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February 1, 2012

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Mr. Brian Farr  
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Dear Mr. Farr:

Please consider this as an official complaint against the Title & Escrow Commission ("T&E" or "member(s)") for its actions in the matter of the Utah Department of Insurance ("Department") vs. LSI Title Agency of Utah, Inc. ("LSI"). While there are many egregious matters of misconduct by the T&E members, we are only addressing the persecution of LSI. We will address the other issues in another complaint unless the resolution of this matter accomplishes those objectives. This complaint is being filed simultaneously with Cherilyn Bradford, Boards and Commissions Director in the governor's office.

Jones Waldo ("Firm") has transcribed the minutes of the T&E meetings. The recordings are not studio quality. A single recording device does not capture voices from every part of a room. Also, because voices vary in volume there are inaudible and unintelligible sections, which will be noted or there will be a \_\_\_\_\_ indicating the recording was inaudible or unintelligible. You will see the speakers denoted as male, female and by first name. The T&E members are all male. A majority of the male comments are from the T&E members. A list of the T&E members are listed in EXHIBIT 1. All EXHIBIT line references below are to a specific transcription unless otherwise noted. The Department and the Firm have the complete audio recordings available should you require them.

In this matter the T&E as complainant, targeted LSI, identified the company by name, ignored the law, applied an imaginary statutory scheme, introduced unsupported allegations in public meetings and continuously discussed the

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allegations for months. For these reasons the T&E should be automatically disqualified to hear the LSI matter. As a consequence, it is an obvious conflict for the T&E to be in a position to concur or not to concur with the Department's recommendation or to impose a penalty. Further, the T&E expanded its authority and inserted itself in the investigative process. In so doing the T&E unduly influenced the Department.

As a result of the aforementioned, LSI is unable to have the merits of its case heard by an objective trier of fact; initially through a formal adjudicative proceeding, on agency review, or at the Court of Appeals. Regardless of the alternatives available to LSI, the matter always ends at the T&E for concurrence with the Department's recommendation and to impose the penalty. There does not appear to be an administrative remedy that is not tainted.

Unfortunately, the administrative remedy is the problem. It is unlikely that the legislature imagined situations like these would occur on a conflict of interest. First, as is the condition today, three of the four title agent members of the T&E are agents underwritten by the same title underwriter, First American, and would have to be automatically disqualified were an action taken against First American. Second, in the instant matter, the T&E members have created a situation through their publicly exhibited prejudices where they must be disqualified. This prevents a final resolution because the T&E, now disqualified, cannot vote to concur with the Department's recommendation or impose the recommended penalty.

The law, 31A-2-402-405 and Rule R-592-1 cannot serve the intended purpose because the T&E members expanded their authority, acted as the complainant, introduced imagined facts, considered outside information and therefore must be disqualified from any participation in the adjudication of the LSI matter.

The law as it has been applied denies LSI due process. The T&E members were the complainant, who purposely targeted LSI, openly displayed prejudice, applied an imaginary statutory scheme, inserted themselves into the investigative process thereby unduly influencing the Department, have rejected the agreed upon S&O three times, and then arbitrarily and capriciously increased the recommended penalty by over 400% "to send a message." LSI and other respondents similarly situated should not be the victim of an administrative conflict. Therefore, LSI

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requests the Civil Review Committee intervene and assist the Department in assuming its legal responsibility, to affirm that the Department has oversight and the final decision when there is an impasse or conflict of interest, and to clarify the proper role of the T&E.

We will demonstrate that LSI has been unfairly target by the T&E since August 2010. The T&E members were openly prejudiced against LSI and continually misrepresented the facts and the law to advance their own initiatives. Even when advised by its legal counsel that the T&E had limits on its authority, the T&E arbitrarily and capriciously increased the agreed upon forfeiture by over 400%, from \$6,000 to \$250,000 just to "send a message" and continued to demand more information. Then they sent a letter to Commissioner Gooch (the "Commissioner") to clarify the rejection as an instruction to the Department.

