ON MY MIND

Barnett II, The Sequel: The Old War Is Dead— Long Live the New War!

By

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Ronald Reagan had it right: "Trust, but verify." Sadly, most banks, insurance companies and securities firms have been sleeping the last nine months, dreaming of financial modernization and affiliations, secure in the insurance agent associations' proclaimed change of heart that "the old war between the insurance and banking industries is over." Meantime, agent associations have been awake, busily waging war in half the states' capitals.

Old war over? Not really. It's just the political game of semantics, of "spin." Call it "old" or call it "new," agent associations wage the same war against bank insurance as before. Their strategies and slogans are slightly different, but their tactics and objectives are the same. Fortunately, the Financial Institutions Insurance Association (FIIA) has remained on full alert and engaged.

"Is Life So Dear and Peace So Sweet?"

Last summer [1996], the FIIA warned that agent associations intended to mass-market restrictive proposals state-by-state in order to roll back or severely impair the ability of banks to serve their customers' insurance needs. Then, the FIIA armed state banking trade associations with copies of the agent associations' "model bill."

The FIIA promised it would "scrutinize efforts to enact parity powers for state banks following the *VALIC* and *Barnett* decisions," making sure that state laws and regulations not be used to hamper, prohibit or significantly interfere with national banks' Section 92 powers and the ability of state-chartered banks to compete.

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FIIA then filed its request with the Office of the Comptroller of the Currency (OCC) for a preemption review of the new Rhode Island law. That law, a 95 percent replica of version one of the agent associations' "model" bill, was proposed and managed into law by senior state legislator-insurance agents. These "lawmakers" proclaimed they acted in the interests of consumers, as they exchanged proposed language modifications in the bill on their agency fax-transmittal sheets. They unabashedly misused their political power to protect themselves and their colleagues from free-market competition. It is time for this sort of featherbedding to stop.

Beware the Trojan Horse

To those who believe the agent association spin that they "are not trying to roll back bank insurance powers," we urge examination of the Rhode Island law and agent association proposals in Illinois, New Mexico and Pennsylvania. They represent the kind of *de facto* national legislation the agent associations intend to achieve by implementing their "model bill" state by state. They continue to corral federal and state legislators. They continue to distort the facts, scare people and write "model legislation." Look out.

And, as we predicted following the U. S. Supreme Court's *Barnett* decision, agent associations continue to lobby state houses and insurance regulators to adopt legislation and regulations to hamper banks' abilities to sell insurance. They

have floated or introduced similar proposals in legislative or regulatory form in half the states in the Union.

Anti-Competitive Aims? Use Anti-Consumer Laws To Replace Anti-Affiliation Statutes

These gratuitous proposals are designed to establish pre-Barnett standards and maintain the agent associations' monopoly shelf life. With anti-affiliation statutes and their explicit anti-competitive purpose now outlawed, agent associations call their unwarranted, anti-competitive proposals "needed consumer protections." But they are not. They are instead "agent association protections" needed to protect their market position and privileges.

If unchecked at the state level, these monopoly-protection bills will seriously impair financial modernization and affiliations efforts at the federal level.

If the agent association monopoly-protection bills are passed into law or finalized as regulation, they will stymie bank entry into the insurance marketplace. In order to reopen the marketplace to banks and widen consumer access and choice, each enactment may require a court challenge and separate request for an OCC-preemption review, like that made by the FIIA in the case of Rhode Island.

If unchecked at the state level, these monopoly-protection bills will seriously impair financial modernization and affiliations efforts at the federal level. Bankers and insurers will have to lobby Congress for federal preemption of these new protectionist state laws, a task to be dreaded.

Agent associations will demand restrictions on incidental powers and revisions in Section 92 language, passed by a previous Congress, that authorize the Comptroller of the Currency to establish the regulations by which national banks conduct insurance agency activities. Already they demand (as in Section 5136A of Jim Leach's bill, H.R. 10) so-called "states' rights" and state supremacy in passing rules they disingenuously claim are only "consumer protections," but are really nothing more than anti-competitive measures designed to protect their oligopolistic market share. In the end, there may be no new federal law enabling modernization and affiliations because bankers and insurance executives will have allowed the agent associations to strip them, state-by-state, of their free-market insurance victories in the Barnett and VALIC cases.

The situation is critical in many states, largely because many financial institutions, insurance companies, securities firms and third-party marketers (TPMs) favorably disposed to the bank insurance market have not made their voices heard in a unified and forceful fashion. They haven't noticed or objected when agent association operatives have introduced negative legislative or regulatory proposals in states like Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, New Jersey, New Mexico, Ohio, Pennsylvania, Texas and West Virginia.

Curiously, these state-based legislative and regulatory proposals pose major threats to both bank insurance marketing and nonbank insurance marketing, since they possess serious defects in the following:

(1) Definitions of "financial institution"
(2) Restrictions on the sharing of customer information among financial institution-affiliates, insurers and TPMs
(3) Limitations on cross-marketing bank and insurance products (as well as securities)
(4) Proposals relating to possible consumer confusion (e.g., disclosures, physical setting and separation, prohibitions against the sale of insurance by bankers who take deposits or make loans, etc.)
(5) Restrictions on referral and compensation arrangements.

"Peace with Honour . . . Peace for Our Time"?

The agent associations are outstanding propagandists, but their rhetoric can no more be taken at face-value than could the words of the power-hungry, land-grabbing dictator, satirized by comedian Joe E. Brown, who claimed he was interested only in peace: "I do not vant var, I vant only peace. A piece of Poland, a piece of Czechoslovakia, a piece of Denmark . . .."

This sentiment describes a similar contrast between the words and deeds of the agent associations. Their representatives appear before various congresspersons, the Administration, the financial press, bankers and insurers, cooing that the war between agents and banks is over. Their claims have so disarmed trusting bankers and insurers that many have left the battlefield. Thinking they have finally gained peace and prosperity in their time, these trusting bankers and insurers have not noticed that the open marketplace they thought they had won is being reoccupied (and closed) by a smiling enemy.

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The agent associations "vant only a piece of Rhode Island, a piece of New Mexico, of Illinois, New Jersey, Pennsylvania . . .." They insist that they welcome affiliations among banking, insurance and securities firms and "would not encumber the banks with anything the agents are not

under." Then they introduce legislation in the states that would make it impossible for banks to provide convenient and competitive insurance services to banking customers.

Incredibly, like Britain's Prime Minister Neville Chamberlain in 1938, too many financial services executives trust the agent associations' claims and do not verify their actions. Agent rhetoric has lulled many banks and insurance companies to sleep.

Fortunately, some progressive companies and organizations were never disarmed and have continued to fight for unencumbered bank insurance powers, free markets and consumer freedom of choice. Committed veterans of FIIA are working with state bank trade associations, the Securities Industry Association (SIA), and others to staunch the continuous assaults on free markets, consumer access and bank insurance powers. More banks, insurers, securities firms and TPMs are joining with us in the FIIA-sponsored Coalition for Consumer Freedom of Choice to defeat these regressive proposals state-by-state and preserve consumer freedom of choice and access to an open market in insurance.

If you haven't yet stepped forward to defend your business and serve your industry, you should. Call FIIA headquarters to learn more about what you can do. Freedom of choice and ease of access for consumers and increased insurance sales and profits for banks, insurance companies and third-party marketers are free-market benefits worth fighting for.

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