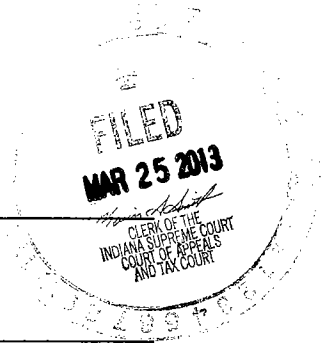
IN THE SUPREME COURT OF INDIANA



Case No. _____

STEPHEN W. ROBERTSON, INSURANCE COMMISSIONER OF THE STATE OF INDIANA, in his official capacity only and not in his individual capacity, on behalf of the INDIANA DEPARTMENT OF INSURANCE, Appellant (Respondent Below), v. TICOR TITLE INSURANCE COMPANY OF FLORIDA, now known as Chicago Title Insurance Company, successor by merger, Appellee (Petitioner Below).	On Petition to Transfer from the Indiana Court of Appeals No. 49 A02-1110-PL-971 Appeal from Final Judgment of Marion Superior Court No. 49D10-1010-PL-043363 The Honorable David Dreyer, Judge

AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Karl L. Mulvaney, #9255-49
Margaret M. Christensen, #27061-49
BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower, 10 West Market St.
Indianapolis, IN 46204-4900
(317) 635-8900
(317) 236-9907 Fax
kmulvaney@bgdlegal.com
mchristensen@bgdlegal.com

Attorneys for *Amicus Curiae*,
National Association of Insurance Commissioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

I.
IDENTITY AND INTEREST OF AMICUS CURIAE

A. THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ("NAIC")

The NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. The NAIC members and NAIC's centralized resources form the national system of state-based insurance regulation in the U.S.

The NAIC's purpose is to provide its members with a national forum enabling them to work cooperatively on regulatory matters that transcend the boundaries of their own jurisdictions. Collectively, the state insurance commissioners work to develop model legislation, rules, regulations, white papers and actuarial guidelines that promote and establish uniform regulatory policy. Their overriding objectives are consumer protection and maintenance of the insurance industry's financial stability.

The NAIC performs numerous crucial services on behalf of state governments including: developing and publishing model laws, regulations, bulletins, financial and accounting standards, white papers, consumer guides, handbooks, periodicals and the *Proceedings of the NAIC*. Hundreds of state and federal laws assign duties to the NAIC and incorporate NAIC standards, models and other publications. In addition, the NAIC

manages and coordinates the accreditation review of insurance departments as well as maintains regulatory and financial databases of insurance company financial data.

B. INTEREST OF THE NAIC

The interest of the NAIC in this case arises from each member's interest in protecting the consumers of their states. The NAIC has a strong interest in ensuring insurance regulators retain the necessary discretion to enforce applicable laws and regulations through administrative decisions and to ensure consumers are treated fairly. The NAIC members understand the interests of insurance consumers and work daily to protect those interests.

Individually and collectively, the NAIC members and the state agencies over which they preside have a wealth of experience in the regulation of insurance. Regulators have unique knowledge and expertise concerning the regulation of the insurance industry and their expertise should be given the deference it deserves. The Court of Appeals recognized the authority of the Indiana Department of Insurance (the "IDOI") as a state government agency and correctly applied the appropriate standard of review that calls for deference to the agency's interpretation and application of the laws and regulations the agency is charged with enforcing.

The NAIC also has an interest in promoting the uniformity of insurance laws and regulations among the states. Indiana's Unfair Competition and Unfair or Deceptive Acts and Practices, I.C. §§ 27-4-1-1 to 27-4-1-18 is based on the NAIC's Unfair Trade Practices Model Act, which has been enacted by almost all NAIC members. The NAIC

seeks to uphold the Court of Appeals' decision as it supports the IDOI's authority and ability to conduct routine administrative proceedings in accordance with the NAIC Model Act. The NAIC members are uniquely qualified and situated to assist this Court by presenting the regulatory and public policy concerns involved in this case and to respond to the arguments raised by *amicus curiae*, the Indiana Land Title Association.