### **Introduction**

LSI is a Utah corporation with offices at 4001 South 700 East, Suite 500, Salt Lake City, Utah 84107. LSI was and is properly licensed to conduct the business of title insurance. LSI has always employed the required qualified employee, Tim Krueger, enabling it to issue title insurance products and provide escrow/closing services in Utah. LSI is a business unit of LSI Title Agency, a multi-state or national title and escrow agency. The title operation is a business unit of Lender Processing Services, Inc. ("LPS"), a public company listed on the New York Stock Exchange. LPS provides a full suite of products and services to mortgage lenders and servicers.

### **T&E Targets LSI- Background & Activity**

From the "approved" minutes we see the T&E initially targeted LSI in August 2010. Canyon Anderson of Backman Title ("Canyon" or "Anderson"), then a T&E member and Jerry Houghton of Tooele Title ("Jerry" or "Houghton") by alleging - falsely - that LSI's fees and rates were 50-70% lower than the market rates causing a lot of companies to go out of business or nearly go out of business, and questioning LSI's licensure, marketing brochure, use of notaries, and general business practices. Note, Canyon Anderson along with First American Title and others, are owners of Backman Title Agency.

We are not aware of any agency or individual that was ever subjected to this kind of highly-charged negative public exposure prior to an official investigation (or even

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while under investigation) by the Department. The T&E's conduct here was egregious. It initiated a trial in the court of public opinion in August 2010 although the Department did not begin its investigation until February 2011.

Please permit us to briefly explain the process. When allegations are made against an individual or an agency an investigation is opened and identified by an *icase* number. The *icase* number (not the name of the party), open date, statute and Rule citations of alleged violations, and the alleged violations are listed on the "Open Investigations Summary Report." This report is provided to the T&E monthly (EXHIBIT 2). No additional disclosure as to the party's identity is provided. When the investigation is complete and the allegations are determined not justified or have been substantiated, the *icase* is closed. The same limited information is provided to the T&E monthly on the "Closed Investigation Summary Report" (EXHIBIT 3).

If the allegations are substantiated, an enforcement case or *ecase* is opened. An *ecase* number is assigned and reported on the "Title Insurance Enforcement Report" to the T&E monthly (EXHIBIT 4). The entity being investigated is still not identified by name; only the *ecase* number is used to identify the entity. The T&E members are not entitled to know the name of the entity or the details of an ongoing investigation. This is a process that has been in place with the T&E since 2005.

No other agency or individual under investigation by the Department has ever been identified by name; nor was it ever an agenda item until the *icase* and *ecase* were complete and the T&E's concurrence was required. Why was there an exception made for LSI?

LSI was targeted because Canyon's company lost a large client (BofA/Recon Trust) to LSI. Based on information and belief, Canyon and the other owners were not willing to let the matter go unnoticed. Canyon used his influence as a member of a public body to advance a personal business agenda, to mislead other T&E members, the Department, and possibly the governor, and by so doing has breached his Oath of Office to discharge his duties of the office with fidelity (defined as "strict conformity to truth or fact") and caused the other members to breach their Oath of Office.

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These unfounded, malicious allegations set into motion a period of libelous writings and slanderous comments that continue to this day. From November 2010 through April 2011, LSI was singled out by name as an agenda item for the T&E meetings. Starting in November 2010 listed under New Business was the agenda item titled "Licensing of LSI." Then from December 2010 through April 2011 under Old Business, LSI was an agenda item, "Update on LSI." The T&E Agendas and Minutes were published, handed out at the meetings, and available to everyone on the Department's website. Just to have your company's name mentioned in this context was damaging to LSI and needlessly incited the local agency owners.

#### **The August 2010 meeting**

From the onset of this persecution, the T&E sees LSI as the problem and Canyon stated "I haven't even got started on that" (EXHIBIT 5, lines 30-32, August 9, 2010). Jerry sees it as a "huge" problem (EXHIBIT 5, lines 375-76, August 9, 2010). Jerry alleged locally owned companies are indirectly being driven out of business or close to being driven out of business by LSI (EXHIBIT 5, lines 361-62, August 9, 2010). The T&E recognized that there are "multiple" companies with the same business model as LSI competing with the locally owned agencies. The T&E ignored the other local agencies owned by out of state entities and fixated on LSI because LSI was the most aggressive (EXHIBIT 5, lines 391-92, August 9, 2010).

