Exhibit 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the Fiscal Year Ended December 31, 2007

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

COMMISSION FILE NO. 1-13990

LANDAMERICA FINANCIAL GROUP, INC.
(Exact name of registrant as specified in its charter)

Virginia (State or other jurisdiction of incorporation or organization)	**54-1589611** (I.R.S. Employer Identification No.)
5600 Cox Road **Glen Allen, Virginia** (Address of principal executive offices)	**23060** (Zip Code)

(804) 267-8000
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, no par value	**New York Stock Exchange**

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. **Yes** ☐ **No** ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. **Yes** ☐ **No** ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. **Yes** ☒ **No** ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒	Accelerated filer ☐
Non-accelerated filer ☐	Smaller reporting company ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). **Yes** ☐ **No** ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant, computed by reference to the closing sale price of the registrant's common stock as reported by the New York Stock Exchange on June 30, 2007, the last business day of the registrant's most recently completed second fiscal quarter, was approximately $1,584.6 million.

The number of shares of the registrant's common stock outstanding on February 22, 2008 was 15,351,550.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement to be made available to shareholders in connection with the 2008 Annual Meeting of Shareholders (to be filed) are incorporated by reference into Part III of this report.

LANDAMERICA FINANCIAL GROUP, INC.

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LANDAMERICA FINANCIAL GROUP, INC.

PART I

Forward-Looking and Cautionary Statements

This Annual Report on Form 10-K contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Among other things, these statements relate to our financial condition, results of operations and future business plans, operations, opportunities and prospects. In addition, we and our representatives may from time to time make written or oral forward-looking statements, including statements contained in other filings with the Securities and Exchange Commission and in our reports to shareholders. These forward-looking statements are generally identified by the use of words such as we "expect," "believe," "anticipate," "could," "should," "may," "plan," "will," "predict," "estimate" and similar expressions or words of similar import. These forward-looking statements are based upon our current knowledge and assumptions about future events and involve risks and uncertainties that could cause our actual results, prospects, performance or achievements to be materially different from any anticipated results, prospects, performance or achievements expressed or implied by such forward-looking statements. Such risks and uncertainties include: (1) the Company's results of operations and financial condition are susceptible to changes in mortgage interest rates, the availability of mortgage financing, and general economic conditions; (2) changes to the participants in the secondary mortgage market could affect the demand for title insurance products; (3) the Company is subject to government regulation; (4) heightened regulatory scrutiny of the Company and the title insurance industry, including any future resulting reductions in the pricing of title insurance products and services, could materially and adversely affect its business, operating results, and financial condition; (5) the Company may not be able to fuel its growth through acquisitions; (6) the Company's inability to integrate and manage successfully its acquired businesses could adversely affect its business, operating results, and financial condition; (7) regulatory non-compliance, fraud or defalcations by the Company's title insurance agents or employees could adversely affect its business, operating results, and financial condition; (8) competition in the Company's industry affects its revenue; (9) significant industry changes and new product and service introductions require timely and cost-effective responses; (10) the Company's litigation risks include substantial claims by large classes of claimants; (11) the Company's claims experience may require it to increase its provision for title losses or to record additional reserves, either of which may adversely affect its earnings, (12) key accounting and essential product delivery systems are concentrated in a few locations; (13) provisions of the Company's articles of incorporation and bylaws and applicable state corporation, insurance, and banking laws could limit another party's ability to acquire the Company and could deprive shareholders of the opportunity to obtain a takeover premium for shares of common stock owned by them; (14) the Company's future success depends on its ability to continue to attract and retain qualified employees; (15) the Company's conduct of business in foreign markets creates financial and operational risks and uncertainties that may materially and adversely affect its business, operating results, and financial condition; and (16) various external factors including general market conditions, governmental actions, economic reports and shareholder activism may affect the trading volatility and price of the Company's common stock. For a description of factors that may cause actual results to differ materially from such forward-looking statements, see Part I, Item 1A, "Risk Factors" on page 18 of this report. We caution investors not to place undue reliance on any forward-looking statements as these statements speak only as of the date when made. We undertake no obligation to update any forward-looking statements made in this report.