II.
STATEMENT OF FACTS

The NAIC as *amicus curiae* agrees with the Background and Prior Treatment of Issue on Transfer set forth in the Brief in Response to Petition to Transfer submitted by the IDOI and respectfully incorporates by reference the IDOI's supplement to Ticor's recitation.

III.
SUMMARY OF THE ARGUMENT

This Court should deny transfer because the Court of Appeals correctly applied the standard of review for challenges to the determinations of administrative agencies. As the Opinion concluded, the IDOI's application of Indiana law is reasonable and consistent with NAIC guidance on regulation of title insurance rates. Moreover, I.C. § 27-1-3.1-8 directs the IDOI to follow NAIC's guidelines in performing market conduct evaluations. Thus, the IDOI followed the directive of the General Assembly when it complied with NAIC's guidelines. The IDOI appropriately conducted a market conduct examination of Ticor where it suspected that Ticor was allowing its agents to charge excessive and discriminatory title insurance rates. As clearly set out in the IDOI's Reply Brief in Opposition to the *Amicus Curiae* Brief of the ILTA the market conduct

examination was not "rulemaking" as ILTA belatedly asserts. Moreover, ILTA's assertion that Hoosiers will lose jobs if transfer is denied is unsupported by any facts and thus amounts to unfounded speculation. The IDOI's decision was not based on a secret or novel standard, as argued by the Indiana Land Title Association ("ILTA"). Application of NAIC's guidelines, will protect Indiana consumers by ensuring reasonable, non-discriminatory insurance rates that are sufficient to support a stable insurance industry.

IV.
ARGUMENT

A. THE COMMISSIONER EXERCISED HIS DISCRETION IN ACCORDANCE WITH THE GOAL OF MAINTAINING A CONSISTENT NATIONAL SYSTEM OF STATE-BASED INSURANCE REGULATION

Insurance regulators are statutorily charged with protecting consumers in a number of ways: overseeing the solvency of insurance companies; licensing insurance companies and producers who solicit the purchase of insurance; reviewing and approving insurance products sold to consumers; and investigating and examining the market practices of insurance companies. *See, e.g.*, I.C. §§ 27-7-3-1 to 27-7-3-21; 27-1-22-2.5 to 27-1-22-4; 27-1-3.1-1 to 27-1-3.1-18 and 27-4-1-4 (2011). These statutes are merely a sample of the features of the comprehensive statutory framework in place nationwide to carry out the twin purposes of consumer protection and marketplace solvency.

The NAIC as *amicus curiae* fully supports the Insurance Commissioner's administrative discretion to interpret the statutes the Commissioner is charged with enforcing. The Commissioner reasonably exercised this discretion when reviewing the

market conduct examination report and issuing the corresponding Administrative Order. If this Court accepts transfer and vacates the Opinion of the Court of Appeals, it would call into question the Commissioner's discretion to identify and balance all relevant factors in determining whether rates are excessive, inadequate or unfairly discriminatory. It could potentially destabilize a key aspect of insurance regulation that touches upon many types of insurance beyond title insurance and have far reaching effects to all states and the industry as a whole.

Specifically regarding rate regulation of title insurance, six other states follow Indiana's system of not requiring title insurers to file premium rates for regulatory review. An additional 36 states require filing of title insurance premium rates, but these states generally deem the rates approved once specified time periods have passed. Only four states require affirmative approval of title insurance rates prior to use. NAIC, Compendium of State Laws on Insurance Topics II-PA-10-1 to 22 (2011). With limited review of title insurance rates before they are implemented with consumers, effective consumer protection hinges on regulatory oversight of insurer compliance in the marketplace. Oversight of insurer compliance with legal obligations and responsible business practices is known as market conduct regulation. Market conduct regulation consists of a number of oversight actions ranging from automated data analysis to market conduct examinations such as the one at issue in this case. Nationally, regulation of title insurance companies is heavily reliant on market conduct oversight such as that performed by the Commissioner to ensure that the system is functioning as intended. The Court should affirm the conclusion of the Court of Appeals that insurance regulators

should be afforded deference because they have the expertise to evaluate market practices and apply the law to the inherently complex and highly regulated business of insurance.