It was determined that LSI was properly licensed in Utah (EXHIBIT 5, lines 216-220, August 9, 2010). The T&E was intent on stopping LSI and the Utah agencies owned by out of state entities from competing (EXHIBIT 5, lines 93-95, August 9, 2010). After it had already been determined that LSI was properly licensed a member questioned if LSI is licensed (EXHIBIT 5, line 226, August 9, 2010). A few minutes later Canyon misrepresented that LSI was not licensed and commented that the T&E was "anxious to hear the results of the investigation" (EXHIBIT 5, lines 351-59, August 9, 2010). Jerry further comments on the significant premium dollars and thinks LSI is doing it "illegally" (EXHIBIT 5, lines 362-63, August 9, 2010). The T&E acknowledges that multi-state agencies are not new to Utah and this activity has gone on for years but ignored it because business was good (EXHIBIT 5, lines 187-90, August 9, 2010). A member comments LSI will write \$30 million in premium revenue in 2010 and commenting that it is "\$30 million away from all of you (local agents)" (EXHIBIT 5, lines 224-25, August 9, 2010). The incendiary comments are inexcusable. They are all assumed to be true.

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**The November 2010 meeting**

In the November 2010 meeting, comments were made that LSI will write \$20 million in premium (EXHIBIT 6, lines 138-39, November 15, 2010); Garry Goodsell ("Garry" or "Goodsell") alleged that LSI would write ed \$10 million in Washington County alone (EXHIBIT 6, lines 160-61, November 15, 2010). Here, these comments are made with no factual basis and only serve to incite the T&E members, the public and injure LSI's reputation.

Because these comments are so outrageous, please permit me to address them now. When the first meeting was held in August 9, 2010, the title underwriters had not yet filed the second quarter filings for 2010. Thus, there were no facts to support this statement, nor is there a reported breakdown by county. The statement was extremely inflammatory because if \$30 million in premium were actually written through locally owned title agencies, the agents would have earned \$25,500,000. If you were a locally owned agency trying to protect your business and heard and/or read that an unlicensed entity extracted \$25,500,000 in commissions from your market, you would be outraged!

To demonstrate the gross inaccuracy of this statement, let's assume Garry meant 2009. In 2009 if LSI wrote Chicago Title's entire unaffiliated premium, which it did not, the total premium generated in 2009 was \$4,930,475. Even when you add Fidelity's \$15,525,396 (LSI's other underwriter), the total would be \$20,455,871 for 2009 (EXHIBIT 7). Garry was off by almost one-third or \$9,544,129. I reiterate this example is only if LSI wrote all of the unaffiliated business for both Chicago and Fidelity, and LSI did not. Garry and the other T&E members believed without any basis that LSI wrote \$30 million in premium but what is worse they made these statements so that others in the industry would believe it too.

In the November 15, 2010 meeting, LSI is a named as an agenda item; New Business, "Licensing of LSI." LSI was never notified of this inquiry. T&E member Garry questioned LSI's licensing status and if it was authorized to issue policies (EXHIBIT 6, lines 7-10, November 15, 2010). Garry further commented that LSI was "extremely active in the counties we are involved with" (EXHIBIT 6, lines 21-22, November 15, 2010) and noted the "urgency" for the Department to do something (EXHIBIT 6, lines 24-26, November 15, 2010). He inquired as to how and when they

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(LSI) are going to be contacted by the Department (EXHIBIT 6, lines 21-22, November 15, 2010). Canyon commented that LSI is a serious threat (EXHIBIT 6, lines 155-57, November 15, 2010). All of this because a Utah agency owned by an out of state entity, and not represented on the T&E, is competing with the agencies owned by local residents in a free market economy.

Another example of the T&E members ignoring the law and advancing its prejudicial persecution is when the Department's investigator Tammy Greening ("Tammy" or "Greening") commented on the use of notaries. Tammy advised the T&E that the statutes do not require that a closing has to be conducted in the state (EXHIBIT 6, lines 102-3, November 15, 2010). Tammy further commented that the use of notaries is not prohibited in Utah even though it may be the general course of business in Utah for the transaction to be closed by a Utah resident. Tammy then explained that under existing practice, a Utah resident reviews the documents (EXHIBIT 6, lines 102-109, November 15, 2010). The notary issue still lingers despite the Firm's unchallenged May 2011 legal opinion noting there was no statutory authority to support the T&E's theory on the notary issue. There have been a few requests made by the members seeking an answer from Perri and the Department, but no answers on legal issues were provided until the January 12, 2012 meeting.