ITEM 1. BUSINESS

General Information

Unless the context otherwise requires, the terms "LandAmerica," "the Company," "we," "us" or "our" refers to LandAmerica Financial Group, Inc. and its consolidated subsidiaries on a combined basis.

LandAmerica was incorporated under the laws of the Commonwealth of Virginia on June 24, 1991. We are a holding company and operate through our subsidiaries. Our principal executive offices are located at 5600 Cox Road, Glen Allen, Virginia 23060 and our telephone number is (804) 267-8000. We maintain an internet website at www.landam.com.

Our shareholders and the public may access our periodic and current reports (including annual, quarterly and current reports on Form 10-K, Form 10-Q and Form 8-K, respectively, and any amendments to those reports) filed with or furnished to the Securities and Exchange Commission ("SEC") pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, through the "Investor Information" section of our website. The reports are made available on this website as soon as practicable following the filing of the reports with the SEC. The information is free of charge and may be reviewed, downloaded and printed from the website at any time.

In addition, our Corporate Governance Guidelines, Code of Business Conduct and Ethics, Code of Ethics for Senior Financial Officers and the charters of the Audit Committee, Corporate Governance Committee and the Executive Compensation Committee are available to shareholders and the public through the "Investor Information" section of our website. Printed copies of the documents are available to any shareholder upon written request to our Secretary at the address set forth above.

The certifications of our Chief Executive Officer and Chief Financial Officer required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 are being filed as exhibits to this Form 10-K with the SEC. In addition, our Chief Executive Officer annually certifies to the New York Stock Exchange ("NYSE") that he is not aware of any violation by us of the NYSE's corporate governance listing standards. In accordance with NYSE Rules, on June 14, 2007, following the 2007 Annual Meeting of shareholders, we filed the annual certification by our Chief Executive Officer certifying that he was unaware of any violation by us of the NYSE's corporate governance listing standards at the time of the certification.

Overview of the Business

Our products and services facilitate the purchase, sale, transfer, and financing of residential and commercial real estate. We provide these products and services to a broad-based customer group including: residential and commercial property buyers and sellers, real estate agents and brokers, developers, attorneys, mortgage brokers and lenders, and title insurance agents. We operate through approximately 700 offices and a network of more than 10,000 active agents, and we also conduct business in Mexico, Canada, the Caribbean, Latin America, Europe, and Asia. Based on title premium revenue, we are one of the largest title insurance underwriters in the United States.

In addition to our core title insurance business, we provide a comprehensive suite of other products and services for residential and commercial real estate transactions, including title search, examination, escrow, and closing services. We also offer appraisals, home inspections, and warranties for residential real estate transactions. For commercial real estate transactions, we provide property appraisal and valuation, building and site assessments and other due diligence services, construction disbursement, coordination of national multi-state transactions, tax-deferred real property exchanges pursuant to Section 1031 of the Internal Revenue Code, and Uniform Commercial Code products insuring personal property. We provide specialized services primarily to our national and regional mortgage lending customers, such as real estate tax processing, flood zone determinations, consumer mortgage credit reporting, default management services, and mortgage loan subservicing. In addition, we offer to our national and regional mortgage lending customers a full range of centralized and integrated residential real estate services through our subsidiary, LandAmerica OneStop, Inc. ("LandAmerica OneStop").

Operating Segments

Our principal business operations are organized under three primary operating segments: Title Operations, Lender Services, and Financial Services. Other operating business segments not required to be reported separately are combined with unallocated corporate expenses and reported in a category called Corporate and Other. Information regarding each of these operating segments is set forth below. Certain financial information regarding our operating segments is presented in Note 19 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data" and in Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

Title Operations

Products and Services

Title Insurance – Title insurance policies are insured statements of the condition of title to real property. These policies indemnify the insured from losses resulting from certain outstanding liens, encumbrances and other defects in title to real property that appear as matters of public record, and from certain other matters not of public record. Title insurance is generally accepted as the most efficient means of determining title to, and priority of interests in, real estate in nearly all parts of the United States. Many of the principal customers of title insurance companies buy insurance for the accuracy and reliability of the title search as well as for the indemnity features of the policy. The beneficiaries of title insurance policies are generally owners or buyers of real property or parties who make loans using real property as security. An owner's policy protects the named insured against title defects, liens, and encumbrances existing as of the date of the policy and not specifically excluded or excepted from its provisions, while a lender's policy also insures the validity and priority of the lien of the insured mortgage as stated in the title policy.

