ON MY MIND

"Remember the Maine… Amendment"

By

Michael D. White is Managing Director of Financial Institutions Insurance Association and President of Michael White Associates, Bank Insurance Consultants, Radnor, PA. MWA@BankInsurance.Com

Legendary Hollywood film-maker Frank Capra is best remembered for his portraits of common everyday folk who live righteously, work hard, show common decency, love liberty, stand by their principles and fight corruption when necessary. *It's a Wonderful Life*, *Mr. Smith Goes to Washington*, *Mr. Deeds Goes to Town*, and *Meet John Doe* readily come to mind when we recall his cinematic and thematic triumphs.

But perhaps Capra's greatest contribution to the spirit and defense of liberty was a series of films he made for the War Department during World War II. The U. S. government asked Capra to create instructional films that would make clear to American soldiers why they were fighting the forces of fascism and military imperialism.

Why We Fight!

Capra was initially daunted by this weighty responsibility, until he stumbled into a warehouse of captured enemy film. As he reviewed the film, he became convinced that the best way to accomplish his mission was to let Hitler, Mussolini and Tojo speak for themselves. The enemies' own words and documentary footage of their horrific deeds would explain to America's fighting men who and what their enemies were and the reasons they needed to be defeated unconditionally. And so was born a most stirring and convincing film series: *Why We Fight!* FDR found the films so powerful that he recommended they be shown in movie theaters across the country so all Americans would know *Why We Fight!*

The Maine amendment was designed to keep most financial institutions out of the annuity business and to limit the right and opportunity of independent agents to freely contract with them.

Capra's great insight was to let the opponents of liberty make the case against themselves in their own words and deeds before the jury of rational observers. He changed the form of the debate.

F/X2: The Deadly Art of Illusion

The bank insurance industry can learn a lesson from Frank Capra in the debate over bank insurance powers. We, too, can let the agent associations' own words and actions illuminate the truth behind their opposition to bank insurance.

While agent associations have generally been on the offensive against bank insurance powers, the system of traditional insurance agency distribution has deteriorated nationwide, and consumers have born the brunt of the associations' self-interest. Nowhere is the clash between this self-interest and the interests of consumers and bankers better seen than in the fight over annuity powers in Maine in the spring of 1993.

It Happened One Night

When the bank annuity bill came before Maine's state legislature, agent associations' arguments echoed the instructions of Casablanca's Prefect of Police: "Round up the usual suspects." But, in addition to their standard cast of unverifiable allegations about bank insurance activities, agent associations introduced an amendment to the bill that required independent agents who contract with banks as third-party marketers to surrender all non-annuity licenses. It further prohibited banks or credit unions from contracting for the sale of annuities with insurance agencies represented on their boards of directors.

The restrictive amendment was designed to make it so difficult for small banks and credit unions to sell annuities that it would no longer be worth their while to support the annuity bill as amended. Of what good was a bank annuity bill that basically barred smaller financial institutions from access to the pool of experienced, community-based, professional agents who could offer annuity products and services?

The Maine Insurance Agents' Council, one of several agent associations that backed this amendment, had at first tried to drive a wedge between large and small financial institutions. In its anti-LD-1051 flier, the Council had argued that the annuity bill "would favor larger banks and financial institutions over the smaller banks who could not afford a full-time annuities agent." When agent associations realized that many small financial institutions had no intention of hiring full-time annuity agents but would consider part-time arrangements with local independent agents interested in supplementing their income from their regular life insurance or property-casualty business, the Council and other associations changed their tactics.

Lethal Weapon

Since, on average, only 6 percent of an agent's first-year agent commission comes from annuity sales, few independent agents can make a living selling annuities alone. Therefore, agent associations devised the amendment to ensure the continuance of their monopoly privileges in the distribution of insurance products, requiring insurance agents who want to sell annuities through banks or credit unions to give up all their other licenses. Virtually no independent agent can afford to forsake his other lines of insurance business to sell annuities through financial institutions. Consequently, agents who hoped to sell in a free market and make insurance products more available to consumers were forced to knuckle under to the power of the traditional agency system. Legislators did the old-line agencies' bidding, insuring protectionist policies for their ailing system.

Agent associations use every tactic and play all the angles to maintain their traditional agency distribution privileges. They pit their opponents against each other, employing divide-and-conquer tactics to persuade smaller financial institutions of the "futility" of competing against "big banks." They devise amendments to effectively inhibit or punish agents who believe bank insurance distribution represents a free-market opportunity. They use legislators to amend proposals like the Maine bank annuity bill, turning it into a competitive disadvantage for smaller institutions. At the same time, they hypocritically decry the unfettered power of big banks to sell annuities.

If agents are so thoroughly opposed to bank insurance or annuity bills, why must agent associations use state legislatures to impose harmful restrictions and severe punishments on fellow agents who might choose to sell insurance in a banking environment?