#### **The December 2010 meeting**

In the December 2010 meeting under the "Update on LSI," Cort Ashton ("Cort" or "Ashton") inquired if there was an investigation in process, and Tammy advised Cort that there is "no" investigation in process (EXHIBIT 8, lines 5-10, December 13, 2010). No other comment was made at this time regarding the investigation. A member later makes inquiry "our motion to investigate LSI and their rates and take them serious will that be done?" (EXHIBIT 8, lines 341-42, December 13, 2010).

An example of the bias against LSI was displayed during this agenda item discussion, Cort introduced the "most recent egregious example that has happened to us." He described the conduct of another agency as "so rampant and so blatant" - yet he never identifies the entity, which he is concerned about, by name (EXHIBIT 8, lines 11-12, 24, 27-30, December 13, 2010). Here, the T&E followed the correct protocol, whereas with LSI, they ignored the rules because they had developed a prejudicial

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approach to a unified prosecutorial stance and nothing would derail the persecution of LSI.

**The T&E is not pleased with the Department**

The T&E went on to question the time frames for complaints to be acted upon by the Department, specifically if there is a shortened time frame for a complaint from the T&E or another agency (EXHIBIT 8, lines 274-78, December 13, 2010). Then the T&E inquired why its complaints are not "being made a priority" (EXHIBIT 8, lines 294-320, December 13, 2010). Priority was discussed again later when Jerry asked "would it be easier for us to prioritize it" (EXHIBIT 8, lines 439, December 13, 2010). Here the T&E appears to transform from its role of concurrence and having the ability to objectively hear a matter to the role of accuser and prosecutor (EXHIBIT 8, lines 295-99, December 13, 2010). This prosecutorial role appears to be the preferred role for the members. They decided that the T&E would hear the LSI matter, commenting "that's not one that we wanted to . . .turn over to the Department" (EXHIBIT 8, lines 240-45, December 13, 2010).

There was an ongoing discussion on underwriter rates from lines 366-407 when a member inquired "is LSI licensed for Utah?" This issue was discussed and settled in the August and November meetings. See above. Regardless, the T&E pressed forward in an argumentative tone with the Department's staff and others (EXHIBIT 8, lines 408-30, December 13, 2010). In this discussion the members displayed an absolute lack of understanding regarding the licensure of an agency and a title insurance underwriter. This is not the first time this confusion has been exhibited (EXHIBIT 8, lines 415-22, December 13, 2010).

Then again, the baseless incendiary comments were made as to the amount of business LSI will write in Utah - this time \$29 million and \$28 million were stated (EXHIBIT 8, lines 324-27, December 13, 2010). Please see my response above.

At this point in time, the T&E members were obviously not satisfied with the Department's handling of the LSI matter; based on information and belief we assert that certain members went to Governor Herbert to complain. However, the T&E members did not visit the governor as a commission; the group included Canyon's employees, First American employees, Tom Hatch, former state senator and past president of the Utah Land Title Association ("ULTA"), ULTA representatives, and

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others. If such an approach was made, it would appear to be outside the required investigative protocol.

### **The Department's investigation**

On February 22, 2011 the Department notified LSI of its investigation; we are lead to believe, not at its own discretion or on its own initiative but because the investigation was driven by the T&E and other external influences. Jones Waldo was retained in March 2011. There were no complaints from consumers or other title agencies disclosed by the Department. Every effort was extended by LSI to cooperate with the Department on the investigation. The undersigned and a senior level executive visited with the Commissioner in July to discuss the investigation and further offered to assist the Commissioner with justifying of underwriter rates. An agreement was reached and a Stipulation & Order ("S&O") was executed on October 27, 2011 (EXHIBIT 17).

### **The First Rejection in the November 2011 meeting**

In the November 14, 2011 T&E meeting the T&E rejected the S&O requesting additional information. On November 15, 2011 the Firm emailed the Department objecting to the request from the T&E. The email communication included a portion of the transcript of the meeting (EXHIBIT 9). (Please note: "Mark" is Mark Kleinfeld, the Administrative Law Judge for the Department.) The line references in the email refer to the abbreviated section of the attached transcript. The complete transcript for November is in EXHIBIT 6.