While most other forms of insurance provide for the assumption of risk of loss arising out of unforeseen future events, title insurance serves to protect the policyholder from the risk of loss from events that predate the issuance of the policy. This distinction underlies the low claims loss experience of title insurers as compared to other insurance underwriters. Losses generally result either from judgment errors or mistakes made in the title search and examination process or the escrow process or from hidden defects such as fraud, forgery, incapacity, or missing heirs. Title insurers incur considerable operating costs related to the personnel required to process forms, search titles, collect information on specific properties, and prepare title insurance commitments and policies.

We issue title insurance policies primarily through three principal title underwriting subsidiaries: Commonwealth Land Title Insurance Company ("Commonwealth"), Lawyers Title Insurance Corporation ("Lawyers Title"), and Transnation Title Insurance Company ("Transnation"). We also own three other title insurance underwriters: Commonwealth Land Title Insurance Company of New Jersey, Title Insurance Company of America, and United Capital Title Insurance Company. Effective December 12, 2007, we merged one of our title insurance underwriters, Land Title Insurance Company, into Lawyers Title. The collective operations of these subsidiaries cover the entire United States (with the exception of Iowa, which does not recognize title insurance), and certain territories of the United States. In addition, we offer our customers international title policy services in Mexico, Canada, the Caribbean, Latin America, Europe, and Asia.

Escrow and Closing Services – In addition to the issuance of title insurance policies, we provide escrow and closing services to a broad-based customer group that includes lenders, developers, real estate agents, attorneys, and property buyers and sellers. In California and a number of other western states, it is a general practice, incidental to the issuance of title insurance policies, to hold funds and documents in escrow for delivery in real estate transactions upon fulfillment of the conditions to such delivery. In the mid-western states, Florida and some eastern cities, it is customary for the title company to close the transaction and disburse the sale or loan proceeds. Fees for escrow and closing services are generally separate and distinct from premiums paid for title insurance policies and other real estate-related services.

Commercial Services – Our Commercial Services business assists customers in handling the more complex nature of commercial transactions and facilitates the coordination and delivery of products and services. In addition to title insurance, escrow, and closing services, we provide a range of specialized services that include construction disbursement, coordination of national multi-state transactions, tax-deferred real property exchanges pursuant to Section 1031 of the Internal Revenue Code, and Uniform Commercial Code products insuring personal property. The combined capital position of our three principal title underwriting subsidiaries enables us to underwrite large commercial policies and to participate in multi-state transactions.

Operations

We issue title insurance policies through branch offices of our title insurance underwriters, wholly-owned or partially-owned and consolidated subsidiary agencies or independent title insurance agents. Where the policy is issued through a branch or wholly-owned subsidiary, the search is performed by us or at our direction, and the premiums collected are retained by us. Where the policy is issued through a partially-owned or independent title insurance agent, the agent generally performs the search (in some areas searches are performed by attorneys and in some instances agents purchase the search), examines the title, collects the premium, and retains a majority of the premium. The agent remits to us the remainder of the premium as compensation, part of which is for bearing the risk of loss in the event a claim is made under the policy. The percentage of the premium retained by an agent varies and is sometimes regulated by the states. We are obligated to pay title claims in accordance with the terms of our policies, regardless of whether we issue policies through direct operations or agents. We maintain a quality assurance program for our independent agents. See "Insured Risk on Policies in Force."

The premium for title insurance is due in full when the real estate transaction is closed. We recognize title insurance premium revenue from direct operations upon the closing of the transaction, whereas we recognize premium revenue from agency operations upon the reporting of such premiums by the agent. Premiums from agents are typically remitted to us after the closing of the real estate transaction, with the average time between closing and reporting being approximately 110 days for 2007.

