

## State Banks, Insurance, and Freedom

By James Stivers

Late last year, our District Central Committee for the Republican Party finally got its chance to question one of our Idaho legislators from the district about last year's session. The issue of the midwifery bill came up and he was asked why he voted to restrict the freedoms of home births. The legislator still insisted that it was voluntary. He also said that it was necessary to pass its *mandatory* provisions (anyone getting confused yet?) because it was required for midwives to obtain malpractice insurance.

I will not mention the legislator's name because he is very popular (and powerful) in north Idaho and this whole episode was so embarrassing (the Committee knew better, but went along with the face-saving charade), he really is a good guy and a good legislator, but he just blew it on this one.

But we have heard this refrain before, haven't we? From seat belt laws to smoking laws, from building codes to the government control of home births, on and on it goes - we are told that new rules and regulations are necessary (the annual umpteen thousand pages of the Federal Register on top of state and local ordinances) for the health and safety of our fellow citizens: **"The insurance companies want it."** That becomes the final pontifical decree in any debate.

Every business in America and every product produced - and every step of production in the value added process - require a battery of lawyers, insurance policies, and accepted protocols should something go wrong. Its cost to economic production is staggering, encompassing between 30% to 50% of GNP. We don't know for sure. Many surgeons spend more on insurance and taxes than they take home.

We grumble and complain, but go along with it, thinking that this is all necessary. We want to be safe and responsible, don't we?

Sometimes, we look for scapegoats: trial lawyers, stupid juries, tort law, and so on. But a closer look at the insurance industry would be worthwhile.

Behind every insurance policy there is an *underwriter*: the person who represents the people who insure the insurance company. Your insurance premiums are not enough to cover the collective needs of the company. Insurance companies must invest your payments in the markets to get a higher rate of return sufficient to cover the claims filed in any given year. They usually invest in companies operating in foreign countries where workers are not insured or are under-insured or where there is no legal protection for the worker or consumer should something go wrong.

Regardless, the underwriter represents a conglomerate of investors who want to make a profit in the insurance industry. Back in the old days, men who were independently wealthy could be their own underwriters. For example, commerce over the high seas was

dangerous and risky. Investors in international trade usually were interested in insuring their cargo and the ship which brought it to their ports. Underwriters could make a lot of money, or they could lose everything.

However, few men are independently wealthy these days. Underwriters have become representatives of larger groups of investors in order to spread the risk.

These investors are usually institutional, like banks. And here is where the story gets interesting. Historically, banks have been the best institutions to underwrite insurance policies because they have the sovereign power to create money by a simple ledger entry. They have the power to spread the risk to everyone through the issuance of fiat money. But this connection with banking was banned a half century ago. The comments by a Mark W. Olson, a member of the Federal Reserve's Board of Governors, here becomes instructive. Speaking at the National Conference of Insurance Legislators (Hmm, this is interesting: What are "insurance legislators"?) on November 22, 2003 he said:

*The McCarran-Ferguson Act has long kept supervision of insurance **within the exclusive domain of the states**. For most of the past century, we--that is, the Federal Reserve and state insurance professionals--have traveled in completely different circles for practical reasons as well. The Federal Reserve has had very little to do with insurance issues because the banks and bank holding companies for which we are responsible have had little involvement in insurance. In fact, the federal legislation that charges the Federal Reserve with supervising bank holding companies--the Bank Holding Company Act of 1956--was enacted in large part **to prevent the affiliation of one of the largest banks in this country with a large insurance underwriter**. Congress went on to strengthen the separation of banking and insurance in 1982 with an amendment to that act generally prohibiting bank holding companies from engaging in insurance agency activities. At that point the insurance underwriting and sales activities of banking organizations were constrained to four limited categories: Banking organizations were permitted to underwrite and sell credit-related insurance; some state-chartered banks could engage in insurance sales under state law that either granted explicit permission or contained implicit authority for these activities; national banks could engage in insurance sales from small towns; **and a limited number of bank holding companies were grandfathered and thus were allowed to continue insurance activities that they had started prior to enactment of the 1982 amendment**.*

*The historic statutory separation of banking and insurance was altered in 1999 when the Congress enacted the Gramm-Leach-Bliley Act (GLB Act) and allowed well-managed and well-capitalized banks to affiliate with insurance underwriters and insurance agencies. That brings the Federal Reserve and state insurance professionals into the same circle.*

*To date, about 630 bank holding companies have chosen to become financial holding companies, the vehicle under the GLB Act through which bank, insurance,*

*and securities affiliations may take place. Of those, about 165 (more than 25 percent) use the new GLB Act authority to engage in insurance agency activities while only 26 (fewer than 5 percent) are engaged in underwriting insurance that is unrelated to credit. All of these companies must comply with state laws governing the sales and underwriting of insurance." Emphasis added*

(If you want to see the whole speech, follow this link:

<http://www.federalreserve.gov/boarddocs/speeches/2003/20031122/default.htm>).

Notice that insurance has long been left under the control of the sovereign states until 1999. But now, in a classic case of "the tail wagging the dog," sure, the banks "must comply with state laws governing the sales and underwriting of insurance," but it is the *banks which are dictating what laws* the respective states must pass. In other words, if states do not pass laws to their liking, they will simply stop insuring the various professions, industries, and commercial transactions which occur in the state. That's a pretty big club since only "a limited number of bank holding companies" have been "grandfathered" in. These banks have a virtual monopoly of the insurance industry, and hence, control the commerce in every state. That is why we have "insurance legislators" and now you know why you are losing your freedoms.

I would suggest that a state bank could break the monopoly these private banks have over underwriting in your respective state. The journey to regain our freedoms requires that we take another look at the relationship between banking, insurance, and state sovereignty.

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