Courts nation-wide have long recognized and deferred to the discretion of the insurance commissioner to analyze and regulate insurance rates. *See Mass. Auto Rating Accident Prevention Bureau v. Comm'r of Ins.*, 453 N.E.2d 381, 385 (Mass. 1983) (courts give "due weight to the commissioner's experience, technical competence, and specialized knowledge as well as the discretionary authority vested in the commissioner by the Legislature"). *See also Ins. Services Office v. Whaland*, 378 A.2d 743, 746 (N.H. 1977) ("Due to its complexity . . . rate-making is left to the discretion of the insurance commissioner who is a specialist in the field and upon whose expertise we must rely.") Indiana follows the rule of deference and limited judicial review. *See* I.C. § 4-21.5-1-1, *et seq.*; *Lightpoint Impressions, Inc. v. Metro. Dev. Comm'n of Marion Co.*, 941 N.E.2d 1055, 1059 (Ind.Ct.App. 2010) ("Deference is to be given by the reviewing court to the expertise of the administrative body."). Here, based on the Commissioner's discretion and expertise, the Commissioner determined that Ticor's agents were not applying the contractual rates in accordance with I.C. § 27-4-1-4(a)(7)(C)(i). In the broader environment of the national system of state-based insurance regulation, casting doubt on the Commissioner's authority to interpret and apply insurance law and regulation will undermine the goals of a consistent regulatory scheme and consistent enforcement nationwide.

The IDOI has the experience and skill to properly interpret the Rate Statute and make determinations as to Ticor's compliance. The Commissioner's determinations are

aligned with the policy goals of insurance regulators nationwide and his considerable technical expertise should be afforded deference in accordance with the Legislature's grant of authority to the IDOI. This Court should deny transfer because the Court of Appeals correctly deferred to the Commissioner's discretion and reasoned analysis of information gathered from many sources in issuing the administrative action and penalty against Ticor.

B. THE COMMISSIONER ADHERED TO STATUTORILY ADOPTED NAIC GUIDELINES, NOT SECRET OR PREVIOUSLY UNKNOWN STANDARDS, IN CONDUCTING THIS MARKET CONDUCT EXAMINATION

The NAIC as *amicus curiae* is uniquely situated to assist this Court in understanding the potentially negative impact of endorsing the novel regulatory concepts offered by Ticor and *amicus curiae* ILTA. ILTA disregards the controlling procedure contained in NAIC's Market Regulation Handbook (the "Handbook") with respect to review of potentially excessive and/or unfairly discriminatory title insurance rates. As explained in the Court of Appeals' Opinion, the IDOI appropriately followed these guidelines. Slip Op. at 16. "[Indiana's] General Assembly has explicitly directed that when the IDOI conducts examinations, the commissioner shall 'consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC examiner's handbook.'" Slip Op. at 16 (citing I.C. § 27-1-3.1-8). The Commissioner's action of following NAIC's statutorily recognized guidelines should not be deemed rulemaking, as asserted by ILTA, because the

Commissioner was not inventing or applying a novel standard to its review of Ticor's title insurance rates. Overturning the Commissioner's decision would be an aberration from NAIC's guidelines and negatively impact the goal of uniform national enforcement.

1. Indiana's Governing Laws on Unfair Discrimination in Insurance Premium Rates are Consistent with NAIC's Model Laws and with Those of Its Partners in the National System of State-Based Insurance Regulation.

State laws prohibiting "unfair discrimination" in insurance premium rate making are found in state insurance laws nationwide as well as in I.C. § 27-4-1-4 (a)(7)(C)(i) (the "Rate Statute"), which explains that:

> Making or permitting ... [e]xcessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for . . . policies or contracts of . . . abstract and title insurance . . .

is an unfair method of competition and unfair and deceptive act and practice in the business of insurance.