Underwriting

We issue title insurance policies on the basis of a title report, prepared pursuant to our prescribed underwriting guidelines, generally after a search of the public records, maps and documents to ascertain the existence of easements, restrictions, rights of way, conditions, encumbrances, liens, or other matters affecting the title to, or use of, real property. In certain instances, a visual inspection of the property is also made. Title examinations may be made by branch employees, agency personnel, or approved attorneys, whose reports are utilized by or rendered to a branch or agent and are the basis for the issuance of policies. In the case of difficult or unusual legal or underwriting issues involving potential title risks, the branch office or agent is instructed to consult with, and obtain prior approval of, a designated supervising office. Our contracts with independent agents require that the agent seek our prior approval before we assume a risk over a stated dollar limit.

We own a number of title plants and in some areas lease or participate with other title insurance companies or agents in the cooperative operation of such plants. Title plants are compilations of copies of public records, maps, and documents that are indexed to specific properties in an area, and they serve to facilitate the preparation of title reports. To maintain the value of the title plants, we continually update our records by regularly adding current information from the public records and other sources. In this way, we maintain the ability to produce quickly, and at a reduced expense, a statement of the instruments that constitute the chain of title to a particular property. In many of the larger markets, the title plant and search procedures have been automated. We anticipate that the use of electronic media at courthouses and state and local governments will continue to grow over the next several years which may reduce the value of our title plants in the future.

Insured Risk on Policies in Force

The amount of the insured risk or "face amount" of insurance under a title insurance policy is generally equal to either the purchase price of the property or the amount of the loan secured by the property. The insurer is also responsible for the cost of defending the insured title against covered claims. The insurer's actual exposure at any time is significantly less than the total face amount of policies in force because the risk on an owner's policy is often reduced over time as a result of subsequent transfers of the property and the reissuance of title insurance by other title insurance underwriters, and the coverage of a lender's policy is reduced and eventually terminated as a result of payment of the mortgage loan. Because of these factors, the total liability of a title underwriter on outstanding policies cannot be ascertained.

In the ordinary course of business, our underwriting subsidiaries represent and defend the interests of their insureds, and our consolidated financial statements provide for estimated losses and loss adjustment expenses arising from claims. Title insurers are sometimes subject to unusual claims (such as claims of Indian tribes to land formerly inhabited by them), claims resulting from fraud and defalcation, claims from large classes of claimants, and other claims arising outside the insurance contract, including but not limited to, alleged negligence in search, examination or closing, alleged improper claims handling, alleged bad faith, alleged collection of excess premiums from certain consumers alleged to be entitled to a re-issue rate, and alleged improper charges for recording and other fees. The damages alleged in such claims arising outside the insurance contract may exceed the stated liability limits of the policies involved.

Standard & Poor's® ("S&P"), a division of The McGraw-Hill Companies, Inc., has assigned a financial strength rating of "A-" to our title insurance operations. According to S&P, an insurer rated "A" has strong financial security characteristics, but is somewhat more likely to be affected by adverse business conditions than are insurers with higher ratings, and the minus (-) rating indicates relative standing within the "A" category. S&P assigns a ratings outlook along with its letter ratings to indicate its expectations of trends that relate to the financial strength rating for the rated company. The ratings outlook assigned by S&P may be either "positive," "stable," or "negative." According to S&P, our ratings outlook is "negative." Fitch, Inc. ("Fitch") has assigned an "A-" rating to our financial strength. According to Fitch, an "A" rating is assigned to those companies that possess strong capacity to meet policyholder and contract obligations, where risk factors are moderate and the effect of any adverse business and economic factors is expected to be small. Fitch also assigns a ratings outlook along with its letter ratings to indicate its expectations of trends that relate to the financial strength rating for the rated company. The ratings outlook assigned by Fitch may be either "positive," "stable," or "negative." According to Fitch, our ratings outlook is "stable." Additionally, our senior debt is currently assigned a rating of "BBB-" by both S&P and Fitch. The S&P and Fitch ratings are not designed for the protection of investors, do not constitute recommendations to buy, sell or hold any security, may be subject to revision or withdrawal at any time, and should be evaluated independently of any other rating. We believe that we are sufficiently capitalized with an aggregate statutory equity of $428.5 million as of December 31, 2007.

