN: So in other states you understand the
20 gratuities are generally not paid to closers?

21 MR. DACEY: I never seen it in my life.

22 MR. DEAN: What other states are you familiar with
23 it?

24 MR. DACEY: California, Massachusetts, Maine, New
25 Hampshire, Connecticut, I worked in Virginia, Texas.

1 MR. DEAN: And New York is the only state that asks
2 for gratuities?

3 MR. DACEY: That's correct.

4 MR. DEAN: Earlier this morning we didn't explore
5 if there was an underlying understanding the payment made to
6 closers is enough for people to make a living. Do you have
7 an understanding there just isn't an economic payment for
8 people to make as a living as a closer?

9 MR. DACEY: I never realized the cost structure of
10 what an independent closer has or doesn't have in terms of
11 overhead. I don't know what it would take for them to make a
12 living, to be honest with you. I think it comes down to who
13 are you comfortable with representing your company and do
14 they do a good job at the end of the day. Custom speaks to
15 the end of the day.

16 MR. DEAN: Do you know when customers are told about
17 this? I understand it's recommended by the closing attorney.

18 MR. DACEY: I heard there's been all kinds of, you
19 know, raised eyebrows or what the hell is that for, those
20 kind of scenarios, but I think it's pretty much ingrained
21 into the system at this juncture and part of the deal.

22 MR. DEAN: Do you have any opinion as to whether
23 there should be an amount that's paid to independent closers
24 that's enough, that covers and provides them a reasonable
25 compensation and gets rid of the need for the gratuity?

1 MR. DACEY: I don't have an opinion about it but it
2 doesn't sound like a bad idea.

3 MR. DEAN: Mr. Tormey, I just want to talk to you
4 about the same issue.

5 Does State Street use independent closers or is it a
6 zone staff?

7 MR. TORMEY: Independent closers.

8 MR. DEAN: What are they compensated at?

9 MR. TORMEY: Ranges from \$50 and up. You're
10 referring to the payment from State Street to the closer?

11 MR. DEAN: Correct.

12 MR. TORMEY: Ranges from \$50 and up, depending on
13 the time and complexity of the close.

14 MR. DEAN: How do you determine that; hours worked,
15 number of exceptions in the title?

16 MR. TORMEY: It's a variety of factors. I don't
17 know that I can enumerate them comprehensively.

18 MR. DEAN: Again, do you have any opinion as to why
19 gratuities are paid or should be paid?

20 MR. TORMEY: I can't speak broadly to the
21 industry's practice. I can speak to State Street's practice.

22 MR. DEAN: What's State Street's practice in regard
23 to gratuities?

24 MR. TORMEY: It's not part of the issuance of the
25 policy. It's not a fee we direct or require. It's not a fee

1 that we ask our clients -- that we ask transactional counsel
2 to ask their clients to pay to our closers. To the best of
3 my knowledge some of our closers are paid gratuity.

4 MR. DEAN: Sure. What I understood earlier from
5 Mr. DeSalvo earlier today, it's paid because closers are paid
6 an insufficient amount of compensation otherwise. Is that
7 also your understanding?

8 MR. TORMEY: I don't know that is my understanding.

9 MR. DEAN: Do you have any understanding for what
10 the reason is then that the gratuities are paid?

11 MR. TORMEY: I wouldn't say that I have an
12 understanding, no.

13 MS. BUXBAUM: Do you think that 50 or \$55 is
14 sufficient to compensate a closer for the work they do?

15 MR. TORMEY: I think, you know, some of it depends
16 on the cost of living and the person's aspirational skills
17 and their ability to achieve a higher income doing several
18 closings a day at \$50 a closing, makes an income that is
19 definitely above minimum wage, if my math is correct.

20 MS. BUXBAUM: Do you want people to get minimum
21 wage to do the closings for your company?

22 MR. TORMEY: No.

23 MR. DEAN: Maybe if I tried a different way. If
24 gratuities were not allowed, do you think there would be a
25 shortage of people who would be willing to do closings?

1 MR. TORMEY: I couldn't speak to that. I don't
2 know.

3 MR. DEAN: Does State Street have any policy about
4 prohibiting closers from accepting gratuities?

5 MR. TORMEY: We don't issue a policy to our
6 independent closers regarding their gratuities taken.

7 MR. DEAN: Do you give any kind of guidance as to
8 receiving gratuities?

9 MR. TORMEY: No guidance. I don't recall that
10 we've received a complaint or any issue from any client
11 saying the closer, you know, didn't perform their services
12 and was paid a gratuity and was inappropriate. So it's never
13 been brought to our attention that it created a problem to
14 the best of my knowledge.

15 MR. DEAN: Okay.

16 Mr. Warner, does Landstar use independent closers or
17 is it your own employees at closing?

18 MR. WARNER: Independent closers, 100 percent.

19 MR. DEAN: 100 percent. How are the independent
20 closers compensated?

21 MR. WARNER: They're paid a fee between 40 and \$50,
22 depending on the county.

23 MR. DEAN: Depending on the county.

24 MR. WARNER: Depending on the county we're closing
25 in.

1 MR. DEAN: Does Landstar have any prohibition
2 against independent closers accepting gratuities?

3 MR. WARNER: No. We do not -- we don't get
4 involved in that at all. We don't insert ourselves into that
5 local practice to try and stop it, we just stay out of it.

6 MR. DEAN: Again, do you have any understanding as
7 to why this practice of paying closing agents a gratuity has
8 arisen?

9 MR. WARNER: I don't. When I was in college in the
10 1980s I was a title closer, and I -- it was the practice back
11 then and that was a long time ago and it's still a practice,
12 so it's just something that has been historically present in
13 this market.

14 MR. DEAN: Do you believe that the amount that the
15 independent closers are paid are insufficient for people to
16 make a living?

17 MR. WARNER: No. I have people knocking on my door
18 all the time seeking to be a closer and independent closer to
19 get more closing business or to displace other people that
20 are getting closer business. It's actually very competitive
21 and a lot of people want to be title closers, and I think the
22 calculus of title closers is that they make the majority of
23 their money on pick-up fees and that -- I don't think -- the
24 tips factor into their income but I don't think it would
25 diminish the amount of people looking to be title closers. I

1 think they are sufficiently compensated with the fees the
2 title companies pay them plus the pick-up fees they are --

3 MR. DEAN: So you think you would have people
4 beating down your doors for this job even if gratuities were
5 prohibited?

6 MR. WARNER: Yes, I do.

7 MS. BUXBAUM: What if pick-up fees were prohibited
8 and they had to survive on the \$50 you pay them?

9 MR. WARNER: I would just be speculating.

10 As to the other question about whether if they're
11 limiting the gratuity would title closers, you know, go away
12 because they were not sufficiently compensated? I feel
13 comfortable saying that would happen. As far as the
14 pick-ups, that is unchartered territory. I wouldn't feel
15 comfortable speculating.

16 MR. DEAN: Again, pick-up fees you take the
17 mortgage and to -- mortgage payoff for the existing mortgage
18 and FedEx.

19 MR. WARNER: They have to confirm the payoff amount
20 by phone, which again is -- at the time of the closing they
21 don't just take the payoff letter, they have to call the bank
22 and verify the numbers are correct, that they haven't
23 changed, the banks haven't done any disbursements of tax or
24 insurance, which would change the payoff figure, and these
25 confirmations are often time consuming again due to

1 Gramm-Leach-Bliley. Often the banks are reluctant to
2 cooperate and other people have to be put on the phone and
3 long strings of voice mails and machines have to be gone
4 through in order to confirm these payoff figures. Once
5 they're confirmed, a transmittal has to be prepared, some of
6 the payoffs actually require correspondence from the
7 borrowers authorizing and direct the credit lines be closed
8 and that correspondence has to be attained and joined with
9 the transmittal and the check and payoff letter and in most
10 cases FedExed out to the bank.

11 Then the title company, title closer is responsible
12 for making sure that that payoff is processed. If that
13 payoff doesn't get there or processed, the title closer is
14 called upon to make it right. If it's lost, the title closer
15 is expected to run around and obtain replacement checks and
16 get the thing paid off. That is their responsibility for the
17 pick-up fee.

18 MR. DEAN: Isn't that the point of the payoff
19 letter, if you pay this amount within so many days, the
20 mortgage will be satisfied? Why is there additional steps
21 required?

22 MR. WARNER: That is a payoff letter. Almost every
23 one has a caveat or disclaimer on it that says if you look at
24 the payoff letter, no one is entitled to rely on this letter.
25 You must contact our payoff department at the time of funding

1 to confirm these figures, otherwise we're not going to feel
2 obligated to stand by the numbers on this letter. The reason
3 why they do that is what I alluded to earlier, that often
4 taxes and insurance are sort of paid out, you know,
5 automatically at certain times after a payoff letter is
6 issued, and that increases the amount that's due on the
7 payoff letter.

8 MR. DEAN: I have no further questions on this.

9 MS. BUXBAUM: I'd like to ask a couple of questions
10 about ancillary searches. We talked about that at great
11 length this morning. We're particularly interested in what
12 type of curative work was done on ancillary searches and why
13 the charges are marked up several times the cost of the
14 searches.

15 So, Mr. Willen, your written testimony to the
16 Department stated that you don't have any data compiled with
17 regard to the amount of time spent on curative work. I'd
18 like to know if curative work is done on patriot searches,
19 for example.

20 MR. WILLEN: At times there are. I think for the
21 most part the returns come in and they are turned around and
22 there's some checking of accuracy but not a whole lot of work
23 on those.

24 MS. BUXBAUM: That's on a patriot search?

25 MR. WILLEN: Yes.

1 MS. BUXBAUM: Mr. DeCaro, do you do curative work
2 on patriot searches?

3 MR. DeCARO: I'm not comfortable using the word
4 "curative." We order the searches for the clients, we
5 review those searches for clients, we answer questions about
6 those. I can't say more than that, but what we do with those
7 searches.

8 MS. BUXBAUM: And how much time do you spend on
9 patriot searches generally?

10 MR. DeCARO: In preparing for this hearing I knew
11 that question was going to come up. It's a question we've
12 all wrestled with at this table and this morning. The only
13 answer I can give you is during the course of the year we do
14 almost 1,200 titles, not counting the sales marketing, I have
15 about 18 people involved in that activity. If you do the
16 math on that, it works out to about 30 hours per title. The
17 best answer I can give you, no one in my office is sitting
18 around doing nothing. We are actively propelling our
19 commercial clients and the consumer to a closing. We're busy
20 all the time.

21 MS. BUXBAUM: I'm trying to ascertain what type of
22 work is done with regard to a particular search. So with
23 regard to a patriot search, which my understanding is a
24 search to see if anyone's name is on the OFAC list. What
25 type of additional work is ever done with respect to that

1 search?