This statute is based very closely on the model NAIC Unfair Trade Practices Act. Unfair Trade Practices Act, NAIC, Model Laws, Regulations and Guidelines, Vol. VI, p. 880 (2011). Section 4G(4) of the model act defines unfair discrimination in the area of accident and health insurance using nearly identical language to that of the Indiana provision quoted above:

> Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner.

This model act was first adopted by the NAIC in 1947. Section 4G(4) appeared in the original 1947 version of the model act with exactly the same wording as it provides today. Each state and district of the United States, along with the territories of Puerto Rico, Northern Mariana Islands and Virgin Islands, has adopted this model act or similar legislation. As publisher of the Model Acts, Regulations and Guidelines, the NAIC has concluded that Indiana's Unfair Methods of Competition and Unfair and Deceptive Acts and Practices Law is substantially similar to the model NAIC Unfair Trade Practices Act. NAIC, Model Laws, Regulations and Guidelines, p. ST-880-4 (2012). Thus, NAIC is well situated to assess the IDOI's interpretation of Indiana's Unfair Methods of Competition and Unfair and Deceptive Acts and Practices Law.

2. The IDOI's Application of Indiana Law is Consistent with Available Guidance in Place in the National System of State-Based Insurance Regulation.

State adoptions of the model NAIC Unfair Trade Practices Act form the backbone of market conduct regulation. As discussed above, Indiana's Unfair Methods of Competition and Unfair and Deceptive Acts and Practices Law is substantially similar to the model NAIC Unfair Trade Practices Act. Likewise, the Court should be aware that existing NAIC guidance sheds light on the Commissioner's actions in conducting a market conduct examination and issuing the administrative order at issue in this case. The Commissioner's actions were consistent with existing NAIC guidance.

The suggested procedures to be followed in market conduct examinations, as well as other methods of market regulation, are detailed in the NAIC's Market Regulation Handbook, a publication drafted and adopted by the NAIC membership.

Chapter 18 of the Handbook sets forth the standards, priorities, procedures and criteria for conducting market conduct examinations of title insurance companies and title insurance agents. This chapter includes standards applicable to examining the rating and underwriting practices of title insurance companies such as Ticor. The Handbook provides specific direction regarding the practices reviewed by the Commissioner's examiner:

> It is necessary to determine if the title insurance company is in compliance with rating systems which have been filed with and, in some cases, approved by, the various state insurance departments. **Where rates are not required to be filed with an applicable regulatory agency, it is prudent to determine if rates are being applied consistently and in accordance with the title insurance company's own rating methods.** In general, rates should not be unfairly discriminatory. Wide-scale application of incorrect rates by a title insurance company may raise financial solvency questions or be indicative of inadequate management oversight. **Deviation from established rating plans may also indicate that a title insurance company is engaged in unfair competitive practices.** Inconsistent application of rates, individual risk premium modifications, modification factors and deviations can result in unfair discrimination.

NAIC, Market Regulation Handbook 346 (2012) (emphasis added).

The NAIC as *amicus curiae* fully supports Appellant's argument that unfair discrimination should be defined by the statutory language prohibiting unjustified discrimination in premium rates charged to "persons of the same class involving essentially the same hazards." I.C. § 27-4-1-4(a)(7)(C)(i). The NAIC also urges the Court to observe that the indicators for unfair discrimination identified in the

Commissioner's order follow those identified in the Handbook. The Commissioner reasonably applied valid, carefully promulgated, and nationally supported criteria in reviewing the Appellee's business practices. The Commissioner, as the statutory insurance regulator charged with overseeing the market practices of insurance companies and trained to apply the applicable law to the facts determined through examination, properly exercised his discretion.