Independent Agents Who Defect are In Harm's Way

Those of us who support free markets, competition, consumer choice and the advantages they bring to consumers and producers alike need to focus the Capra Camera on the Maine amendment and spotlight its purpose. It was designed to keep most financial institutions out of the annuity business and to limit the right and opportunity of independent agents to freely contract with them. One of the ways it accomplishes its purpose is by confiscating the insurance licenses of those agents who contract to sell annuities through banks. By promising to seize this essential property of any insurance agent and confiscate their future income and assets (i.e., their vested non-annuity commissions), the amendment forces agents to stay within the traditional agency system. It prevents them from competing freely, from utilizing a different forum for consumer contact to identify and meet recognizable insurance needs, and from surviving or thriving in their own profession. Bad public policy with no rational basis, this prohibition constitutes restraint of trade.

The second aspect of the Maine amendment that prohibits agent-bank directors from contracting to sell annuities in the bank on whose board they sit is another flagrant anti-free-market policy. No agent should be put at a competitive disadvantage just because that agent serves his or her community by sitting on a bank's board of directors. Bank directors are not forbidden to borrow money from a bank on whose board they sit. Likewise, if an annuity arrangement is appropriate, at arm's length and disclosed—as a director's bank loan would be—nothing should prohibit a licensed insurance agent from freedom to legally contract.

Moreover, the bank knows the local agent and considers him or her to be competent and trustworthy enough to sit on the bank's board. Who would prove better to sell annuities in a community bank than an agent-director who understands the bank's regulatory and compliance issues, business objectives, and customer needs?

Crime and Punishment

This discriminatory amendment was not offered out of concern for bank safety and soundness. It was designed to prevent independent agents from forging annuity selling agreements with banks. Agent associations were alarmed that a number of their members—and nonmembers—were eager to expand the insurance market and develop commission-sharing arrangements with banks and credit unions. Fearing their own membership, agent associations designed the amendment to punish any insurance agents who might undercut the monopoly distribution privileges the associations jealously protected. The amendment did not bar agents from serving on bank boards; it sought only to bar agents from developing a free-market relationship with banks.

Amendments like the one in Maine, which confiscate the insurance licenses of agents who sell annuities through financial institutions, use coercion to institute protectionist, anti-consumer policies. Their purpose is to make it financially unfeasible for agents to enter into annuity marketing agreements with banks. They are meant to prevent banks (especially small banks) from obtaining professional local expertise to successfully compete at selling annuities. Their ultimate goal is to maintain traditional agencies' monopoly control of insurance distribution.

Maine agents associations devised the amendment to ensure the continuance of their monopoly privileges in the distribution of insurance products, requiring insurance agents who want to sell annuities through banks or credit unions to give up all their other licenses.

The Enemy Within

The agent associations' tactics have been clever and effective. In Maine they have done much to protect the traditional insurance agency system at the expense of consumers, independent agents and free enterprise.

If lawmakers in other states are going to support Maine look-a-like legislation, they should be honest and stop calling insurance agents "independent." Under these circumstances, there's nothing "independent" about them. They are represented by trade associations whose "leaders" have arranged to punish them severely if they step out of line.

Bankers need to focus the camera lens on the coercive and punitive nature of Maine-like amendments.

Just ask legislators this question: "If agents are so thoroughly opposed to bank insurance or annuity bills, why must agent associations use state legislatures to impose harmful restrictions and severe punishments on fellow agents who might choose to sell insurance in a banking environment?" Intelligent legislators and those who enjoy a good Capra movie just might understand *Why We Fight!*

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How Well are Citizens of Maine Served by the Traditional Agency System?

Maine Households are Vastly Underinsured Compared to Most of the Nation

- With an average of $81,700 in life insurance coverage per household in 1991, Maine households have less insurance than those in 42 states and the District of Columbia
- Citizens of Maine need more life insurance, and they are not getting it.
- So, when the Maine Agents' Council writes in its flyer that "This act would unfairly put the consumers and over 1000 small business persons in Maine at a disadvantage," it perverts the truth. The traditional agency system does not adequately serve Maine insurance consumers.

…Yet Maine is Not a Particularly Poor State

- Maine households do not rank 43rd in life insurance coverage because their needs are less.
- Maine ranked 30th in per capita personal income in 1991, increasing its 1986 rating from 34th.
- From 1986 to 1991 period, the growth rate in Maine's per capita income exceeded that of the other New England states and that of the United States as a whole.

Fifteen Poorer States Have Higher Insurance Amounts Per Household than Maine

- However, Maine's growth rate in insurance coverage per household during 1986-1991 was exceeded by that of New England and the United States as a whole.
- Fifteen of the 21 states with lower per capita incomes than Maine have higher average amounts of insurance coverage per household.

Arguments that lower income or lower income-growth rates explain the low average amounts of insurance for Maine households do not hold water. Opening up the insurance marketplace to allow all insurance agents to sell insurance products through financial institutions would benefit consumers, independent insurance agents financial institutions, and the economy of Maine.

Sources:

- *1992 ACLI Life Insurance Factbook Update*
- U.S. Commerce Department's *Survey of Current Business* (April 1992)