The T&E's rejection was driven by the T&E's desire to support a conclusion they reached 15 months prior, in August 2010, when the T&E filed the complaint against LSI. The T&E needed facts to support its predetermined conclusion. It appears the T&E did not approve of the investigation because it did not find the facts they had assumed. In EXHIBIT 9, lines 46-49 Cort stated "I would IMAGINE (emphasis added) there were multiple people signing PRs ... commitments... escrow settlement statements." Here, even if the T&E were the trier of fact, they need facts. The objective trier of facts is not entitled to consider imagined facts. The T&E only has the facts offered by the Department. Then, admittedly, without any knowledge of the facts, he commented "it doesn't seem appropriate" (EXHIBIT 9, lines 66). Without question, the T&E is biased against LSI.

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On December 5, 2011 both LSI and the Department's assistant attorney general-enforcement counsel, Gale Lemmon ("Lemmon"), wrote letters (LSI, EXHIBIT 10; Lemmon, EXHIBIT 11)("Letters") to the T&E requesting the T&E follow the law and rule. Lemmon specifically noted that the T&E lacked authority to ask for more of information or to participate in the investigation and requested that it concur with the Department's S&O.

**The Second Rejection in the December 2011 meeting**

In the December 13, 2011 T&E meeting the T&E rejected the S&O for the second time. Cort began the discussion acknowledging receipt of the Letters and asked if anyone had a comment (EXHIBIT 12 lines 8-10, December 13, 2011). The T&E's counsel, assistant attorney general Perri Babalis ("Perri" or "Babalis") was handed the Letters after the discussion had commenced. It appears she was not included in the earlier distribution and thus would not be in a position to properly advise the T&E.

Cort ignored Lemmon's letter and continued to probe into the investigation (EXHIBIT 12 lines 11-31, December 13, 2011). In the exchange between Tammy, Cort, Brett, and Jerry, it is obvious Cort and Jerry were convinced the T&E had the authority to challenge the Department and demand more information (EXHIBIT 12 lines 32-119, December 13, 2011). The undersigned was present, objected and restated that the T&E lacked the authority and again requested the T&E produce the statute it believes supports its position (EXHIBIT 12, lines 126-169, December 13, 2011). Then Cort stated they would ask its counsel what they "can and can't do." (EXHIBIT 12, lines 170-71, December 13, 2011).

During this time, Perri sat silent. She was never asked by the T&E to comment, nor did she offer a comment. Most surprising was the Department's silence. Not a word was offered by any of the Department's personnel to support or disclaim Lemmon's letter. Nor was Lemmon present. Brett inquired and clarified the question about the scope of the examination and commented "why didn't we do a full scope?" (EXHIBIT 12, lines 103-119, December 13, 2011). Brett also appeared to have ignored Lemmon's letter. He placed the Department in a position of answering to the T&E on a matter where the T&E has absolutely no authority: the investigation! Now the Department is less than co-equal in the relationship and adopted the T&E's

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application of the law, which is contradictory to the Department's enforcement counsel's opinion and obviously biased against LSI.

**LSI objects and asks the Department to be disqualified**

On December 20 at 2:25 p.m., the Firm hand-delivered a letter to the Commissioner objecting to the T&E's action. (EXHIBIT 13). The letter requested the matter be dismissed because of the obvious bias by the T&E and the Department. In addition, LSI advised it was awaiting a legal opinion from Perri and requested the Department disqualify itself from this matter and all future matters relating to LSI and Tim Krueger because of its bias.

In the late afternoon on December 20 the undersigned received a call from Suzette Green-Wright, Director Market Conduct ("Suzette" or "Green-Wright"), requesting additional information. The undersigned advised Suzette that a letter had been delivered earlier that afternoon to the Commissioner and advised her LSI was awaiting a legal opinion from Perri. On December 21 we received an email from the Department (EXHIBIT 14) requesting additional information, the same information the T&E requested. The mere request is an additional basis for LSI's objection.

**The Third Rejection in the January 9, 2012 meeting**

In the January 9, 2012 T&E meeting the T&E received legal advice from Perri in the Executive Session. In the open meeting Perri advised the T&E and the public attendees that the T&E could accept the Commissioner's penalty or impose its own penalty but the T&E must accept the S&O as written; they could not ask for additional information. (EXHIBIT 15, lines 13-22, January, 9, 2012). Cort was outraged.