Additionally, as IDOI demonstrates in its Reply Brief to ILTA, ILTA's belated argument that IDOI's market conduct examination was rulemaking is simply without merit. (IDOI's Reply Brief, 5-12). IDOI's market conduct examination was a fact sensitive investigation about suspected excess and discriminatory title insurance charges by some of Ticor's agents. The decision finding a violation was applied retrospectively and not prospectively to a class of other insurers, as would be required for a finding of tacit rulemaking that ILTA seeks. Neither *Blinzinger v. American Helathcare Corp.*, 466 N.E.2d 1371, 1375 (Ind.Ct.App. 1984), nor any of the other cited cases supports ILTA's proposition that IDOI engaged in tacit rulemaking. (*Id.*).

3. ILTA's and Ticor's Suggestion of a Cost-Based Approach to Reviewing Title Insurance Rates Ignores the Cost-Based Origin of Ticor's Ratebook and the Regulatory Purpose of the Ratebook.

The strained "cost-based" rate regulation arguments of Ticor and *amicus curiae* ILTA are not only contradicted by NAIC guidance, they are fatally flawed in concept because they fail to take into account that title insurance premium rates are already cost-based for both the principal and agent. (Appellant's App. 127). The position that the IDOI should disregard the Ratebook premium and in each instance gather detailed

information and scrutinze the insurer's costs specific to each insured would render the Ratebook virtually meaningless. Each insurer has the opportunity to scrutinize its costs prospectively when setting the rates that its own agents are contractually obligated to follow.

Curiously absent from both Ticor's and ILTA's arguments is any explanation of the regulatory purpose of the Ratebook and the extent to which the Commissioner may rely on it in overseeing the practices of licensed entities. It is precisely by comparing the Ratebook premium to the insurance premium rates actually charged that the IDOI and other market regulation experts nationwide can evaluate insurer compliance and ensure that the insurance marketplace is functioning properly. The fact that Ticor's agents manipulated the insurance premium rate and settlement service charges does not compel the IDOI to apply a new and unique standard, such as "cost-based" rate regulation, to evaluate Ticor's compliance with applicable law. Chapter 18 of the Handbook does not require or recommend that an examiner collect any information regarding a title insurer's costs in determining the insurer's compliance with underwriting and rating statutes, rules and regulations. In describing the information examiners should request and consider, the Handbook provides:

> During an examination, it is necessary for examiners to review a number of information sources, including:
> • Rating manuals and rate cards;
> • Rate classifications;
> • Rating systems filed with regulators;
> • Policy fees;
> • Discounts;
> • Title insurance company automated rating systems;
> • Rating materials provided to title insurance agents;

- Underwriting guidelines;
- Applicable policy forms and endorsements;
- Title insurance agent compensation agreements, where applicable;
- Statistical reporting requirements; and
- Underwriting/closing/escrow files content and structure.

NAIC Market Regulation Handbook, Ch. 18, p. 347 (2011). With the Court's indulgence for this technical excerpt, the NAIC urges the Court to recognize that this instruction contradicts Ticor's assertion that "[t]he only way" to determine the reasonableness of premium charges is to examine an insurer's costs. In fact, none of this instruction suggests the examiner should gather information regarding the insurer's costs or retroactively evaluate the sufficiency of the insurer's premium rates in light of its costs.

Ticor's rates are, or should be, calculated to cover expected costs and allow it and its agents a reasonable profit. *Id.* Pursuant to its contract with Ticor, the independent agent in this case was entitled to 70% of the Ratebook premium. (Appellant's App. 23). No evidence was presented that either Homequest or the other two independent agents were not able to cover their costs and realize a profit by adhering to their contracts and retaining 70% of the Ticor Ratebook premium. Indeed, an agent could set his or her own fees for related settlement costs. Ticor's expert testified that "[t]o the extent that the agent does not find the premium sufficient to cover all of their expenses in Indiana, the agents can charge—can add a charge for these other services that they are performing." (Appellant's App. 667). Notably, the expert did not suggest including charges for other services as part of the insurance premium rate, as Ticor was found to have done.