2 MR. DeCARO: As I said, we make sure we order the
3 right search and put the right information into our system.
4 When we get the search back, we make sure it's correct. If
5 we are going with the lot and name, we have to determine if
6 this is the name and sometimes the return is very expensive
7 if you have a very common name.

8 MS. BUXBAUM: On average can you tell me how much
9 time you spend on a patriot search?

10 MR. DeCARO: No, I can't.

11 MS. BUXBAUM: Do you do additional work on patriot
12 searches for, Mr. Warner?

13 MR. WARNER: As Mr. DeCaro said, when returns are
14 extensive, we do have to do some additional work in figuring
15 out which John Smith we may be dealing with and if there is a
16 direct hit on the OFAC list. OFAC has to be contacted to
17 issue a release in order for that person to conduct a
18 financial transaction.

19 MS. BUXBAUM: What percent of searches come up as a
20 hit?

21 MR. WARNER: Again, as I said before, without
22 actual statistics I wouldn't feel comfortable giving an
23 actual percent but it is a small percentage.

24 MS. BUXBAUM: A very small percentage?

25 MR. WARNER: A very small percentage, yes.

1 MS. BUXBAUM: Mr. Tormey, in terms of patriot
2 searches, do you do any additional work?

3 MR. TORMEY: Our staff in performing a patriot
4 search, yes, when there is a hit on the search there's
5 definitely work. The act of performing the search is work.

6 MS. BUXBAUM: How long does it take to do that
7 search?

8 MR. TORMEY: It varies per name and whether or not
9 the other members of the panels have said whether or not the
10 results are not. I can't say having had results appear. It
11 can be quite a challenging and lengthy process to go through
12 contacting the office of foreign access control. There are
13 strict protocols of informing the client of certain aspects
14 of the result and there is a lot time. It's the office of
15 the president. It's a federal mandate and strict rules and
16 fair amount of energy to make sure you go through the proper
17 protocol to make sure.

18 MS. BUXBAUM: What percent of your searches come up
19 as a hit?

20 MR. TORMEY: I would answer similarly to Ken, small
21 percentage. I would ask you to define small, very small.

22 MS. BUXBAUM: Is it greater than five percent? Is
23 it closer to one percent?

24 MR. TORMEY: I couldn't to the best of my
25 knowledge, I couldn't provide an answer with that level of

1 specificity.

2 MS. BUXBAUM: Mr. Dacey? What about Thoroughbred
3 searches, you do those in-house, correct?

4 MR. DACEY: We do. We search the database
5 in-house. We have a trained person who does that.

6 MS. BUXBAUM: How long does it take to do that
7 search?

8 MR. DACEY: Minimum amount of time, ten minutes.

9 MS. BUXBAUM: What percent of searches do you think
10 come up as a hit?

11 MR. DACEY: De minimis. I think the better
12 question you may want to ask, I'm not in the business of
13 telling you what to ask, but we spend a fair amount of time
14 procuring and administrative time obtaining things like smoke
15 detectors affidavit or a well test or things such as that
16 that are all part of this ancillary search.

17 MS. BUXBAUM: That's more of the municipal search,
18 correct.

19 MR. DACEY: Yes it is. It is lumped to me in the
20 unregulated or other searches that we do and we do spend a
21 lot of time. Typically the same person handling those kinds
22 of tasks would be the one trained to run patriot search
23 database.

24 MS. BUXBAUM: But I was focusing on the patriot
25 search.

1 MR. DACEY: That is a small amount of time and it's
2 with de minimis hits.

3 MS. BUXBAUM: Mr. DeCaro, Benchmark also stated it
4 doesn't maintain records regarding how much time is spent on
5 curative work. In general as to all ancillary searches which
6 would include, at a minimum, patriot, bankruptcy, municipal,
7 can you tell me what type of additional work was done with
8 regard to those searches?

9 MR. DeCARO: On municipal searches there again
10 there is a tremendous amount of work that goes into municipal
11 searches. Making sure that you are ordering the right
12 searches, you want to make sure you have the right name,
13 owner of the property, address of the property is correct.
14 Before you put that order out you want to make sure you are
15 as clear as possible, you have all the information.

16 MS. BUXBAUM: How long does that take to confirm
17 all the information is correct?

18 MR. DeCARO: The information we get from our
19 clients is very sketchy. You would think we would get more
20 clear information from our clients on transactions that are
21 worth a couple thousand dollars or million dollars. We get
22 very sketchy information. We use all sorts of resources to
23 clarify what they're asking us, from Google maps to
24 proprietary databases that the insurance industry uses. So
25 we go through an awful lot of effort to make sure we're

1 ordering the proper searches.

2 Of course when they come back we have to make sure
3 they're accurate. Our clients, although where we don't
4 insure them, they expect us to be experts in alerting them to
5 any problems that are there.

6 MS. BUXBAUM: Benchmark charges a flat fee for
7 municipal searches up to four names; is that correct?

8 MR. DeCARO: We don't charge by name for municipal
9 searches.

10 MS. BUXBAUM: Sorry.

11 MR. DeCARO: Patriot.

12 MS. BUXBAUM: Strike that. For patriot and
13 bankruptcy searches, Benchmark charges a flat fee for up to
14 four names.

15 MR. DeCARO: Correct.

16 MS. BUXBAUM: If it's more than four names there is
17 an additional charge per name.

18 MR. DeCARO: That would appear to be but I don't
19 know the answer to that question though.

20 MS. BUXBAUM: If there are two sellers and two
21 buyers, then your flat fee would work out to a reasonable fee
22 perhaps but if there is only one person refinancing, does
23 Benchmark charge that same flat fee for a patriot and
24 bankruptcy search?

25 MR. DeCARO: We want to talk about reasonable.

1 These searches have been forced on us. We don't need to do
2 those searches to give a title. That is a courtesy to our
3 client. I would prefer not to do those searches.

4 MS. BUXBAUM: You do them and if there is one
5 person financing his mortgage, you charge that person the one
6 flat fee for a bankruptcy search and the one flat fee for a
7 patriot search, correct?

8 MR. DeCARO: Correct.

9 MS. BUXBAUM: That doesn't work out for such a
10 great deal for that person.

11 MR. DeCARO: It's a matter of opinion.

12 MS. BUXBAUM: Mr. Warner, what determines how much
13 Landstar charges for a municipal search?

14 MR. WARNER: What determines? Well, we have a new
15 structure for the needs of different clients in different
16 counties and it's a bundled fee.

17 MS. BUXBAUM: So it depends on which specific
18 searches are requested?

19 MR. WARNER: There are bundles that are typically
20 requested in the different counties so we provide those
21 bundles, unless the client requests something different.

22 MS. BUXBAUM: You have different fees for each
23 specific bundle?

24 MR. WARNER: Yes, that's correct.

25 MS. BUXBAUM: Okay. Landstar indicated that the

1 fee for the municipals includes -- the markup that's charged
2 is necessary to pay competitive salaries that Landstar pays,
3 including full medical and dental, and that the markup is for
4 reviewing and consulting with the parties regarding the
5 municipal search results.

6 MR. WARNER: And for curatives, yes.

7 MS. BUXBAUM: Can you describe what type of review
8 and consultation takes place with regard to municipal
9 searches?

10 MR. WARNER: Sure. There is no markup. There's
11 the amount we pay for the search and then there's the service
12 charge. I understand you're referring to it as a markup. To
13 us in our industry, that is the service charge. The
14 difference between the amount we pay and the amount we charge
15 is the service charge. We don't view ourselves as sort of
16 merchants marking up something on a shelf. We view us as
17 value added.

18 Typically what you have with the municipal searches,
19 it all starts with the contract of sale and most properties
20 are sold with a provision in the contract of sale that
21 they're going to have a valid CO and they are going to be
22 free and clear of all violations and they are going to be
23 subject to the building body, provided there's no violations
24 thereon.

25 So that part of the contract of sale starts the need

1 for all these municipal searches. Banks also want to see if
2 they take the property that they don't have violations. What
3 we do as far as curatives starts with what shows up on the
4 search. If you have violations on the search, we talk about
5 what violations they are, whether they can be cured by an
6 inspection or by a contractor's certification, as some can,
7 and we work with the client to arrange for that to happen.

8 Often we have to rerun the searches again and again
9 as these documents are submitted because the parties want,
10 quote unquote, a clean search showing it off record.

11 So that's what we do. I mean, from going over
12 building plans to see if a particular item was in the
13 original C of O or not to helping the client get sign-offs on
14 open building permits to issues we like to call liens in
15 transit, emergency repairs, you know, pest inspection, fees
16 and things like that that are not currently liens but will
17 show up in the municipal searches and, if not cured, will
18 eventually make their way through to the Department of
19 Finance to be assessed to the new owner as super liens.

20 So, I mean, without going off on a complete
21 narrative, whatever is showing up in the searches, we take
22 the contract of sale and what the seller is supposed to give,
23 take the searches and we go over them and arrange to cure
24 them to generate clean searches so the mortgagee and the
25 purchaser with feel comfortable they're getting a property

1 with a valid CO free of violations.

2 MS. BUXBAUM: Do you know how much time that takes
3 on average per transaction?

4 MR. WARNER: I wouldn't want to speculate on
5 average because I would have to compute that, but it is a
6 substantial amount of time and can be hours and it can
7 involve site visits, which we do on occasion.

8 MS. BUXBAUM: How often do you do that?

9 MR. WARNER: On occasion. I wouldn't want to put a
10 percentage on it, but we do go through extraordinary efforts
11 to help our clients cure problems with violations and we do
12 spend time on them and we do frequently chase down sign-offs
13 and range for inspections, and this does take time.

14 MS. BUXBAUM: Landstar also explained to the
15 Department its customers are aware that the municipal search
16 charge includes additional services and competitive for
17 market.

18 MR. WARNER: Yes.

19 MS. BUXBAUM: By "customers" you're referring to
20 attorneys, correct?

21 MR. WARNER: No. I'm referring to everyone. I'm
22 referring to attorneys, bankers, and even the consumer. You
23 know, I was here, remember, this morning and I heard the
24 reference that the consumers are not making choices in title,
25 that the consumers are not the customer, the actual property

1 owners. We view the property owners as the customer and I
2 know you had En Title here spending tremendous amounts of
3 marketing dollars marketing to the actual property owners to
4 choose them and if you talk to commercial real estate
5 attorneys, they will tell you more and more, perhaps as many
6 as 90 percent of their commercial real estate clients now
7 choose the title company themselves as the end user and no
8 longer depend on the attorney to order title for them.

9 So when I'm talking about the customer, I'm talking
10 about the attorney and bank and the end user in a host of
11 circumstances.

12 MS. BUXBAUM: What about residential insured?

13 MR. WARNER: Even residential. You know, many
14 lenders have distribute lists to their borrowers at the time
15 of refinance. We're on some of those lists. Lists have
16 several title companies. Borrowers will call us, ask for fee
17 estimates, ask about our services, and in those cases we have
18 to market to the borrowers directly and convince them that
19 we're better than the other four companies on the bank's
20 list.

