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### Barnes v. District Court, In and For City and County of Denver

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FILED IN THE  
**SUPREME COURT**  
 NO. 79-SA-579 OF THE STATE OF COLORADO  
 IN THE SUPREME COURT JAN 24 1980  
 OF THE STATE OF COLORADO *David W. Bazin*

J. RICHARD BARNES, Commissioner	)	
of Insurance of the State of	)	
Colorado, et al.,	)	
	)	
Petitioners,	)	
	)	REPLY MEMORANDUM
vs.	)	OF LAWYERS TITLE
	)	INSURANCE CORPORATION
THE DISTRICT COURT FOR THE	)	
CITY AND COUNTY OF DENVER AND	)	
STATE OF COLORADO AND THE	)	
HONORABLE RAYMOND DEAN JONES,	)	
one of the judges thereof,	)	
LAWYERS TITLE INSURANCE	)	
COMPANY, et al.,	)	

On January 21, 1980, petitioners filed their memorandum in opposition to the response by Lawyers Title Insurance Corporation ("Lawyers Title") to this Court's order to show cause why the rule should not be made absolute in this case. Petitioner's memorandum was served by mail upon Lawyers Title and was not received until the afternoon of January 23, 1980. Because petitioners have raised for the first time, several contentions which grossly distort the record in this case, Lawyers Title respectfully submits this reply memorandum.

I.

PETITIONERS' HAVE MISREPRESENTED  
 THE NATURE OF THE DISTRICT COURT'S RULING.

The sole question before this Court is whether the district court had jurisdiction to review the actions of the Commissioner of Insurance which were the subject of the complaint below. In the district court, Lawyers Title argued that the Commissioner acted unlawfully when he allowed Transamerica to implement the "old rates" set forth in its December 12th filing. Judge Jones ruled that the Commissioner's actions were unlawful because the Transamerica

rates were allowed to become effective before interested parties, including respondent Lawyers Title, were given the opportunity to be heard. In so doing, the district court did not usurp the power of the Commissioner to make rate decision orders as claimed by petitioners, but only ruled that proposed rates could not be implemented prior to compliance with proper statutory procedures.

Thus, while the insurance statutes do provide remedies for persons aggrieved by the Commissioner's actions, in this case the Commissioner chose not to follow proper procedures, thereby rendering the remedies provided in the statutes totally inadequate and ineffective.

Moreover, petitioners have misrepresented the record when they assert that the plaintiffs below "presented no evidence as to any permanent loss in business" caused by the Commissioner's unlawful actions. (Petitioners Memorandum at 9.) In fact, such evidence--which was not disputed by petitioners during the district court hearing--can be found in paragraphs 21 and 22 of the verified complaint filed by Lawyers Title Insurance Corporation (separately verified on December 28, 1979, by Gilford H. Mayes, Jr.). Indeed, this Court has previously held that the inability to implement previously approved insurance rate increases constitutes irreparable injury. See National Automobile Underwriters Association v. District Court, 160 Colo. 467, 672, 418 P.2d 52, 55 (1966).

In the final analysis, petitioners have totally failed to establish that the district court did not have jurisdiction to stay the orders of the Insurance Commissioner.

## II

PETITIONERS APPEAR TO BE INTENTIONALLY MISLEADING THE COURT BY STATING THAT TRANSAMERICA DID NOT AUTHORIZE THE COLORADO TITLE INSURANCE RATING BUREAU TO MAKE RATE FILINGS ON TRANSAMERICA'S BEHALF.

Petitioners assert that Transamerica has not given the Rating Bureau written authorization to file rates on its behalf, as required by H.B. 1510. Petitioners know that this statement is false. On January 11 and 15, 1980, the Insurance Commissioner conducted hearings on the Transamerica filing; Ms. Sandra McCray, the attorney who signed petitioners' memorandum, attended those hearings and was present when witnesses for Transamerica testified that in 1971, Transamerica gave the Rating Bureau written authority to act for it in rate matters, and that there was no revocation of that authorization prior to December 12, 1979.