Cort and Larry (speaking for the T&E) and I engaged in a 19 minute discussion. Cort and Larry reiterated all of the same issues - the T&E is frustrated with the Department, unlicensed activity is mentioned 12 times, the number of transactions is mentioned, the need for the T&E to have additional facts is mentioned 5 times. The T&E again ignored my continuous request to please identify the law that supports its theory (EXHIBIT 15, lines 89-96, 146-151, January, 9, 2012).

Then the T&E vocalized the T&E's frustration with the Department and Perri (EXHIBIT 15, lines 132-35, January, 9, 2012) and its prejudice against LSI and other

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local agencies owned by out of state entities. The T&E imposed a \$250,000 forfeiture, and in the next breath Cort acknowledged that “my number is just a message,” guessing what could or should have been, thinking it should be more and sending a message are mentioned 9 times in this 19 minute discussion (EXHIBIT 15, lines 25-85, January, 9, 2012).

At the conclusion of the meeting, in a discussion with Brett, the undersigned clasified the proceeding as a witch-hunt. Brett stated he could see the T&E’s point. He did not comment that he was familiar with the facts, the law, or that he had reviewed the investigative file, nor that he had any knowledge of the matter beyond the five T&E meetings he attended. He was not receptive to our comments, the facts or the law. Rather his comments parroted the comments of the T&E members. He was less than objective, and plainly prejudiced against LSI.

**Meeting with the Commissioner to resolve the issue**

On January 13 Randon Wilson and the undersigned met with Commissioner Gooch, Brett, and assistant attorney general Bryce Pettey to discuss the matter and try to come to a resolution. The Commissioner assured us LSI would not be blindsided and they would work with us on a resolution. We discussed the fact that the administrative remedies placed LSI in a circular position; always ending in front of the T&E for concurrence unless the matter was dismissed. We offered to discuss the facts and our opinions relative to the T&E’s prejudice. He refused to discuss the issues. We also informed him that LSI was not going to waive its constitutional challenges. Brett again commented that he could see the T&E’s position and refused an offer to discuss his understanding of the law that supports the T&E’s position on licensure and fines.

On January 19 the undersigned met with the Commissioner and advised him that LSI would be filing this complaint. We again requested he take a look at the evidence and the transcripts. He said he would not, because it was “an open matter”. He commented that he was inclined to impose a penalty based on the number of policies issued that were not signed by a licensed individual. When the undersigned asked for a citation to the law that supported that theory, he declined to provide one. We believe there is no such requirement and no law or rule has ever been cited.

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LSI has cooperated completely with the Department and has only discussed the matter with Tammy and Lemmon. At no time did LSI ever attempt to influence or circumvent the process. During this same time, T&E members have advanced positions contrary to the law to the Commissioner and Brett on these issues. Why else would the Commissioner support a theory without a firm basis in the law? Any hint of prejudice requires the Commissioner and his staff to disqualify themselves from this matter.

#### **Additional activity**

On January 23 the undersigned received a copy of the letter the T&E sent to Commissioner Gooch wherein the T&E admitted that the penalty it imposed "may be excessive, but imposes this penalty as a message." Further the T&E "hopes the imposition of this penalty will instruct the Commissioner that additional facts are desired before the Commission can impose a proper penalty" (EXHIBIT 16). Also, on January 23 & 24 at the ULTA conference, the T&E members were not reserved about sharing their thoughts and the letter with the attendees, unduly inciting agents against LSI and the Department and further tarnishing LSI's good name.

#### **Discussion**

The T&E has continually expanded its authority and usurped some of the authority from the Department. Because the law creates a co-equal situation, the party most willing to exercise a push to expand authority normally is successful. That is the case here. The Department has been painted into a corner and tainted by the activity of the T&E.

The result, from a procedural standpoint, is a standoff in which T&E arrogates to itself the right to hold the Commissioner at bay based on unfounded suppositions and outright misstatements of fact, with LSI powerless to bring the matter to closure. In addition to constitutional questions inherent in T&E's entire statutory structure (arising from the dormant commerce clause and the privileges and immunities clause), this stalemate works a deprivation of fundamental due process.