We place a high priority on maintaining effective quality assurance and claims administration programs. Our quality assurance program focuses on quality control, claims prevention and product risk assessment for our independent agencies. In addition, to reduce the incidence of claims losses, we established due diligence requirements in connection with the appointment of new agents, procedures for renewing existing agents, and an Agency Audit Program. The claims administration program focuses on improving liability analysis, prompt, fair and effective handling of claims, early evaluation of settlement or litigation with first and third-party claimants and appropriate use of ADR (Alternative Dispute Resolution) in claims processing. We continue to refine our systems for maintaining effective quality assurance and claims administration programs.

Facultative Reinsurance and Coinsurance

Our title insurance subsidiaries distribute large title insurance risks by entering into facultative reinsurance agreements with other insurance companies (the "reinsurer"). In facultative reinsurance agreements, the reinsurer assumes a portion of the risk that the primary insurance company (the "ceding company" or "ceder") decides not to retain in consideration of a premium. The ceder, however, remains liable to the insured under the policy for the total risk, whether or not the reinsurer meets its obligation. Reinsurance agreements may be entered into with related insurance companies and/or with unaffiliated insurance companies. When facultative reinsurance agreements are entered into, a primary risk generally in the amount of 5 percent of the total risk with a $5 million minimum and a $20 million maximum is retained by the ceder. We enter into reinsurance arrangements both as the reinsurer and the ceder.

We generally purchase facultative reinsurance from unaffiliated reinsurers based upon our review of the underwriting risks, the retention laws of the state where the property is located, the state where the ceding company is domiciled, and the retention limitations imposed by the customer.

We occasionally utilize coinsurance to enable us to provide coverage in amounts greater than we would be willing or able to undertake individually. In coinsurance transactions, generally, each individual underwriting company issues a separate policy and assumes a portion of the overall total risk from the first dollar. Each coinsurer is liable only for the particular portion of the risk it assumes.

Our title insurance subsidiaries enter into facultative reinsurance and coinsurance arrangements with most of the larger participants in the title insurance market, and such arrangements are not concentrated with any single title insurance company. Revenue and claims from facultative reinsurance are not material to our business as a whole. The exposure on assumed reinsurance risks is reduced due to the ceding company's retention of a significant primary risk. In addition, the exposure under these agreements generally ceases upon a transfer of the property and, with respect to insured loans, is decreased by reductions in mortgage loan balances. For these reasons, the actual exposure is much less than the total reinsurance our title insurance subsidiaries have assumed. Loss reserves on assumed reinsurance business are maintained on a basis consistent with reserves for direct business.

We have not paid as reinsurer or recovered as ceder any material reinsured losses under a facultative reinsurance agreement during the three year period ended December 31, 2007.

Title Process Errors and Omissions Coverage

We maintain two title process errors and omissions insurance policies through Lloyd's of London totaling $50 million. The Lloyd's of London policies provide fidelity and title loss coverage, with a $20 million primary layer and a $30 million excess layer. There is a $20 million deductible for the title process errors and omissions coverage. With respect to fidelity coverage, there is a $500 thousand deductible for employees and a $2.5 million deductible for agents.

Title Operations Revenue

The table below sets forth, for the years ended December 31, 2007, 2006 and 2005, the approximate title operating revenue and percentages of our total title revenue for the five states representing the largest percentages of such revenue in the most recent year and for all other states and countries combined:

Revenue by State
(Dollars in millions)

	2007		2006		2005	
California	$ 412.9	13.1%	$ 504.2	14.4%	$ 661.1	19.0%
Texas	391.2	12.4	388.3	11.1	353.1	10.1
New York	309.9	9.9	269.7	7.7	256.5	7.4
Florida	268.3	8.5	377.7	10.7	368.1	10.6
Pennsylvania	196.5	6.3	175.3	5.0	62.4	1.8
Other	1,566.5	49.8	1,795.0	51.1	1,780.9	51.1
Total Title Revenue	$ 3,145.3	100.0%	$ 3,510.2	100.0%	$ 3,482.1	100.0%

Title operating revenue as a percentage of our total consolidated operating revenue was 88.1 percent as of December 31, 2007, 90.3 percent as of December 31, 2006, and 90.3 percent as of December 31, 2005.

Sales and Marketing

For sales and marketing purposes, we have organized our business into three customer groups: residential services, commercial services, and agency services. In each of these groups, we continue our transition from title insurance product delivery to being a single source provider of the multiple products and services involved in real estate transactions.