21 MS. BUXBAUM: How do you know that your charges are
22 competitive in the market? Do you discuss it with other
23 agents?

24 MR. WARNER: I don't discuss it with other agents
25 but I do attend cocktail parties at which title closers are

1 present who see everyone's fees and anecdotal information
2 that I receive through those channels telling me the fees are
3 competitive.

4 MS. BUXBAUM: Thank you.

5 Mr. Tormey, State Street's testimony was that it
6 takes an average of one hour per file performing curative
7 work in connection with municipal searches. Can you describe
8 what you do in that hour?

9 MR. TORMEY: Sure. We estimate one hour for 2012
10 for New York transactions. My recollection?

11 MS. BUXBAUM: Right.

12 MR. TORMEY: I think without going ad nauseam, I
13 think Ken has done a good job describing the tasks and
14 responsibilities which can be everything from reviewing --
15 yesterday afternoon I was assisting with reviewing Sandbern
16 to list maps from 1986 through 1945, trying to determine
17 regarding Pergola, determining when it was erected. It is a
18 long list of different tasks and responsibilities. In the
19 interest of time I'll sort of leave it at that, unless you
20 would like me to expound further.

21 MS. BUXBAUM: How many other states do you do title
22 work in?

23 MR. TORMEY: Off the top of my head I couldn't give
24 you the number that State Street conducts transactions in.

25 MS. BUXBAUM: Do you have offices in other states?

1 MR. TORMEY: No, State Street does not.

2 MS. BUXBAUM: The only office is on Wall Street?

3 MR. TORMEY: That's correct.

4 MS. BUXBAUM: Do you know what percent of your work
5 is done outside of New York?

6 MR. TORMEY: Off the top of my head, I don't know.

7 MS. BUXBAUM: Mr. Dacey, we discussed this already
8 that Thoroughbred does patriot and bankruptcy searches
9 in-house.

10 MR. DACEY: Correct.

11 MS. BUXBAUM: And you also charge a flat fee for
12 each of those searches.

13 MR. DACEY: I thought it was per name.

14 MS. BUXBAUM: Per name, sorry. You charge a flat
15 fee per name.

16 MR. DACEY: Yeah.

17 MS. BUXBAUM: I thought the information that we
18 received was that it's a flat fee up to a certain number
19 of --

20 MR. DACEY: Per file.

21 MS. BUXBAUM: Per file.

22 Mr. Gigliotti?

23 MR. GIGLIOTTI: Yes.

24 MS. BUXBAUM: I think you testified earlier that
25 Allied does municipal searches, correct?

1 MR. GIGLIOTTI: Yes. No patriot. Very rarely we
2 get a request for a patriot search. Maybe two last year.
3 Extremely rare.

4 MS. BUXBAUM: Do you know why that is in zone one?

5 MR. GIGLIOTTI: Not sure. I'm not sure.

6 MS. BUXBAUM: You issue mortgage policies, correct?

7 MR. GIGLIOTTI: We issue mortgage policies.

8 MS. BUXBAUM: And the banks don't request them?

9 MR. GIGLIOTTI: Not all banks, not upstate. I'm
10 not sure why.

11 MS. BUXBAUM: Do you do bankruptcy searches?

12 MR. GIGLIOTTI: Yes.

13 MS. BUXBAUM: And --

14 MR. GIGLIOTTI: Depends on the county, Herkimer
15 County doesn't.

16 MS. BUXBAUM: You do municipal searches?

17 MR. GIGLIOTTI: Yes.

18 MS. BUXBAUM: Do you charge a service fee on the
19 searches, on the municipal searches that you do?

20 MR. GIGLIOTTI: I think some of them we might
21 charge a \$2 charge for making the calls to the municipality
22 to get the search, and that's about it. Basically whatever
23 the municipality charges us is what we just pass on to our
24 client.

25 MS. BUXBAUM: Do you know if that's typically how

1 things are done in zone one?

2 MR. GIGLIOTTI: Pretty much. Whatever the
3 municipality charges is passed on to the client.

4 MS. BUXBAUM: I'd like to ask a couple of questions
5 about advertisement and marketing.

6 Mr. Willen, Advantage Title hearing testimony stated
7 that a substantial amount of money is spent on marketing to
8 the insured and consists of business meals and entertainment.
9 Can you tell me what insured Advantage markets to?

10 MR. WILLEN: In that case we're talking commercial
11 developers. We don't market to residential homeowners very
12 much, but to the commercial developers, as was stated
13 earlier, the developers over the last few years have begun to
14 be the title orderers as much, if not more than the
15 attorneys, so that's a market we needed to pay more attention
16 to.

17 MS. BUXBAUM: What type of marketing do you do?

18 MR. WILLEN: We do lunches, we attend events, we do
19 dinners, we do ball games occasionally. Whatever way we can
20 get our clients who are tied up at their desks all day like
21 we all are, in an atmosphere where we can have some dialogue
22 and some face time and ability to really try to differentiate
23 ourselves from our competitors, with all due respects to the
24 fine gentlemen to the right of me. Being able to be in an
25 environment with those decision makers allows us an

1 opportunity to really talk about our services, how they like
2 them customized and just gives us a little face to face
3 that's hard to find between working hours.

4 MS. BUXBAUM: Are all of your entertainment events
5 attended by Advantage employees or salespeople?

6 MR. WILLEN: Yes. Either myself or my sales team,
7 yes.

8 MS. BUXBAUM: And --

9 MR. WILLEN: I mean, I'm saying sales team but
10 they're really account executives, all my salespeople, vice
11 presidents, they have responsibilities beyond sales. They
12 are involved with their files. Few of them are title closers
13 as well, so they're really -- they're not just sales or
14 marketing.

15 MS. BUXBAUM: Do you think that is a proper use of
16 premium?

17 MR. WILLEN: Well, I think most businesses have
18 different marketing needs. That's just one of them.

19 MS. BUXBAUM: But title insurance is a regulated
20 business, correct?

21 MR. WILLEN: Correct.

22 MS. BUXBAUM: In effect the insured is paying your
23 expenses.

24 MR. WILLEN: I mean, you can carry that through to
25 so many things. The insureds are paying my staff's salaries.

1 The insureds are paying for my rent. The insureds are --

2 MS. BUXBAUM: Rent and salary is a necessary
3 overhead expense in order to issue the policy, correct?

4 MR. WILLEN: Correct, and so is marketing in order
5 to be able to get our phones to ring.

6 MS. BUXBAUM: Meals and entertainment is a
7 necessary aspect of issuing the insurance policy?

8 MR. WILLEN: I wouldn't say it exactly that way.
9 It's a necessary aspect of keeping our lights on. It's one
10 way that we help to locate new clients, so we do CLE and
11 marketing events where we try to market to people who are not
12 currently clients of ours. We're a business. We're trying
13 to get customers. And so the marketing to the insured, by
14 the way, I think was a three percent number for us, is one
15 part of our business. We also do advertising, we do print
16 ads, we do journal ads. I think we've done radio spot.
17 There's things we do to make sure we market our company and
18 to try to differentiate. But getting in front of and
19 spending time with clientele is a very important part of
20 gaining the loyalty and just trying to get an opportunity to
21 get -- once we get business, we're able to keep clients
22 because of our service, that is what we focus on, but we have
23 to get out there.

24 MS. BUXBAUM: So once you have a client do you stop
25 spending money on meals and entertainment for that person?

1 MR. WILLEN: If I did, then Tom would steal them
2 from me or maybe Ken would or maybe some of the other
3 gentlemen. Of course not.

4 MS. BUXBAUM: Advantage submitted a category of
5 expense to the Department that said -- that was titled
6 "Entertainment, 50 percent." Does that mean that that
7 number -- that Advantage actually spent twice that number?

8 MR. WILLEN: I'm not sure what you're referring to.
9 I think that is what we're allowed to write off.

10 MS. BUXBAUM: The 50 percent, for tax purposes, you
11 can deduct but you actually spend twice that much if what
12 you -- if what was stated was 50 percent whim.

13 MR. WILLEN: I'm really not sure about that. I
14 didn't fill out the report and I'm not sure that is accurate
15 so I'm not going to say that is.

16 MS. BUXBAUM: We might want to get back in touch
17 with you and find that out.

18 MR. WILLEN: You're welcome to do that.

19 MS. BUXBAUM: Mr. Forsyth, does Excaliber market to
20 the insured?

21 MR. FORSYTH: We don't differentiate between the
22 insured and the non-insured. We have a variety of people
23 that steer business our way and it's not always identified
24 who's paying the title premium and that we market to that
25 particular person.

1 MS. BUXBAUM: Excaliber's hearing testimony stated
2 that in 2012 you spent marketing money on actual and
3 potential insureds.

4 MR. FORSYTH: They were included, yes.

5 MS. BUXBAUM: Can you describe what type of
6 marketing you do for actual and potential insureds?

7 MR. FORSYTH: Much like many of my colleagues here,
8 I do events. I have done sporting events, golf outings. I
9 have done educational seminars and the like in the hopes of
10 getting myself in first and personal with the individual
11 clients, even to the extent of trying to put different types
12 of clients together to promote business.

13 MS. BUXBAUM: Based on the information that
14 Excaliber provided to the Department, in 2011 Excaliber spent
15 more than half of its retained fees on meals and
16 entertainment.

17 MR. FORSYTH: I don't remember 2011. I remember we
18 just went through the whole 2012.

19 MS. BUXBAUM: I'll represent to you that I can tell
20 you what the numbers were but I will represent it was more
21 than 50 percent of retained premium that was spent on meals
22 and entertainment.

23 MR. FORSYTH: Okay.

24 MS. BUXBAUM: How can you justify spending more
25 than 50 percent on retained premium on meals and

1 entertainment?

2 MR. FORSYTH: I didn't make very much money. I'm
3 not trying to be cute. That was a tough year. We had a
4 budget we came up with that we thought we could exceed that
5 budget and bring in the revenue, and we did not do as much
6 revenue as we anticipated.

7 MS. BUXBAUM: Do you budget at the beginning of the
8 year and then not pay attention to what is coming in during
9 the rest of the year to determine whether your meal and
10 entertainment expenditures are reasonable?

11 MR. FORSYTH: The business plan I had when I
12 started this company four years ago I anticipated based on
13 past numbers that I would be able to produce working at other
14 companies and direct underwriters. And I came up with a
15 budget that I thought would work in 2011. I didn't do very
16 well with my budget.

17 MS. BUXBAUM: Because you didn't spend more than 50
18 percent of retained premium on meals and entertainment on any
19 other year?

20 MR. FORSYTH: Not to my knowledge. When I started
21 the company I had a lot of start-up costs. I don't remember
22 what that percentage was versus meals and entertainment.

