

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

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|---------------------------|---|----------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. F-79-0042 |
| v. |) | |
| |) | Filed: March 2, 1979 |
| ALLEN COUNTY INDIANA BAR |) | |
| ASSOCIATION, INC., |) | Equitable Relief Sought |
| |) | |
| Defendant. |) | Judge Jeff E. Eschbach |

COMPLAINT

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act (15 U.S.C. §4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Sections 1 and 2 of said Act (15 U.S.C. §§1 and 2).

2. The defendant maintains its principal office, transacts business, and is found within the Northern District of Indiana.

II

THE DEFENDANT

3. The Allen County Indiana Bar Association, Inc. (hereinafter "ACBA") is made the defendant herein. ACBA is a voluntary professional association for attorneys practicing in Allen County, Indiana, and maintains its principal office in Fort Wayne, Indiana at 1904 Fort Wayne National Bank Building. Approximately 400 attorneys are currently members of ACBA.

III

CO-CONSPIRATORS

4. Various other persons, organizations, entities and corporations not made defendants herein have participated as co-conspirators with the defendant in the violation hereinafter alleged, and have performed acts and have made statements in furtherance thereof.

IV

TRADE AND COMMERCE

5. After a contract to purchase residential real property is signed, the state of the seller's title must be established to the satisfaction of both the buyer and the lender. In Allen County, Indiana, except in transactions involving loan guarantees under programs of the United States Veterans Administration or the Federal Housing Administration of the Department of Housing and Urban Development, title to residential real estate has been traditionally established or certified by an attorney who has written a title opinion based on an examination of a current abstract of title. An abstract of title is an instrument prepared by an abstract company from official county records, summarizing liens, encumbrances, conveyances and other pertinent facts about a particular parcel of real estate. The cost of preparing the abstract normally is paid by the seller, and the attorney's fee for examining the abstract normally is paid by the buyer.

6. Title to residential real estate in Allen County may also be guaranteed by a policy of title insurance issued by a title insurance company. Title insurance normally is issued after a title insurance company employee has examined county records to determine whether there are liens, encumbrances, conveyances or other matters affecting the property, and after any defect in the title that has been discovered has been

cured. Title insurance policies may protect the buyer of the property, the lender, or both.

7. In many parts of the country, and in most parts of Indiana outside Fort Wayne, lawyers' examinations of title abstracts have largely been superseded by title insurance as the predominant means of assuring against title defects in residential real estate transactions. Title insurance generally is less expensive and less time-consuming for the parties to the transaction than compiling and examining abstracts.

8. Many lawyers who are members of ACBA traditionally have derived substantial revenues from fees for the examination of abstracts of title. To the extent that title insurance is purchased in place of an abstract examination, the revenues and potential revenues of those lawyers are diminished. Conversely, to the extent that abstract examinations by lawyers are required or sought in place of title insurance, the revenues and potential revenues of those companies that issue title insurance, as well as that of their agents, are diminished.

9. At least three title insurance companies located outside the State of Indiana are engaged, through local agents, in the sale of title insurance in Fort Wayne. In 1978, more than \$150,000 in premiums was paid in Fort Wayne for title insurance from these companies, about half of which amount was sent to the companies' out-of-state offices, the other half having been retained by their local agents. In addition, there was a continuous flow of services, supplies, forms, title policies, applications and other communications between these out-of-state companies and their local agents in connection with the sale of title insurance. But for the activities of the defendants and

co-conspirators, as hereinafter alleged, it is probable that the out-of-state title insurance companies now selling title insurance in Fort Wayne would have obtained substantially more business, and that additional out-of-state title insurance companies would have solicited and obtained business, in Fort Wayne.

10. The unlawful activities of the defendant and co-conspirators, as hereinafter alleged, are within the flow of, and have a substantial effect on, the above-described interstate commerce in the sale of title insurance.

V

VIOLATIONS ALLEGED

11. Beginning in or about 1976, defendant and co-conspirators have been engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. §1, and have unlawfully combined and conspired to monopolize the aforesaid trade and commerce in violation of Section 2 of the Sherman Act, 15 U.S.C. §2. Said unlawful combinations and conspiracies are continuing and will continue unless the relief hereinafter prayed for is granted.

12. The aforesaid combinations and conspiracies have consisted of a continuing agreement among the defendant and its co-conspirators to restrain and prevent title insurance companies from competing with the defendant's members in the business of certifying title to residential real estate in Fort Wayne in transactions not involving federally guaranteed loans.

13. In furtherance of the aforesaid combinations and conspiracies, the defendant and co-conspirators have done those things which they have combined and conspired to do, including among other things:

- (a) Adopted, promoted and disseminated a resolution and a Statement of Principles intended to limit and restrict the sale of title insurance in lieu of abstract examinations;
- (b) Induced lending institutions not to lend money for the purchase of residential real estate except after examination by an attorney of an abstract of title;
- (c) Discouraged the public, real estate brokers and other attorneys from participating in residential real estate transactions without the examination by an attorney of an abstract of title.

VI

EFFECTS

14. The aforesaid combinations and conspiracies have had, and are continuing to have, the following effects, among others:

- (a) Title insurance companies have been limited, restricted and injured in their efforts to sell title insurance in the Allen County area;
- (b) Title insurance companies have been denied the opportunity to compete freely in the business of certifying or guaranteeing title to residential real estate in the Allen County area;
- (c) The cost to buyers of obtaining necessary certification of title to residential real estate has been maintained at artificially high levels;
- (d) Competition in the business of certifying or guaranteeing title to residential real estate in the Allen County area has been restrained; and
- (e) Purchasers have been deprived of the benefits of free and open competition in the market for title certification services in the Allen County area.

PRAYER

Wherefore, plaintiff prays:


1. That the alleged combination and conspiracies between the defendant and its co-conspirators be adjudged and declared to be unlawful in violation of both Sections 1 and 2 of the Sherman Act;

2. That the defendant, including its officers, directors, agents, employees, successors and assigns and all persons acting or claiming to act in its behalf, be perpetually enjoined and restrained from continuing or renewing the combinations and conspiracies alleged herein and from entering into any similar agreement or concert of action;

3. That the defendant be enjoined from adopting, promulgating, publishing, or seeking adherence to any resolution, statement of principle, rule, or standard, or any collective statement, that has the purpose or effect of discouraging the use or acceptance of title insurance to certify the lack of defects in title to residential real estate;

4. That the defendant be ordered to disseminate a copy of any order incorporating any of the aforementioned relief to its members, to all lending institutions in Allen County, and to any association or organization of real estate agents in Allen County, and to publish any such order in a newspaper of general circulation in Allen County; and

5. That the Court grant any other relief it deems appropriate.


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