Residential Services – Residential transaction services business results from the construction, sale, resale, and refinancing of residential properties. Most of our residential business comes from local attorneys, real estate brokers and developers, financial institutions, mortgage brokers, and independent escrow agents. Our marketing strategy for the residential business focuses on maintaining and expanding these local business sources by providing superior customer service. Our commitment to customer service is supported by our Superior Service Guarantee, which provides for refund of the escrow or closing fee when a residential customer is not satisfied with our service. In 2006, we introduced Landamclosing.com, a web-based site for opening and closing orders and the management of documents by our residential customers. We also maintain a website, KnowYourClosing.com, a consumer education resource that gives consumers answers to commonly asked questions regarding their closings and tells them where to turn for reliable information. Although we serve the residential market through two major distribution channels: direct company operated offices and title insurance agents, we only include the offices that we directly operate in the residential services group.

Commercial Services – Commercial real estate business results from the construction, sale, resale and refinancing of properties with a business or commercial use. Our commercial services group specializes in coordinating, underwriting and closing complex commercial and multi-property transactions. Our financial strength is an important factor in marketing our commercial title business capabilities because it enables us to write larger title policies and retain higher levels of risk without purchasing reinsurance from a third party. As part of our customer focused strategy, each office provides transaction and support services to national and local commercial accounts. The transaction and support services benefit both our owned offices as well as independent agents who handle substantial commercial transactions, although we consider business from such independent agents to be part of the agency services business. Commercial services business supports LandAmerica Commercial Connection, a web-based site for opening and closing orders, and the management of documents by our commercial customers.

Agency Services – We consider our network of more than 10,000 agents, whom we refer to as our Agent Partners to be one of our four main customer groups. We offer a suite of services called AgentXtra® to provide our Agent Partners with solutions for their businesses, to improve their relationships with their customers, and to grow their businesses.

Customers

As of December 31, 2007, no single agent was responsible for more than 5 percent of our title insurance revenue. In addition, our title insurance business is not dependent upon any single customer. The loss of any one independent agent or customer would not have a material adverse effect on our business, operating results and financial condition.

Competition

The business of providing real estate transaction services is very competitive. We compete for residential title insurance business primarily on the quality of service in those states that regulate rates that we can charge for our services, and on price and service in other states that do not regulate rates. Quality of service is based upon a number of factors, including the ability to respond quickly and accurately to customers, and technological capabilities (resulting in the delivery of a readily accessible, efficient, and reliable product). Competition for commercial title business is based primarily on service, expertise in complex transactions, the size and financial strength of the insurer, and price, to the extent permitted by rate regulations. Title insurance underwriters also compete for agents on the basis of service and commission levels. For each of our customer groups, we have increased our emphasis on service levels and the variety of services and products we provide.

Our principal competitors are other major title insurance underwriters and their agency networks. During 2007, our principal competitors were Fidelity National Financial, Inc., The First American Corporation, Stewart Information Services, Inc., and Old Republic International Corporation. While there are approximately 86 title insurance underwriting companies licensed in the United States that generate 99 percent of the industry's underwriting market, the top five companies (consisting of us and our four principal competitors and their consolidated subsidiaries) accounted for approximately 93 percent of the title insurance underwriting market in 2006, the latest date for which information is available, based on public filings made by those companies.

Our title insurance subsidiaries are subject to regulation by the insurance authorities and enforcement of laws by other governmental authorities of the states in which they do business. Our title insurance subsidiaries and other subsidiaries that provide settlement services are subject to compliance with the Real Estate Settlement Procedures Act ("RESPA") on one to four family residential transactions which is primarily enforced by the U.S. Department of Housing and Urban Development. See "Regulation." Within this regulatory framework, we compete with respect to premium rates, coverage, risk evaluation, service, and business development.

State regulatory authorities impose underwriting limits on title insurers based primarily on levels of available capital and surplus. In addition, we have established our own internal risk limits, which are in some cases at levels lower than those permitted by state law. In determining the amount of underwriting risk we will undertake, we may spread the risk of a large underwriting liability over our three principal title underwriting subsidiaries.