23 MS. BUXBAUM: Do you think that spending 50 percent
24 on retained premium for meals and entertainment is a
25 reasonable use of premium?

1 MR. FORSYTH: I disagree that it is premium
2 dollars. I have revenue stream and I have to make a budget
3 out of that. Premium does make up a large portion of our
4 revenue but it's not taking premium dollars and spending them
5 on other types of expenses.

6 MS. BUXBAUM: Other than premium what other revenue
7 stream do you have?

8 MR. FORSYTH: Well, we have a small amount of
9 revenue stream that we get for miscellaneous searches that we
10 do for clients who may want us to do searches on deals that
11 do not close. They might have interest in properties that
12 they just want to find out what the title situation is in
13 that case. Many of them will ask me for a bill.

14 MS. BUXBAUM: Do you know what percent of your
15 revenue is from other than premium?

16 MR. FORSYTH: Very minor.

17 MS. BUXBAUM: So I thought you testified just a few
18 questions ago that you had -- strike that.

19 So other than premium and informational search
20 revenue, what other revenue do you have?

21 MR. FORSYTH: I think I'm in business to sell title
22 insurance, produce product and come up with the policy at the
23 end of the day. They pay for their policy and that's what
24 drives my company.

25 MS. BUXBAUM: So when I asked you if spending 50

1 percent of retained premium on meals and entertainment was
2 reasonable, I believe what you said was you quarreled with my
3 use of the terminology and you said it's not premium money,
4 it's other money. So where does that other money come from,
5 other than additional searches?

6 MR. FORSYTH: People are paying premium and other
7 expenses that go along with the closing, and that is my
8 revenue stream.

9 MS. BUXBAUM: Mr. DeCaro, can you tell us what type
10 of marketing you do direct towards the insured?

11 MR. DeCARO: Marketing we direct toward the insured
12 are educational events, networking events, meals and
13 entertainment.

14 MS. BUXBAUM: Who are those insureds? Are those
15 commercial customers or residential?

16 MR. DeCARO: Commercial customers.

17 MS. BUXBAUM: Mr. Warner, does Landstar market to
18 the insured?

19 MR. WARNER: Yes.

20 MS. BUXBAUM: Is that commercial or residential
21 insureds?

22 MR. WARNER: Mostly commercial but residential on
23 occasion.

24 MS. BUXBAUM: Of all the title agents who are here
25 today, Landstar spent a fairly small percentage of premium on

1 gifts, meals and entertainment. How is Landstar able to
2 obtain its business without these expenditures?

3 MR. WARNER: Well, as a percentage of total
4 revenue, the amount we spent on meals and entertainment is
5 small but in actual dollar amounts I have it as substantial
6 in the fact that we do use meals and entertainment as a means
7 of marketing. We're prudent, we're frugal and as a
8 percentage of the total revenue it's a small percentage, but
9 we still do it and we try and do it economically.

10 I can say that, you know, of the people sitting here
11 with me today, you know, everybody has a business mix.
12 Everybody has a mix of business, whether it be very high end
13 commercial and very big law firms and very big real estate
14 investment trusts or small refinance work with banks or small
15 local attorneys, everybody has a mix, and really there are
16 common and customary ways of marketing to different segments
17 of the business.

18 The Landstar spends the amount we thought was
19 required to get an audience to get our potential customers
20 out of the office to conduct education, to conduct, you know,
21 marketing to differentiate ourselves and tell clients about
22 us at a dinner or a ball game, so we do that. It's just that
23 our mix of business and our clientele doesn't maybe require
24 that as much as other people, so that's why it's a small
25 percentage and we're able to do that.

1 MS. BUXBAUM: Is your mix of clientele different
2 from other title agents?

3 MR. WARNER: Well, I mean the exact mix is
4 proprietary information but everybody has their own mix of
5 people. Maybe 90 percent commercial, some people may be 30
6 percent refinance, 50 percent purchase. So suffice it to
7 say, if I can answer the question this way, Landstar mix of
8 high end commercial transactional work may be smaller than
9 some other people that you examined.

10 MS. BUXBAUM: Thank you.

11 Mr. Gigliotti, I'm going to ask you general
12 questions for zone one since you are a zone one
13 representative.

14 Do you know whether zone one title agents generally
15 spend substantial amounts of premium dollars on meals and
16 entertainment?

17 MR. GIGLIOTTI: I understand that we do not but I'm
18 not sure what other agents do. We deal basically with ECs so
19 I'm not sure what they do with their clients. They represent
20 the lenders.

21 MS. BUXBAUM: What would happen if no agent
22 provided tickets or meals and entertainment to their
23 customers, would fewer title policies be ordered, Mr. Willen?

24 MR. WILLEN: I can't speak to whether fewer titles
25 would be ordered but I don't know. I would say that we

1 probably never had an industry, since I have been in the
2 business, where there's been no marketing of title companies.
3 So I don't know what that world would look like.

4 MS. BUXBAUM: I didn't say no marketing, I said no
5 meals and entertainment.

6 MR. WILLEN: One part of the marketing that we all
7 do -- maybe zone one is different. I understand that.

8 MS. BUXBAUM: But you mentioned a myriad of other
9 types of marketing, correct?

10 MR. WILLEN: Yes.

11 MS. BUXBAUM: So meals and entertainment is just
12 one small portion, right?

13 MR. WILLEN: Probably the most effective though.
14 It may be just one but it's probably been the most effective
15 one.

16 MS. BUXBAUM: Mr. DeSalvo, what do you think would
17 happen?

18 MR. DeCARO: Can you ask me that question again,
19 please?

20 MS. BUXBAUM: Sure. What do you think would happen
21 if no title agents spent money on meals and entertainment?
22 Would fewer title policies be issued?

23 MR. DeCARO: The number of title policies issued in
24 the State of New York have nothing to do with the amount of
25 travel and entertainment spent in this industry.

1 MS. BUXBAUM: Why is money on meals and
2 entertainment spent?

3 MR. DeCARO: I just believe it's a customary way of
4 businesses differentiating themselves.

5 MS. BUXBAUM: Mr. Forsyth, what is your answer to
6 that question?

7 MR. FORSYTH: I don't think that the amount of
8 title policies would be effected.

9 MS. BUXBAUM: Mr. Tormey, do you believe the number
10 of policies would be effected?

11 MR. TORMEY: Yes, I do.

12 MS. BUXBAUM: In what way?

13 MR. TORMEY: I wasn't going to be cute with that.
14 I think -- as the other panelists have said, I don't think it
15 would broadly impact the number of policies. However, I
16 would say that the informational exchanges and the
17 educational aspect of what many of the companies that the
18 title insurance industry do does yield an awareness among
19 attorneys as well as insureds regarding situations where they
20 should buy a policy or endorsement to a policy that they
21 might not otherwise purchase were they not made aware of the
22 potential coverages and benefits of that policy.

23 MS. BUXBAUM: How do meals and entertainment bring
24 that to their attention?

25 MR. TORMEY: I can't -- as to State Street, that's

1 not part of our general approach to business, but if you
2 would like me to speak broadly to the industry, I think there
3 is a bit of education and communication about our industry
4 that happens at those meals and entertainment events.

5 MS. BUXBAUM: Thank you.

6 MR. DEAN: I'm going to ask some questions about
7 salary and other expenses. I will keep the salary questions
8 to a general level but as a measure of background, we sought
9 information from 20 different agents. One of the things we
10 looked at was premiums retained versus the salary that was
11 charged and noticed there was a very large discrepancy
12 between the number of companies where some companies wrote in
13 excess of 200 percent of their retained premiums were spent
14 on salary where others were in the single digits.

15 So as Mr. Warner and I'm sure everybody else goes to
16 cocktail parties talks to other people in the title agency
17 business, I want to get your take on that.

18 I guess I'll start with you, Mr. Willen.

19 How many employees does Advantage have? You have 40
20 employees. You told us that at the beginning.

21 MR. WILLEN: Yes.

22 MR. DEAN: How is ownership compensated?

23 MR. WILLEN: How is what?

24 MR. DEAN: Ownership compensated.

25 MR. WILLEN: You're asking how I'm compensated?

1 MR. DEAN: Yes.

2 MR. WILLEN: What are you asking specifically?

3 MR. DEAN: What is the formula?

4 MR. WILLEN: I take a salary.

5 MR. DEAN: It's not a profit draw?

6 MR. WILLEN: No. If they are profits and belong to
7 me, they stay in the operating account.

8 MR. DEAN: So in this hypothetical companies that
9 are running in excess of 200 percent, do you have any
10 understanding how companies are operating with that kind of
11 expense structure? I'm not saying that any company here is
12 at 200 percent, but I'm asking generally.

13 MR. WILLEN: I can only speak for my company and I
14 don't know what the percentage is but I can tell you I have a
15 high percentage of high salaries because we do primarily
16 commercial, very, very difficult multi-state, multi-parcel
17 commercial transactions throughout the country, mostly in New
18 York but throughout the country. And I need experts in so
19 many areas. So I have six in-house counsel. As you can
20 imagine, in-house counsel are going to be the higher paid
21 employees in the business.

22 MR. DEAN: I am completely unfamiliar with that
23 actually.

24 MR. WILLEN: You might want to come work for me
25 then.

1 MR. DEAN: I can't take you up on that.

2 MR. WILLEN: It is so crucial that I have experts,
3 it is so crucial we have people who can handle title -- solve
4 title problems and probably took me about ten years of being
5 in business where I realized that just having title officers
6 was not going to get -- put me in a position to get the kinds
7 of transactions that I wanted to do. So we really made a
8 commitment to bringing titles to service my clientele.

9 MR. DEAN: So you're saying you have a high salary
10 structure?

11 MR. WILLEN: We do.

12 MR. DEAN: The way you structure your business, I
13 guess to put the question a different way, are there other
14 streams of revenue outside of retained premium that we're not
15 seeing that that would make up for this expense structure?

16 MR. WILLEN: No. I just have smaller profits.

17 MR. DEAN: Mr. DeSalvo, how many employees does
18 Benchmark have?

19 MR. DeCARO: 25 employees.

20 MR. DEAN: And do you know how ownership is
21 compensated?

22 MR. DeCARO: Salary.

23 MR. DEAN: Again, not a profit?

24 MR. DeCARO: No.

25 MR. DEAN: Does the situation of high expenses,

1 high salary to net retained premium, is there any other
2 source of revenue that you understand would make up for these
3 expenses?

4 MR. DeCARO: I don't understand the question.

5 MR. DEAN: Sure. The analysis that we looked at
6 was net retained premium versus the salaries reported as part
7 of your data requests and a lot of them were in excess.
8 Salaries alone for a lot of the agents we reviewed were in
9 excess of premiums they retained.

10 The question I have is how do agents operate with
11 that kind of expense structure where you're not even talking
12 about other overhead costs? Are there other sources of
13 revenue that we're not seeing that make up for those costs?