Moreover, at the December 28 hearing the district court was presented with a copy of a letter, written by Transamerica in 1971, authorizing the Rating Bureau to act on its behalf. Thus, there can be no doubt that the Rating Bureau was authorized to make and file rates on behalf of Transamerica, and that accordingly Transamerica was bound by the Rating Bureau rates which became effective on December 4.

## III

PETITIONERS' REPEATED REFERENCES TO ALLEGED PRICE FIXING ARE NOT ONLY IRRELEVANT, BUT FALSE AND MISLEADING.

The primary thrust of petitioners' memorandum is its suggestion that there is something anti-competitive about the efforts of Lawyers Title to enforce the only title insurance rate lawfully approved by the Commissioner and Insurance Board.

First of all, these accusations are clearly irrelevant to the sole question before the Board: Did the district court have jurisdiction to stay the order of the Insurance Commissioner?

Secondly, and perhaps more importantly, petitioners' accusations represent a deliberate distortion of the statutory framework regulating the title insurance industry, and an irrelevant but scurrilous attack upon Lawyers Title and the other members of the Rating Bureau. Joint filings by members of an insurance rating bureau are manifestly not price fixing. Such filings were and are explicitly authorized by statute, as petitioners well know and recognize. See C.R.S. § 10-4-405(4) (as amended by H.B. 1510). As petitioners themselves point out, the General Assembly recently revised the insurance statutes to eliminate rate regulation for certain kinds of insurance. With respect to title insurance, however, the General Assembly saw fit to continue the regulatory scheme. See C.R.S. § 10-4-401(3)(a)(V) (as amended by H.B. 1510). While petitioners may not like the regulatory scheme adopted by the General Assembly, they are obliged to enforce it. It is ironic at best, for the Commissioner and his attorneys to suggest that the efforts of the members of the Rating Bureau to follow the regulatory scheme, constitute price fixing. If price fixing it is, then it is price fixing permitted (if not required) by the insurance statutes.

Lawyers Title does not dispute that Transamerica is entitled to file and charge a separate title insurance rate. But such a rate can be implemented and charged only after compliance with statutory procedures. There is nothing anticompetitive about efforts to enforce the requirements of the insurance statutes. Lawyers Title can only assume that the scurrilous charges made by petitioners represent an effort to distract this Court from the primary issues involved in this case.

CONCLUSION

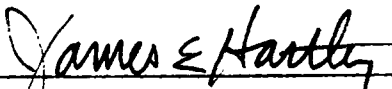
Respondent Lawyers Title Insurance Corporation respectfully submits that the district court did have jurisdiction to stay the December 27 Order entered by the Insurance Commissioner. Accordingly, the Petition in this case should be dismissed and the rule discharged.

DATED January 24, 1980.

Respectfully submitted,

HOLLAND & HART

By



Patrick M. Westfeldt #2682  
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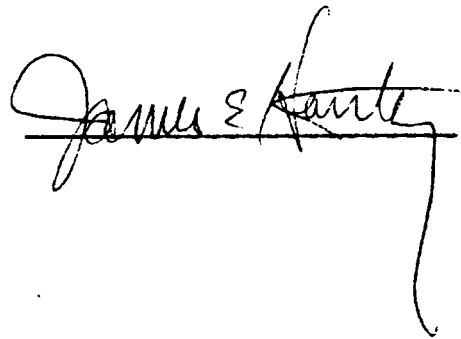
ATTORNEYS FOR RESPONDENT  
LAWYERS TITLE INSURANCE CORPORATION

CERTIFICATE OF SERVICE

This is to certify that the foregoing was served on the parties herein by hand delivering a copy thereof on this 24th day of January, 1980, and addressed as follows:

Sandra B. McCray, Esq.  
Assistant Attorney General  
Insurance Commissioner's Office  
201 East Colfax Avenue  
Denver, Colorado 80203

Gail E. Oppenneer, Esq.  
Suite 1700  
718 Seventeenth Street  
Denver, Colorado 80202

A handwritten signature in cursive script, appearing to read "James E. Harte", is written over a horizontal line. A long vertical line extends downwards from the end of the signature.