Cyclicality and Seasonality

The title insurance business is closely related to the overall level of residential and commercial real estate activity, which is generally affected by the relative strength or weakness of the United States economy. In addition, title insurance volumes fluctuate based on changes in interest rates and the availability of mortgage financing. Periods of increasing interest rates and reduced mortgage financing availability usually have an adverse effect on residential real estate activity and therefore decrease our title insurance premiums and fee revenue. In contrast, periods of declining interest rates and good mortgage financing liquidity usually have a positive effect on residential real estate activity which increases our title insurance premiums and fee revenue.

Commercial real estate volumes are less sensitive to changes in interest rates, but fluctuate based on local supply and demand conditions for space and mortgage financing availability.

The title insurance business tends to be seasonal as well as cyclical. Residential buy/sell activity is generally slower in the winter, when fewer families buy or sell homes, with increased volumes in the spring and summer. Residential refinancing activity is generally more uniform throughout the seasons, but is subject to interest rate variability. We typically report our lowest revenue in the first quarter, with revenue increasing into the second quarter and through the third quarter. The fourth quarter customarily may be as strong as the third quarter, depending on the level of activity of residential refinancing and of commercial real estate transactions. However, because of significant decline in the availability of mortgage financing in 2007, operating revenue did not reflect the typical seasonal pattern as evidenced by sharp declines in revenue in the third and fourth quarters.

Environmental Matters

Title insurance policies specifically exclude any liability for environmental risks or contamination. Policies issued before 1984, while not specifically addressing environmental risks, are not considered to provide any coverage for such matters, and we have not experienced and do not expect any significant expenses related to environmental claims.

Through our subsidiaries, we sometimes act as a temporary title holder to real estate under a nominee holding agreement and sometimes participate in title holding agreements involving tax-deferred exchanges. In such situations involving non-residential property, we require that an appropriate environmental assessment be made or have currently been made to evaluate and avoid any potential liability.

Lender Services

Products and Services

The Lender Services segment focuses on mortgage lenders as a distinct customer base for certain of our products and services, which include centralized real estate transaction management services, appraisal and valuation services, flood zone determinations, consumer mortgage credit reporting, real estate tax processing services, default management services, and mortgage loan subservicing. In 2007, we continued to support LenderXtra^{sm}, a flexible approach to product bundling that allows national lenders to create customized service packages that include LenderXtraOrder®, our online platform that allows real-time, instant price quotes and order conversion for bundled lender services.

Real Estate Transaction Management Services – LandAmerica OneStop offers to the national and regional mortgage lending community a full range of integrated residential real estate services and the ability to manage the delivery of those services through a centralized source. We provide these mortgage originators with a single, convenient point of contact through which they may place all of their orders for title insurance and real estate-related services. Transaction management services include the coordination and delivery of title insurance, mortgage credit reporting, flood zone determinations, property appraisal and valuation, property inspections, closing and escrow services, and real estate tax processing services.

Appraisal and Valuation Services – We offer a broad suite of valuation applications, which include automated valuation models, traditional appraisals, broker price opinions, collateral scores and appraisal reviews utilized by participants in the secondary mortgage markets.

Flood Zone Determinations – LandAmerica Flood Services provides mortgage lenders with certifications that indicate whether the property securing the loan is located in a special flood hazard area as defined by the U.S. Federal Emergency Management Agency ("FEMA"). Our flood service includes an initial flood zone determination report provided to the lender at the origination of the loan and subsequent notifications provided to the lender during the term of the loan of any changes in a property's flood zone status brought about by changes in flood insurance rate maps issued by FEMA.

Consumer Mortgage Credit Reporting – LandAmerica Credit Services is a nationwide provider of consumer credit reports and income, employment, and tax return verifications to lenders engaged in mortgage origination. Our technology interfaces with many loan origination systems and directly with Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan and Mortgage Corporation ("Freddie Mac") and permits 24 hours, 7 days a week monitoring and response. Our credit information is obtained using technology linked to the three major credit repositories: Equifax, Experian and Trans Union. In addition, through Bureau Direct™, a borrower's erroneous credit information can be updated at each of the three major credit repositories in 72 hours or less, thereby reducing the necessary paperwork and time required by the borrower and the lender seeking to close a consumer's lending transaction.