14 MR. DeCARO: If I understand your question
15 properly, their salaries are more than their premium dollars
16 that are coming in to the company?

17 MR. DEAN: Yes.

18 MR. DeCARO: I have no idea.

19 MR. DEAN: Mr. Forsyth, you are the owner of your
20 company, and how are you compensated?

21 MR. FORSYTH: When it is available, we will take
22 partnership distributions.

23 MR. DEAN: So you're not drawing a salary that is
24 part of your expense?

25 MR. FORSYTH: No expense.

1 MR. DEAN: Are there other revenue streams other
2 than premium that make up for -- that supplement the income
3 that you receive?

4 MR. FORSYTH: No, sir.

5 MR. DEAN: I guess not rated expenses.

6 MR. FORSYTH: Excuse me?

7 MR. DEAN: You don't draw that distinction?

8 MR. FORSYTH: I'm mostly commercial work.

9 MR. DEAN: You're mostly commercial.

10 MR. FORSYTH: Vast.

11 MR. DEAN: Mr. Warner, are you a part of the
12 ownership of Landstar?

13 MR. WARNER: Yes.

14 MR. DEAN: How are you compensated?

15 MR. WARNER: Salary.

16 MR. DEAN: Salary, not as a profit distribution?

17 MR. WARNER: At the end of the calendar year, which
18 is also our fiscal year, profits that are not necessary to be
19 retained for the continued operation are distributed to the
20 partners.

21 MR. DEAN: Do you have -- are there other sources
22 of revenue, markup fees, fees for filing that supplement
23 retained premium?

24 MR. WARNER: Again, there are service fees. I
25 don't characterize them as markups. I characterize them as

1 fees for service but, yes, service fees, fees for uninsured
2 search products, yes.

3 MR. DEAN: How much of your revenue, what percentage
4 of your revenue do those fees account for?

5 MR. WARNER: I don't want to characterize an exact
6 percentage.

7 MR. DEAN: Ballpark without holding you to it.

8 MR. WARNER: Without reviewing the numbers, I don't
9 feel comfortable saying an exact amount. It is a substantial
10 amount, somewhat less than 25 percent.

11 Q. How much of State Street's revenue comes from
12 outside of premium?

13 MR. TORMEY: To the best of my knowledge I don't
14 know a precise percentage.

15 MR. DEAN: Ballpark.

16 MR. TORMEY: I would estimate it's less than 10
17 percent, if you give me the same offer, you won't hold me to
18 it.

19 MR. DEAN: I won't hold you to it.

20 MR. TORMEY: I would estimate probably less than
21 ten, perhaps less than five percent.

22 MR. DEAN: Switching to a somewhat different
23 question, I note you don't have any salespeople but you do
24 pay commissions. Who are commissions paid to?

25 MR. TORMEY: I don't believe -- for State Street

1 title? I don't believe --

2 MR. DEAN: I'm looking at the wrong company.

3 Director of operations, what does he do?

4 MR. TORMEY: You're probably referring to Adam. He
5 performs a variety of services. He does everything from
6 title examination to clearance and curative work, recording
7 documents, closing representation, a whole variety of tasks.

8 MR. DEAN: How many employees does State Street
9 have?

10 MR. TORMEY: One. Adam.

11 MR. DEAN: You use a payroll service?

12 MR. TORMEY: That's correct.

13 MR. DEAN: Why do you use a payroll service for a
14 small company?

15 MR. TORMEY: To ensure compliance with state
16 regulations regarding payroll. There's more nuances. I
17 think most companies -- that is the answer.

18 MR. DEAN: I note that you use a management -- pay
19 a management fee. Who is the management fee paid to?

20 MR. TORMEY: State Street pays a fee to the entity
21 managing it.

22 MR. DEAN: Which is?

23 MR. TORMEY: Title Vest.

24 MR. DEAN: Mr. Forsyth, I asked the question I
25 meant to ask you, which you don't have any salespeople but

1 you do pay commissions. Who are the commissions paid to?

2 MR. FORSYTH: My in-house counsel has been in the
3 real estate industry for 25 years, so occasionally he does
4 get a deal his way and I pay a commission, but it's not a
5 very large portion of our revenue stream.

6 MR. DEAN: We're going to jump a bit because we're
7 already running over. I want to jump quickly to affiliated
8 businesses and, Mr. Willen, I'll start with you again.

9 I understand that Advantage Title is affiliated with
10 Advantage Foreclosure, Advantage Legal, Advantage -- Mortgage
11 Advantage. Any other affiliates?

12 MR. WILLEN: Did you name five?

13 MR. DEAN: I named four. If I include Advantage
14 Title, that would be five companies. What are their
15 relationships?

16 MR. WILLEN: All owned by me. Essentially
17 divisions of Advantage Title that I incorporated separately
18 so we can do proper analysis of our P and Ls.

19 MR. DEAN: Do they all share employees?

20 MR. WILLEN: None. I don't think any of them share
21 employees. They all have their own employees.

22 MR. DEAN: What about office space?

23 MR. WILLEN: Except for one, the mortgage company,
24 because by banking regulations they're not allowed to have a
25 mortgage business within any other business.

1 MR. DEAN: Okay. Then those companies, I guess,
2 other than mortgage share overhead expenses?

3 MR. WILLEN: Yes.

4 MR. DEAN: What expenses are those?

5 MR. WILLEN: Each one pays a portion of rent, maybe
6 a portion of the copier. We have sort of a copy department,
7 mail, general -- each one has its own P and L. They're real
8 companies with real expenses. I don't have partners in them
9 so I need to be able to analyze what they make and whether
10 they're viable. I have a partner in one.

11 MR. DEAN: Do any of those companies refer business
12 to Advantage Title?

13 MR. WILLEN: Yes, the mortgage company refers
14 business when it is able to.

15 MR. DEAN: I think I understand 40 percent of the
16 business roughly.

17 MR. WILLEN: Estimate, yes.

18 MR. DEAN: How does the mortgage company market
19 advertise the title services?

20 MR. WILLEN: It doesn't whatsoever.

21 MR. DEAN: How does the referral come about then?

22 MR. WILLEN: When my partner in the mortgage
23 company does a loan for somebody, he discloses he has an
24 interest in the title agency and that we'd be happy to share
25 title for them and have the option of whether they want to

1 use us or not.

2 MR. DEAN: Is there any written document they're
3 given?

4 MR. WILLEN: I think a written disclosure.

5 MR. DEAN: If it's possible, we would like to see
6 that afterward.

7 MR. WILLEN: Sure.

8 MR. DEAN: Do you offer any incentive to people who
9 use the mortgage and title business?

10 MR. WILLEN: I'd love to but I cannot.

11 MR. DEAN: No bundle services?

12 MR. WILLEN: No.

13 MR. DEAN: I want to move over to Mr. Warner.
14 Landstar is affiliated with a number of companies.

15 MR. WARNER: Yes, that's correct.

16 MR. DEAN: We know them as Luxury Title, Premium
17 Title, Legacy Title. I think that's it. Any others?

18 MR. WARNER: Well, there's a company Escrow
19 Settlement Corp. which has common ownership, but not a title
20 agency.

21 MR. DEAN: What does Escrow Settlement do?

22 MR. WARNER: Ministerial aspects of loan closings.

23 MR. DEAN: Sorry, ministerial aspects of --

24 MR. WARNER: Loan closings.

25 MR. DEAN: Do they handle loan closings for the

1 Landstar title companies?

2 MR. WARNER: No. I mean, they handle mostly equity
3 loan closings and closings for out-of-state lenders. In
4 other states lenders are used to having title companies do
5 the settlement, and in New York title companies don't do
6 settlements so to accommodate them we have this company that
7 does the settlement.

8 MR. DEAN: Who owns all these companies?

9 MR. WARNER: Myself and the other partner.

10 MR. DEAN: They're all located at the same address
11 I understand; is that correct?

12 MR. WARNER: That's correct.

13 MR. DEAN: Do they all share employees?

14 MR. WARNER: Well, there are some employees in
15 common and some separate.

16 MR. DEAN: Can you give me any more understanding?

17 MR. WARNER: They have separate employees but some
18 employees do work for both companies.

19 MR. DEAN: Is that an administrative or customer
20 pacing function that works for both companies?

21 MR. WARNER: Both.

22 MR. DEAN: So you have four different title
23 companies, correct? You have Luxury, Premier, Legacy and
24 Landstar.

25 MR. WARNER: Yes.

1 MR. DEAN: What's the difference between the four,
2 they serve different markets?

3 MR. WARNER: Yes, yes, they do. They serve
4 different markets. One is oriented towards residential real
5 estate on the north shore. One is oriented toward
6 residential real estate on the south shore of Long Island and
7 one is oriented toward central Long Island. Pretty much
8 regional realtor driven companies.

9 MR. DEAN: Why three companies for such a small
10 geographic area?

11 MR. WARNER: Well, they're realtor driven which
12 means the realtors that are partners in them focus on these
13 geographic areas and that's where we focus the marketing
14 efforts of those companies.

15 MR. DEAN: Okay. Do all these companies write for
16 the same insurance companies?

17 MR. WARNER: No, no. There's some variance in
18 that.

19 MR. DEAN: Does each company have its own
20 underwriter it is affiliated with?

21 MR. WARNER: Each company has its own underwriter.
22 Some share a common underwriter. Some have two that are
23 different. It's not exactly the same.

24 MR. DEAN: Thank you.

25 Mr. Dacey, Thoroughbred is owned by Houlihan

1 Lawrence as we said before. I don't know how much Houlihan
2 purchases its title through Thoroughbred.

3 MR. DACEY: 21.25 percent.

4 MR. DEAN: Do you know if disclosures are given to
5 the Houlihan clients about the relationship between
6 Thoroughbred and Houlihan?

7 MR. DACEY: Would you like me to read it?

8 MR. DEAN: How long is it?

9 MR. DACEY: Probably too long but very to the
10 point.

11 MR. DEAN: If I can get a copy. It is here. It is
12 part of the record, terrific.

13 Where else do you get business from, any other
14 affiliates?

15 MR. DACEY: No, we do not have other affiliates.
16 Let me correct that. Houlihan, up until August, did have a
17 joint venture mortgage bank partnership with Wells Fargo.
18 That has subsequently gone away. Over the past six months
19 Houlihan has taken great steps and measure through your
20 department to apply for and just received a mortgage banking
21 license. That's known as Sterling Partners or Silvermine
22 Partners. We will in the future, I assume, get some business
23 from them but presently they're not doing any business yet.

24 MR. DEAN: Is the joint company the joint venture
25 that was Wells Fargo that's now defunct, is that Thoroughbred

1 Mortgage?

2 MR. DACEY: That was, correct.

3 MR. DEAN: Before it was defunct, how much
4 business -- how much of Thoroughbred Title business came from
5 the mortgage?