The IDOI's interest is in regulating title insurance premiums, not the settlement costs charged by local agents. The Indiana Unfair Methods of Competition and Unfair

and Deceptive Acts and Practices Law focuses on the ***title insurance premium*** component of closing costs in directing that the ***premiums*** shall not be excessive or discriminatory. It is permissible for the agent to independently establish and impose charges for title searches and other settlement services. But it is not permissible for a title company to allow its agents to charge whatever the market will bear for title insurance coverage, exclusive of settlement services. Homequest's wide variance in title insurance premium rates was properly identified by the IDOI as a violation of the Indiana insurance code.

The proceedings at issue here involved a full hearing that afforded Ticor the opportunity to rebut the suggestion that its agent's rates that didn't conform to its own Ratebook were excessive. Presumably because Ticor had actually terminated its own attempts to monitor and control the rates charged by its agents (Appellant's App. 86, 88) and was unable to provide any reasonable explanation for the various rates charged by its agents, it, and now the ILTA, attack the propriety of the Commissioner's procedure in this enforcement proceeding. The IDOI's enforcement proceeding followed the NAIC recommendations, as directed by Indiana statute. As such, the Court of Appeals' opinion deferring to the Commissioner's discretion should be upheld.

The evidence is also clear that Ticor abdicated any responsibility to monitor title insurance rates its local agents were charging in Indiana because it turned off the computer program that would have reviewed the rates being charged. (Appellant's App. 86, 88). Ticor admitted that irrespective of the contract to charge Ticor Ratebook rates, it simply allowed the local agents to charge what the market would bear. (Appellant's App.

85). Allowing its agents to charge whatever they wanted to charge, to bundle charges in such a way that the rates for title insurance could not be ascertained, and to abdicate any responsibility for oversight is a clear violation of I.C. § 27-4-1-4(a)(7)(C)(i). The result, as outlined by the IDOI's Brief of Appellant, was that Homequest charged $95,000 more than the rates permitted by the Ratebook for the year 2007, and in many cases vastly exceeded the rates per $1000 of title insurance the other two local agents charged.[1] Because there was evidence to support the administrative decision that Ticor's rate charges were excessive and discriminatory, the Court of Appeals correctly upheld the Commissioner's decision.

4. Requiring the Commissioner to Adopt a New Standard for Reviewing Rates In Market Conduct Examinations Will Not Protect Indiana's Economy.

Contrary to the unsupported and hypothetical assertions in ILTA's *amicus* brief, the Commissioner's adherence to NAIC guidelines does not pose any threat to independent or comparatively small title insurance agencies. First, ILTA's concern that requiring each agent to follow an insurer's rate book will negatively affect competition is unfounded. Ticor's own contract with its agents requires those agents to charge the rates set forth in the Ratebook. (Appellant's App. 1103-04). It is inconsistent, at best, to argue that the market cannot support the rates in the Ratebook and that Indiana jobs will be lost as a result of the IDOI's actions in this case.

---

[1]IDOI's Brief of Appellant, sets out in greater detail the evidence supporting the Commissioner's determination that the rates charged by Homequest, which Ticor allowed to be charged, constituted a violation of I.C. § 27-4-1-4(a)(7)(C)(i). IDOI Appellant's Br. 58-61.

In any event, the IDOI does ***not*** regulate the amounts charged by title insurance agencies for related services, such as title searches. To the extent that an agent's commissions from title insurance premiums do not meet overhead costs, the agent can recuperate its costs and earn its profit from the charges it sets for other services. It puts Indiana consumers at risk to allow title insurance agents to artificially reduce their charges for title searches and other related work while hiking up the cost of title insurance premiums. As found by the Commissioner in this market conduct examination of Ticor, that practice makes it difficult, if not impossible, for a consumer (or regulatory body) to assess the premium they pay for title insurance separately from the cost of related services.