In 2004, the Utah Supreme Court handed down the decision of *Chen v. Stewart*, 2004 UT 82, 100 P.3d 1177. Therein, the Supreme Court stated the following:

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Constitutional issues, including questions regarding due process, are questions of law that we review for correctness. [Citations omitted.] Due process, however, "is not a technical conception with a fixed content unrelated to time, place, and circumstances." [citing Dairy Product Services, Inc. v. City of Wellsville, 2000 UT 81, ¶ 49, 13 P.3d 581]. "The requirements of due process depend upon the specific context in which they are applied." V-1 Oil Company v. Dept. of Environmental Quality, 939 P.2d 1192, 1996 (Utah 1997).

2004 UT 82 at ¶ 25. The court then observed that "although the exact requirements of due process may vary from situation to situation, the minimum requirements of due process include adequate notice and an opportunity to be heard in a meaningful manner." Id. at ¶ 68. See also *In re Worthen*, 926 P.2d 853 (Utah 1996) ("due process is flexible and calls for procedural protections that the given situation demands . . . at a minimum, timely and adequate notice and an opportunity to be heard in a meaningful way are at the very heart of procedural fairness" – 926 P.2d at 877).

In R592-1-4 *Licensing* the T&E "grants preliminary concurrence to the issuance of a license ... subject to final concurrence; however in R592-2-5-7 *Imposition of Penalties* there is no preliminary granting of concurrence subject to final concurrence. The Commissioner has the non-delegable duty to investigate and determine the penalty, also see 31A-2-404(2)(g)(ii). The T&E has no authority to participate in any investigation or direct the Department.

Unfortunately, with the imposition of a penalty, the law and rule are circular. When there is an impasse, there is no statutory relief. The only resolution is for the Commissioner to dismiss the matter or come to a resolution absent the need to impose a penalty.

Not unlike other insurance lines (i.e. health, life, home and auto) the insurance industry professionals and the public are not always pleased with the results of the Department's efforts and investigative work. However, the title industry has been granted two extraordinary privileges; first, through an annual assessment, the title industry funds an investigative employee at the Department. The industry has high expectations for the employee's performance to monitor and reform the conduct of

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the agents. Second, because these expectations were not met, the T&E was created to exercise more control over title investigations than the Department. You are witnessing the result of the systemic flaw in the creation of the T&E; it is an absolute conflict of interest anytime you would be subject to a competitor sitting in judgment of another competitor and self-serving individuals self-policing an industry. The LSI matter is representative of the title industry's abuse of these extraordinary privileges.

The four title agent members of the T&E are sophisticated title insurance professionals. They are to be held to a very high ethical standard and are expected to understand and apply the law. Individually and collectively these members have breached the public trust. They should be removed from the T&E for this egregious conduct against LSI and the overreaching of authority to attempt to control the Department on title issues. In the alternative, at least they should be publicly admonished. The prejudice they displayed and the abuse of authority is inexcusable.

### **Conclusion**

T&E members illegally expanded their authority, the T&E was the complainant, targeted LSI, identified the company by name, ignored the law, applied an imaginary statutory scheme, introduced unsupported allegations in public meetings, and unduly influenced the Department. As a consequence, it is an obvious conflict for the T&E to be in a position to concur or not concur with the Department's recommendation or impose a penalty in the LSI matter.

LSI requests the Civil Review Committee intervene and assist the Department in ending the co-equal situation with the T&E and the circular process denying LSI and other respondents an objective adjudication when a conflict arises. Anything less will send a chilling message to members of the title industry that the Department cannot stand by its agreements because the agreements are subject to the approval of the T&E, their competitors. Should this occur, very few, if any agencies or individuals will negotiate a S&O with the Department.

Mr. Brian Farr  
Assistant Attorney General  
February 1, 2012  
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Justice and equity dictate the Department dismiss this matter to remove LSI from the discord between the T&E and the Department and ensure that LSI will not be subjected to prejudicial and unpredictable enforcement of the law in the future.

Respectfully submitted,

JONES WALDO HOLBROOK & McDONOUGH PC

A handwritten signature in cursive script that reads "Richard Peter Stevens".

Richard Peter Stevens

RPS:rm  
Exhibits Attached

cc. Commissioner Gooch w/attachments  
Utah Insurance Department