6 MR. DACEY: Maybe about 10 percent.

7 MR. DEAN: I think we asked initially for affiliates
8 but you didn't -- Thoroughbred didn't identify Thoroughbred
9 Mortgage. Do you know why that is?

10 MR. DACEY: It wasn't in operation.

11 MR. DEAN: I think the subpoena is from 2012. It
12 wasn't in operation?

13 MR. DACEY: We have nothing to do with it. We're a
14 totally separate LLC owned by Houlihan, so we're not
15 affiliated in any way. It's not even owned by the same
16 ownership within Houlihan.

17 MS. BUXBAUM: What is the relationship between
18 Thoroughbred Mortgage and Title?

19 MR. DACEY: No relationship.

20 MS. BUXBAUM: Just shares?

21 MR. DACEY: Just owned by people at Houlihan.

22 MR. DEAN: Not all the people.

23 MR. DACEY: I don't own any of it, correct.

24 MR. DEAN: Between Houlihan and Thoroughbred, do
25 you offer any kind of incentives on bundled services?

1 MR. DACEY: No.

2 MR. DEAN: Thank you.

3 Mr. Forsyth, just a couple quick questions. You are
4 a subsidiary of Title Vest?

5 MR. FORSYTH: Title Vest is an investor in my
6 company.

7 MR. DEAN: Okay. What is Excaliber? It's an LLC?

8 MR. FORSYTH: Yes.

9 MR. DEAN: Are there other agencies, subsidiaries
10 that Title Vest has, do you know?

11 MR. FORSYTH: I don't understand the question.

12 MR. DEAN: Are there other title agencies,
13 subsidiaries that Title Vest has created?

14 MR. FORSYTH: I don't have a real working knowledge
15 of Title Vest's other businesses. I don't have a firsthand
16 knowledge. I run a small group with four people. Title Vest
17 does a lot of back office work for me, that is their
18 contribution to our partnership, and I underwrite for all
19 five underwriters. I lease space from them. Like I said, I
20 do utilize some of their office for back space or back office
21 work.

22 MR. DEAN: Okay.

23 Mr. Tormey, I guess State Street is a similar type
24 of entity that Title Vest is, an investor in State Street or
25 direct sub?

1 MR. TORMEY: To the best of my knowledge I'm not an
2 owner in State Street but Title Vest is an investor in State
3 Street.

4 MR. DEAN: You also get back office services, you
5 contract for back office services from Title Vest?

6 MR. TORMEY: Recently, no.

7 MR. DEAN: You moved into handling your own work?

8 MR. TORMEY: Adam has come up to speed and handles
9 everybody pretty much exclusively himself.

10 MR. DEAN: You lease space from Title Vest or have
11 your own location?

12 MR. TORMEY: Leases space from Title Vest.

13 MR. DEAN: For either of you does Title Vest
14 perform any type of marketing or services for you? No?

15 MR. TORMEY: Not for State Street, no.

16 You said any marketing?

17 MR. DEAN: For State Street.

18 MR. TORMEY: No. Title Vest does not perform
19 marketing for State Street, no.

20 MR. DEAN: Did they refer any business to you?

21 MR. TORMEY: Can you define what you mean by refer?

22 MR. DEAN: Does any of your business come from
23 Title Vest in any way?

24 MR. TORMEY: No. The transaction that State Street
25 handles in New York are not -- does not tend to involve Title

1 Vest.

2 MR. DEAN: Not people who are sent to you by Title
3 Vest or anything like that? I'm struggling with this
4 because you asked for clarification before and I want to make
5 sure there is no category of business that I'm missing.

6 MR. TORMEY: I don't believe so.

7 MR. DEAN: Mr. Forsyth, there's no marketing, no
8 assistance that comes from Title Vest?

9 MR. FORSYTH: No.

10 MR. DEAN: Do they refer any clients to you?

11 MR. FORSYTH: No.

12 MS. BUXBAUM: Thank you very much. We appreciate
13 your time and your answers and that concludes the second
14 panel.

15 (A recess was taken.)

16 MS. BUXBAUM: We will begin our third panel of our
17 experts.

18 If you can raise your right hand. Do you solemnly
19 swear or affirm that the testimony you are about to give will
20 be the truth, the whole truth and nothing but the truth?

21 MR. BIRNBAUM: Yes.

22 MR. HUNTER: Yes.

23 MS. BUXBAUM: Mr. Hunter?

24 MR. HUNTER: I appreciate the invitation to appear
25 before you, Mrs. Buxbaum, Ms. Lees, Mr. Dean.

1 My name is John Robert Hunter, director of insurance
2 for Consumer Federation of America. I am the former
3 insurance administrator under Presidents Ford and Carter and
4 former Texas insurance commissioner and actuary.

5 I assume the written testimony, which is quite
6 detailed, will be in the record. In 2012 consumers paid
7 almost \$11 billion in premiums for title insurance in the
8 nation and \$819 million in New York. Though opaque to
9 consumers, title insurance is a very big business with
10 premiums exceeding most property and cash insurance lines,
11 including med mal, earthquakes, products liability,
12 commercial, auto and physical damage and several other lines.
13 Title insurance is one of the most costly items at the
14 closing of a real estate transaction yet consumers poorly
15 understand it.

16 Title insurance assures the lender and buyer that a
17 person selling the property actually has clear title. Title
18 insurance thus facilitates homeownership by mitigating the
19 risks related to transfer of ownership.

20 There are two types of title insurance policies that
21 are purchased. Frequently and almost always the lender's
22 title insurance policy is paid for by the borrower though
23 required by the lender. The \$11 billion in title insurance
24 premiums paid by the consumers in the United States in 2012
25 was roughly 32 percent less than what they paid for it in

1 2000 but over twice what they paid for it in 1995.

2 The ups and downs of title insurance premiums are
3 driven by decreases and increases in the number of
4 transactions, home sales and mortgage refinances and the
5 fluctuations in home values and mortgage amounts. Title
6 insurance premiums are based on the amount of the sales price
7 or mortgage loan. As home prices soared before 2008, title
8 insurance premiums jumped solely because of the increase in
9 home prices rather than legitimate increases in the cost of
10 providing services. As the financial crisis struck and sales
11 of homes and values declined, premiums fell back both in New
12 York and the nation.

13 The title insurance industry is highly concentrated
14 with only four insurance groups controlling 87 percent of the
15 market in the nation. Between 2009 and 2013 the number of
16 title insurance firms fell in half from 88 to 44. Nationally
17 the Department of Justice concentration index places the
18 title insurance market in the nation as a highly concentrated
19 2158 HHI. In New York the top four companies have an even
20 greater market share, 91 percent with an even higher, more
21 concentrated, non-competitive HHI of 2250.

22 Numerous studies over the past 30 years have
23 documented inefficiencies in the title insurance market and
24 how they harmed consumers through higher prices. Examples
25 include U.S. Department of Justice in 1977, HUD report in

1 1980, Texas Department of Insurance report in 1986 and the
2 GIO report in 2007, which I'll discuss more later. These and
3 other studies have documented that the fundamental market
4 problem with title insurance is reversed competition.

5 Reversed competition refers to a market structure in
6 which the seller of a product markets the product to an
7 intermediary and instead to the ultimate purchaser of the
8 product.

9 In the case of title insurance, title insurance
10 markets their products to real estate professionals, such as
11 attorneys and others, who, because of their position in the
12 real estate transaction, are able to steer the consumer who
13 is actually paying for the product to a particular title
14 agent or title insurer with bigger kickbacks. The ultimate
15 consumer has little or no market power in the title insurance
16 transaction because title insurance is required for obtaining
17 the loan, demand is elastic, and because the consumer who
18 infrequently purchases real estate has little knowledge of
19 title insurance and no time to shop. The entities with the
20 market power and title insurance are the people who are able
21 to steer consumers to particular insurers and agents.

22 The competition among title agents and title
23 insurance for the business of the real estate professionals
24 causes title insurance premiums to increase as title agents
25 and insurers spend money and provide various considerations

1 to the referrers of title business. The provision of
2 consideration for real estate professionals by title agents
3 and insurers take both legal and illegal forms.

4 The Real Estate Somers Procedure Act in 1974 was
5 intended to limit this reverse competition by prohibiting
6 kickbacks and referral fees and outlining requirements for
7 acceptable business arrangements between settlement agents
8 and other parties. Reverse competition is still possible,
9 however, through the negotiation of the premium retained by
10 settlement agents by affiliated business agreements and in
11 other ways.

12 Another impediment to competition is the rating
13 bureau, the organization that develops rates and systems for
14 title insurers. In New York that organization is TIRSA.
15 Some have argued as a 2012 HUD study put it that "A," quote,
16 "Rating Bureau is a cartel that keeps title insurance higher
17 than they are in the states that don't use them."

18 Reverse competition makes low price competition
19 useless. The CEO of Title One, Inc. low cost title insurance
20 insurer put it this way. "We would have to raise our fees to
21 be competitive." The CEO explained he was not competitive
22 because our rates are too low, not giving room for kickbacks.

23 In a major review of title insurance GAO confirms
24 these concerns about competition in the market in 2007
25 listing several factors raising questions about the existence

1 of price competition and the result in price paid by
2 consumers within the title insurance industry, including
3 consumers, finding it difficult to shop and, therefore, put
4 little pressure on insurers and agents to compete on price.
5 Title agents do not market to consumers who pay for the
6 insurance but for those in position to steer consumers to the
7 agents.

8 As property insurance values alone increase, the
9 title insurance increases faster than the costs increase and
10 in fact the GAO found in states where agents search and
11 examination services are not included in the premium paid by
12 consumers, it is not clear that the additional amounts paid
13 to the agents are fully supported by the underlying costs.
14 The title insurance industry maintains it incurs significant
15 costs when offering title insurance policies but the majority
16 of the costs are not for losses or operating cost to generate
17 the insurance policy, but rather most of the premium is split
18 with the title agent who receives as much as 90 percent, in
19 New York approximately 85 percent of the premium dollars.

20 According to a major study done by HUD, pricing for
21 title insurance are excessive indications that title
22 insurance charges are greater than the competitive level,
23 include positive correlation with property values although
24 the cost of searches, the major cost involved does not vary
25 with price. High total service profits, high market

1 concentration, borrowers in minority neighborhoods paying
2 more, charges taking loan and borrower characteristics into
3 account for the lowest cost state, North Carolina, to the
4 highest, which includes New York being more than \$1,000 and
5 the costs do not support that difference. Title charges are
6 higher when fees are paid to lenders, brokers and real estate
7 agents. When those other fees are high, title charges go up,
8 also controlling for all relative loan and borrower
9 characteristics. The same borrowers are being charged
10 above-average fees for multiple components in their closing
11 costs.