Moreover, the IDOI's compliance with the NAIC guidelines does not validate ILTA's concern that an insurer or agent would be unable to charge a larger premium where the policy risk is greater. While the NAIC guidelines suggest that "[d]eviation from established rating plans ***may also indicate*** that a title insurance company is engaged in unfair competitive practices," an insurer can rebut any presumption of unfair price discrimination or excessive rates. NAIC, Market Regulation Handbook 346 (2012) (emphasis added).

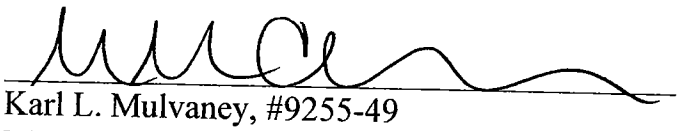
In the proceedings at issue here, Ticor had the opportunity at hearing to explain and justify the divergent rates charged by its agents. However, Ticor made no effort to justify the inconsistent rates and cannot support any claim that its rates were varied in order to address disparate risk among the policies issue by its agents. Neither NAIC's guidelines, nor the IDOI's application of those guidelines to Indiana law preclude an

insurer from providing a reasonable explanation for charging inconsistent rates for title insurance policies.

V.
CONCLUSION

For all of the foregoing reasons, the Court should deny transfer.

Respectfully submitted,

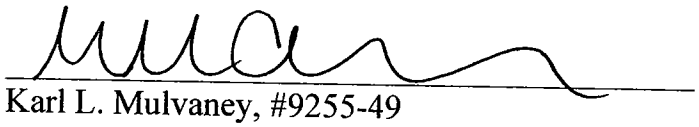


Karl L. Mulvaney, #9255-49
Margaret M. Christensen, #27061-49
BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower, 10 West Market St.
Indianapolis, IN 46204-4900
(317) 635-8900
(317) 236-9907 Fax
kmulvaney@bgdlegal.com
mchristensen@bgdlegal.com
Attorneys for *Amicus Curiae*,
National Association of Insurance Commissioners

WORD COUNT CERTIFICATE

The undersigned hereby certifies that the foregoing Amicus Brief in Support of Brief of Appellant complies with Indiana Appellate Rule 44 word limitation in that it contains 4,190 words, which does not exceed the 4,200 word limit.

Respectfully submitted,



Karl L. Mulvaney, #9255-49
Margaret M. Christensen, #27061-49
BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower, 10 West Market St.
Indianapolis, IN 46204-4900
(317) 635-8900
(317) 236-9907 Fax
kmulvaney@bgdlegal.com
mchristensen@bgdlegal.com
Attorneys for *Amicus Curiae*,
National Association of Insurance Commissioners

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served upon the following counsel of record by first class United States Mail, postage prepaid, this 25th day of March, 2013.

Wade D. Fulford
INDIANA DEPARTMENT OF INSURANCE
311 W. Washington Street, Suite 300
Indianapolis, IN 46204

Gregory F. Hahn
Bryan H. Babb
Kevin M. Quinn
Joel T. Nagle
BOSE MCKINNEY & EVANS LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

Thomas E. Wheeler
FROST BROWN TODD LLC
201 North Illinois Street, Suite 1900
P.O. Box 44961
Indianapolis, IN 46244

Todd L. Padnos
SHEPPARD MULLIN RICHTER
& HAMPTON, LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

David Steiner
Kate Shelby
Deputy Attorney General
OFFICE OF THE INDIANA ATTORNEY
GENERAL
Government Center South, 5th Floor
302 W. Washington Street
Indianapolis, IN 46204-4770

Jan M. Carroll
Sean P. Burke
BARNES & THORNBURG, LLP
11 South Meridian Street
Indianapolis, IN 46204

Karl L. Mulvaney, #9255-49
Margaret M. Christensen, #27061-49
BINGHAM GREENEBAUM DOLL LLP
2700 Market Tower, 10 West Market St.
Indianapolis, IN 46204-4900
(317) 635-8900
(317) 236-9907 Fax
kmulvaney@bgdlegal.com
mchristensen@bgdlegal.com
Attorneys for *Amicus Curiae*,
National Association of Insurance
Commissioners

14478243.5