12 An example of excessive prices not seen in the rate
13 of the market of New York competitive in the usual way is the
14 data derived that you sent me to analyze that you collected
15 on expenses. The extent of improper expenses being passed
16 through for items such as golf outings, sporting events, MSG
17 suites, as I learned today men's party places, the aggregate
18 amount of the improper expenses for title insurance
19 underwriters during the 2008 to 2012 period was a whopping
20 \$79.6 million, which represents 6.3 percent of the premiums
21 collected by the insurers during that time. The aggregate of
22 improper expenses which was collected from a sampling of
23 title insurance agents during three years showed a 4.8
24 percent of premiums collected being spent on these expenses,
25 so you're talking well over 10 percent, around 11 percent of

1 the premium being used for these parties.

2 On top of that the expenses for title insurance and
3 title agents are inflated because of considerations provided
4 to the referrers, which may include money or a variety of
5 free services, such as printing and distributing marketing
6 materials for the agents.

7 The loss ratio for the title insurance industry for
8 a lot of reasons are among the lowest in the insurance
9 industry. That ratio measures the amount the insurer pays in
10 claims relative to the amount it receives in premium.
11 Insurance industry data shows it paid out eight percent of
12 premium dollars in claims nationally in 2012 and 5.4 percent
13 in New York. This compares to about 75 percent for auto and
14 home insurers. New York is the 16th lowest in payout premium
15 ratio in the nation.

16 Another sign that rates are part of this low payout
17 ratio is surely due to the ultra high prices paid by the
18 state. New York State was one of the highest prices in the
19 study for a medium priced home, \$2,100, while in LA the cost
20 was about \$1,500 and Chicago \$1,000, less than half of what a
21 New Yorker pays.

22 Further exacerbating the problem, title insurance's
23 four primary underwriters typically control the rating
24 mechanism, particularly directly through rating boroughs and,
25 therefore, that is a problem. We price regulation and in a

1 reverse competition market as a prescription for excessively
2 high prices, reliance to protect consumers where reverse
3 competition dominates because the market is not responsive to
4 consumers, real and protective consumer protection is
5 required. Consumers don't have the power, the market power,
6 to discipline the market. Only those who have the power are
7 the referrers of business, and they have an incentive for
8 higher prices and not lower.

9 I would like to briefly comment on the written
10 testimony of TIRSA. TIRSA basically says that it collects
11 only the data the Department approves for it to collect and
12 that the data the Department seeks in this hearing are
13 unavailable. TIRSA admits it never audited the data since,
14 quote, TIRSA has never been requested to perform that. The
15 sharply limited data TIRSA produces, therefore, as the
16 Department's statistical agent are too limited and
17 unnecessarily suspect due to the lack of audit.

18 TIRSA's responses to the Department's questions one
19 through four are inadequate. The apparent lack of interest
20 in the important questions raised by the Department,
21 including the lack of any initiative to obtain the missing
22 information, is troubling. Rather than offering to assist
23 consumers in the difficult job of finding reasonably priced
24 title insurance, TIRSA offered what CFA believes is an
25 inaccurate characterization of how the market functions

1 saying title insurance buyers and their attorneys are
2 perfectly capable of choosing an underwriter and agent and
3 charge for various services and shopping for the most
4 reasonable deal.

5 In fact, consumers usually don't know that title
6 insurance is not a fixed cost and these costs must be dealt
7 with in the context of purchasing a home; the largest and
8 most complex financial transaction most households undertake.
9 Regulation is necessary to ensure homeowners are informed and
10 not overwhelmed by the unfamiliar landscape.

11 In order to set the stage, I believe the Rating
12 Bureau should be abolished, and advisory organizations too
13 suffer from a fatal flaw, they must produce a price for
14 advisory cost levels for the least effective member of the
15 insurance company to flourish. Thus the tendency is to jack
16 up the price even when they are only proposing loss costs.

17 So I believe that also you need a real independent
18 statistical agent, someone who will work with you hard to
19 find ways to find the answers to the serious questions you
20 have. Given the fact that the allocation of non-identifiable
21 expenses to New York represented 21 percent of the national
22 non-identifiable expenses, even though the New York title
23 insurance premiums were only nine percent of the national
24 data, it's very troublesome, alarming that TIRSA seems so
25 disinterested in finding out what is going on. I would seek

1 an independent vendor to collect and validate the data and
2 audit it and to be proactive in suggesting data calls and
3 status calls to the Department.

4 Just on one personal comment, I'm happy the
5 Department is taking a serious look at this line of
6 insurance. As a second line you should look at reverse
7 competition as a serious problem. Your work in the first
8 place is to be applauded. You have been a leader in the
9 nation in seeing movement toward a better outcome for
10 consumers. Thank you.

11 MS. BUXBAUM: Thank you, Mr. Hunter.

12 Mr. Birnbaum?

13 MR. BIRNBAUM: Good afternoon. Can you hear me
14 okay?

15 My name is Birny Birnbaum. I am the consulting
16 economist specializing in insurance rates and policy, and I
17 also serve as the executive director of the Center for
18 Economic Justice, which is a non-profit consumer
19 organization. I've studied title insurance market rates and
20 data collection for over 20 years and have worked for and
21 consulted with a number of state insurance departments on
22 title insurance rates, data collection and regulation.

23 Mr. Hunter has described the reverse competitive
24 market, the structure of title insurance markets and impact
25 of reverse competition on title premium and fees for related

1 services paid by consumers, so I won't repeat a lot of that.

2 I will say that reverse competition is not simply
3 marketing to intermediaries. It's the considerations to
4 intermediaries to obtain business referrals. The cost of
5 such considerations drives up the price of the title
6 insurance. In a reverse competitive market there is no price
7 competition for consumers who actually pay the premium.
8 Rather the competition for the referrals drives up the price.
9 That's why it's called reverse competition.

10 So a couple of points. No study or analysis of
11 title insurance markets not funded by the title insurance
12 industry has failed to find reverse competition in title
13 insurance markets. No study or analysis not funded by the
14 title insurance industry has failed to find that reverse
15 competition in title insurance markets inflates the amounts
16 paid by consumers for title insurance and related services.

17 In both Mr. Hunter's testimony and in my report to
18 the California Insurance Commissioner I cite numerous studies
19 that document that, including my own study in California. So
20 I'm going to cite from a book called "The Regulatory
21 Economics of Title Insurance" which was written by Dr. Nelson
22 Lipschitz. Nelson is a long-time consultant and advocate for
23 the title insurance industry. He consults exclusively for
24 the title insurance industry, but even in his book he
25 identifies the problems that are the focus of this particular

1 hearing. Commercial bribery, he says, is prohibited for
2 several reasons, perhaps the most important is the general
3 societal belief that such tactics are unfair and immoral.
4 But from the IC perspective of economic theory, there is also
5 a sound economic reason to prohibit such activity. Bribery
6 distorts the flow of economic activity and leads to economic
7 inefficiencies.

8 Nelson also talks about the fact that in the case of
9 residential transactions, the ultimate purchasers of titles
10 generally depend on someone else to recommend the title
11 insurance. That someone else is a professional participant
12 in the real estate transaction and might be a real estate
13 broker, lender, lender's attorney, a buyer or seller's
14 attorney, or the real estate developer. In the title
15 insurance industry anyone with the ability to so direct the
16 placement of business is said to have control of the
17 business. We heard about that in the panel preceding us
18 where one of the questions was to an agent who talked about
19 having a real estate brokerage driven affiliated business
20 arrangement. Why would you have three title agencies on Long
21 Island, in Nassau County for example? Well, because we've
22 got realtors on the north shore that we want to deal with,
23 realtors in the middle and realtors on the south shore that
24 we want to focus on. So that's why we have affiliated
25 business arrangements in three separate agencies. I'll get

1 to why that contributes to the inefficiencies in the inflated
2 cost of title insurance in a little bit.

3 But Nelson goes on to say in order to derive some
4 economic benefit from being in a position to direct the
5 placement of title insurance, many business controllers have
6 open title agencies known in the tight industry as control
7 business agencies. Extreme cases have arisen in which the
8 insurer provides so much service to an agent at such low
9 prices that the agent is an agent in name only. Those
10 agreements are typically struck with business controllers
11 whose agency is inactive, is confined to and services only
12 the business they control. Such nominal agent has the sole
13 function of providing an order to the insurer which performs
14 all substantive work on examining the title and issues the
15 policy and pays the agent a commission net of a nominal
16 charge of service provided. Economically such a commission
17 is just a disguise referral fee or kickback. So that was
18 Nelson Lipschitz.

19 So there have been dozens, many dozens of examples
20 of referral fees paid by title insurance insurers and to home
21 builders, realtors, developers and attorneys for steering
22 consumers to particular title agents and title insurers.
23 These referral fees have taken a variety of forms and can
24 show up in statistical reports in a variety of expense
25 categories. I'm familiar with allocations that title

1 insurers use, attorney agent programs, to pay attorneys for
2 referrals as opposed to payment for title agent services by
3 paying commission to attorney agents but performing all the
4 title search examination and underwriting for those attorney
5 agents.

6 Recent experience in New Mexico provides further
7 evidence that in the absence of price competition of title
8 insurers -- and I cite this because I testified last month in
9 an industry wide rate hearing in New Mexico. Two years ago
10 the New Mexico legislature changed the law. New Mexico has a
11 promulgated rate like New York effectively does with the
12 Rating Bureau so in New Mexico the commissioner promulgates
13 the title insurance rate and every insurer had to charge
14 them. But two years ago the legislature said you can charge
15 less. We'll allow downward deviations and you can do that by
16 county. You can do it by any one of the 33 counties. And if
17 you don't like what you're doing, you can revert back to the
18 promulgated rate without approval by the insurance
19 commissioner. All you need to do is give 90 day's notice.

20 So in the two years since that happened, not one
21 downward deviation was filed. This was during a period in
22 which the actuary or the rate recommendation by the New
23 Mexico staff in that hearing a month ago was for a 9.6
24 percent rate reduction. So during a period where the staff
25 indicates that rates should be significantly lower, there

1 wasn't one company willing to compete on the basis of price.

2 So one of the key takeaways is because of reverse
3 competition in title insurance markets, the expense amounts
4 reported by title insurers and agents, regulatory financial
5 and statistical reports cannot be deemed reasonable expenses
6 to be included in title insurance rates. In fact, the
7 assumption must be the reported title insurance expenses
8 significantly exceed the reasonable cost of producing and
9 administering a title insurance policy.

10 So that's significantly different from rate making
11 for, say, private passenger auto or homeowner's insurance
12 where companies report their expenses and the insurance
13 expense exhibit on the annual statement and rely upon those
14 reported expenses, take an average of that over the years and
15 add some sort of inflation factor to it with the presumption
16 while those -- we incurred those expenses and, therefore,
17 they're reasonable. Well, if there's a competitive market,
18 then perhaps you can make the argument that expenses that
19 were incurred were necessary and were reasonably incurred,
20 therefore, they're reasonable expenses, but you can't make
21 that assumption.

22 Not only can you not make that assumption, you can't
23 rely on reported expenses as even being the expenses for
24 those expense categories because there are no expense
25 categories in which anyone is going to fill in the amount for

1 a referral fee or kickback. They will call it a variety of
2 things. They might call it marketing or they might call it
3 rent, if they're going to rent space in a realtor's office in
4 order to provide the realtor that kickback or put that
5 expense in something called IT, if they're going to give away
6 software to a company. So simply asking companies to report
7 their expenses without an exhaustive audit is not going to
8 get you all the information you need to identify what
9 expenses were unreasonably incurred.

10 So that brings me to the recommendations. So the
11 first recommendation has to do with how do you align market
12 forces so that they benefit consumers? Right now the market
13 structure is such that it's not in the consumer's interest.
14 It's in the interest of the referrer of the business because
15 it's the referrer of the business, the realtor, home builder,
16 the attorney, whoever is in the position to refer that
17 business, they have the market power. They can command the
18 considerations.

19 So how do you get it so the person actually paying
20 for the title insurance has the market power? Well, the way
21 to do that is to require lenders to pay for the title
22 insurance and prohibit them from making a separate charge to
23 the borrower. So requiring the lender to pay for the title
24 insurance without permitting a separate charge, the lender
25 would then have to incorporate the cost of the title

1 insurance into its interest rate. And since lenders compete
2 on the basis of interest rates, then the lenders would be
3 looking for lower prices for title insurance and, of course,
4 they're in the position to actually force title insurers to
5 lower their prices. Now you've got people knowledgeable
6 about title insurance and are in the market more than once
7 every few years with the handful of companies that are
8 selling.

9 So that not only aligns market forces with the
10 interest of consumers, but the other thing it would do is it
11 would eliminate the situation where lenders can require any
12 type of endorsement they want, whether it's needed or not,
13 and simply pass that cost on to the borrower, because who
14 cares if you are the lender? Do you think, well, there
15 might be one in a million chance this event is going to occur
16 so we're going to require an endorsement for every single
17 home loan. Well, if they were paying for that, there would
18 be a different calculus. So the lender pays is clearly the
19 approach to change the market dynamic.

20 Short of a lender pays approach, then clearly more
21 efficient rate regulation is necessary. And the components
22 of a more efficient rate regulation would include a number of
23 things, but just to give you some highlight from my
24 experience around the country, states have attempted a
25 variety of approaches to title rate regulation with very

1 limited success at insuring the rates reflect the reasonable
2 cost of producing a title insurance policy. I told you
3 earlier why traditional actuarial analysis fails for title
4 insurance. Actuaries have few, if any, tools to address a
5 product which expenses comprise 95 percent of the premium,
6 and those expenses are unrelated to the cost of producing a
7 title insurance policy. New Mexico and Texas have attempted
8 to scrutinize title expenses by collecting detailed financial
9 and statistical data from title insurance insurers and agents
10 but the detailed data do not reveal unreasonable expenses
11 because there is no expense category for kickback and
12 referral fees. No agents or insurers would characterize
13 their expenses as such.

14 You heard it today. This isn't a kickback. This is
15 just face time. You know, this is just a way for us to keep
16 the business that we already have by maintaining those
17 personal relationships. That's not a kickback. Well, I
18 guess we'll differ on that characterization.

19 So, in summary, the regulatory model I'm trying to
20 identify and exclude unreasonable expenses from reported
21 expenses hasn't been successful at producing title insurance
22 rates that are not excessive. So my recommendation is that
23 the title rate regulation should take the form of actually
24 building the rate from the identification of the reasonable
25 cost of performing the key functions of title insurance;

1 search, examination, underwriting, policy administration and
2 claim settlement. The components of basic settlement are
3 clear and title impediments, escrow and closing.

4 So the fundamental approach to title regulation
5 should be for the Department to examine and audit title
6 insurers and agents to identify the specific activities
7 performed, the people skills and other resources required to
8 perform those activities, and the actual costs of performing
9 those core component activities of title insurance production
10 and settlement. Instead of the approach of starting with all
11 expenses and trying to eliminate unnecessary or unreasonable,
12 the approach should be quantitate the reasonable expenses by
13 examining and auditing the actual activity of title insurance
14 insurers.

15 Based on the conversation you had with the agents
16 today, you will not get a straight answer. You have to go in
17 and look at what they're doing.

18 In addition, the Department should require title
19 insurers to develop loss experience by type of title
20 insurance coverage. This means identifying losses with
21 particular title policy forms and endorsements. If you go to
22 title insurers and say you got this -- the extended coverage
23 policy that you charge 20 percent more, what's the loss
24 experience for that policy versus your basic policy? We
25 don't know. You charge X dollars for an endorsement. What

1 are the claims associated with that endorsement? We don't
2 know. What is the basis for that? Well, we think it's
3 reasonable. Well, in what world could that kind of
4 explanation possibly satisfy a statutory requirement rate not
5 being excessive? So there's clearly a need for data
6 collection but TIRSA is not the mechanism to do that.

7 So to the reasonable core expenses for these core
8 components of producing title and reasonable loss costs, you
9 should add a provision for marketing acquisition expense,
10 taxes, license fees and profit, but those would be normative.
11 In other words, you would say what would be a reasonable
12 provision for that outside of what you actually spend. Just
13 like you don't set a profit provision by saying in the last
14 five years we made beau coup amounts of profit, therefore,
15 that's what we're going to do in the future. You establish a
16 profit provision based on standards what is reasonable
17 profit. So the result of the analysis should be a maximum
18 charge for title insurance and settlement costs by policy
19 type, endorsement and geographic location and perhaps there
20 might be some other rating factors.

21 It's hard to imagine why a policy directly issued by
22 an underwriter, for example, should cost the same as a policy
23 that goes through an independent agent, given that in theory
24 the direct -- the direct business is because of some national
25 agreement that the underwriter has perhaps with a lender or

1 whatever but, again, if there should be a lower cost to that,
2 but the consumers don't benefit from it. If you have a
3 lender who pays, the consumer would benefit from such an
4 arrangement.

5 So once you establish the maximum rates, title
6 insurers should be permitted to file and use rates and charge
7 below the maximum established by the Department. So
8 companies like En Title Direct could try to engage in price
9 competition.

10 The Rating Bureau should clearly be abolished.
11 TIRSA should clearly be abolished since it serves no purpose
12 other than to facilitate cartel pricing by insurers with no
13 accountability to regulators and the public. The responses
14 that you got to your questions from TIRSA were ridiculous. I
15 mean, that those folks didn't start their letter by saying
16 we're hugely embarrassed to not be able to answer your
17 questions is astonishing to me. Data collection should be
18 performed by a statistical agent independent of the title
19 insurance industry and whose primary responsibility and
20 allegiance is to the Department. Your statistical agent,
21 your data collection, data collection should be at the
22 transaction level to enable the Department to effectively
23 monitor the market performance of insurers and agents.

24 You know, in basically every line of insurance and
25 every type of business, you see massive amounts of data being

1 collected and predictive analytics and data mining going on.
2 There is no reason for you guys not to be collecting on each
3 and every title insurance transaction. There's certainly
4 somebody collecting that data, whether the title agents
5 initially --

6 And, oh, by the way, I should start by I wanted to
7 let the folks on the panel before me know that there have
8 been some recent inventions that they might want to know
9 about. One is called the computer and the other is called
10 the internet. Some of these tools have been used, automated
11 some of the processes that in other states are used for title
12 insurance. For example, in a lot of states there are now
13 automated title searches. There is automated underwriting.
14 Some of the stuff happens over the internet. So I didn't
15 hear one of these people talk about any of the efficiencies
16 that happened over the last 20 years through automation,
17 through the internet, through computers and yet that has
18 happened.

19 When we look at other industries we see costs that
20 have dramatically dropped because of these types of
21 innovations and these new technologies. So abolishing TIRSA
22 and establishing an independent statistical agent collecting
23 data at the transaction level is important. By collecting
24 data at the transaction level you really could monitor what
25 is going on in the marketplace through data mining and it's

1 only through that kind of data collection that you could do
2 it without sitting in the insurance agent's office on a
3 regular basis or the titler's office on a regular basis.

4 Abolishing TIRSA is particularly critical now in
5 light of the sixth circuit court of Carter versus
6 Welles-Bowen, which the court rejected the Department of
7 Housing and Urban Development's criteria for sham affiliated
8 business arrangements. Basically what HUD had done, if
9 you're familiar with this, they had a ten-point set of
10 criteria. It said you have to have an office, you have to
11 have staff, well, and other things. Basically it says, look,
12 this can't just be a paper transaction, can't be a sham
13 affiliated business or anything.

14 Well, the court basically threw that out and said
15 you got a license, you know, the only revenue you're getting
16 is the profit from the affiliated business arrangement, your
17 license, that's good enough for us.

18 So in light of that decision, it's going to make it
19 much more difficult for the Consumer Financial Protection
20 Bureau, which has taken over enforcement of RESPA from HUD
21 and for states to stop these sham affiliated business
22 arrangements, the purpose of which is simply to pay a
23 consideration for referrers of business as profit from the
24 affiliated business arrangement.

25 So when a lender pays market structure, there would

1 be no incentive for lenders to engage in these type of
2 affiliated business arrangements, unless they actually
3 lowered costs which benefited consumers, but in the current
4 reverse competitive market structure, as long as title rates
5 are inflated, the additional expense of creating and
6 maintaining an affiliated business arrangement are less than
7 the referral fees that can be earned with that enterprise.
8 So what happens is these affiliated business arrangements add
9 expenses to the overall industry expenses that are reported,
10 expenses which TIRSA reports simply as an expense of the
11 industry, but these are expenses which add no needed capacity
12 to the market.

13 Are those three agents needed in Nassau County?
14 Could one agent do exactly the same work as those three
15 agents? Do you need three sets of administrative expenses
16 in order to accomplish that? So the existence of TIRSA
17 creates not only another barrier to transparency for expenses
18 associated with these activities, but really creates a
19 barrier for you to really examine title insurance rates.

20 So I'll stop there and I'm happy to answer any more
21 of your questions.

22 MS. BUXBAUM: I think because of how late we've
23 gone, we are going to dispense with questions of the two of
24 you but we really appreciate your testimony and appreciate
25 the recommendations that you made to the Department. So

1 thank you everyone for being here and we are adjourned.

2 (TIME NOTED: 5:00 P.M.)

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CERTIFICATION

I, LINDA A. SCHILT, a Notary
Public in and for the State of New
York, do hereby certify:

THAT the foregoing is a true and
accurate transcript of my stenographic
notes.

IN WITNESS WHEREOF, I have
hereunto set my hand this 16th day
of December 2013.

LINDA A. SCHILT