Tax Services – LandAmerica Tax Services offers real estate tax processing services to mortgage lenders. We monitor and report real estate property tax data needed by mortgage lenders on secured properties. Where the lender requires an escrow for the payment of taxes by borrowers during the term of the loan, we capture and report the amount of the taxes due on secured property and interface with the loan servicing department of the mortgage lender and the various local taxing authorities to facilitate the timely payment of real property taxes. Where the borrower is directly responsible for payment of property taxes, we provide an annual report to lenders on their secured property of the status of the payment of the taxes due. During the lending process, we also advise lenders whether any delinquent taxes are associated with the property in the origination process, and when the loan transfers, or goes into foreclosure.

Services performed for mortgage lenders vary significantly. While some lenders prefer complete outsourcing of all tax service functions, other lenders prefer to perform their own tax services and purchase data from us. Recently, we believe that the trend among large lenders has been to perform certain functions of their own tax processing services, known as insourcing. We have developed a series of products to provide those lenders with the data and other tools they need to insource their tax service functions.

Default Management – LandAmerica Default Services provides comprehensive default management services to lenders and mortgage servicing operations. These services consist of foreclosure processing in Washington, Oregon, California, Arizona, Nevada and Idaho, broker price opinions and appraisal coordination, management of properties acquired at foreclosure (REO), senior lien monitoring, junior lien analytics, field services (property inspection and preservation services) and default title and real estate settlement services. During 2007, we discontinued performing bankruptcy and lien processing services.

Through a 2006 acquisition, we now offer BackInTheBlack, a web-based application that focuses on loss mitigation and collections and is implemented with client specific rules to provide clients the capability to manage the entire default process from beginning to end, from collections to bankruptcy and foreclosure. BackInTheBlack transforms default servicing by replacing current home-grown, paper-based techniques with a unified problem loan underwriting solution.

Although there are numerous suppliers of mortgage origination and loan services, our largest competitors with whom we compete on the basis of price and service are The First American Corporation, Fidelity National Information Services, CBC Companies, Equifax and Kroll Factual Data, Inc.

Subservicing – LoanCare Servicing Center, Inc. ("LoanCare") is an approved servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Federal Housing Administration, the Veterans Administration, several nationwide financial institutions, and a number of private investors. Our loan subservicing services are offered through interim and private label subservicing programs. Interim subservicing is utilized by lenders selling loans in the secondary market pending the transfer of the loans and the related servicing rights to a permanent purchaser/investor. The private label subservicing program is utilized by lenders wishing to promote the relationship between themselves and their borrowers.

Although there are numerous providers of subservicing services, our largest competitors with whom we compete on the basis of price and service are Dovenmuehle, Cenlar FSB, GMAC Mortgage Corporation, and Countrywide Home Loans, Inc.

The top five customers in our Lender Services segment account for approximately 32.8 percent of operating revenue.

Cyclicality and Seasonality

Portions of our Lender Services segment, particularly real estate transaction management, appraisal and valuation, flood zone determinations and consumer mortgage credit reporting, have cyclical and seasonal trends similar to our Title Operations segment. In contrast, we believe that a higher interest rate environment and weakness in the overall economy increases the volume of mortgage defaults, which increases our default management business.

Financial Services

The Financial Services segment includes Orange County Bancorp and its wholly-owned subsidiary, Centennial Bank, a California industrial bank we acquired in November 2003 ("Centennial"). Centennial's primary business is the origination and bulk purchase of commercial real estate loans in the Southern California market, and to a lesser degree, in the Arizona and Nevada markets. Deposits are solicited through the internet for both certificates of deposit and passbook savings accounts. As an industrial bank, Centennial does not accept demand deposits, such as checking accounts, that provide for payment to third parties. Centennial does not offer banking services such as credit cards or automated teller machines. We utilize Centennial to hold a portion of our escrow deposits. The following is a summary of certain information relating to Centennial's deposits, loans, and allowances for loan losses for the last five years.

Total deposits held by Centennial were $564.5 million at December 31, 2007 and $618.2 million at December 31, 2006. Certificates of deposit and passbook savings accounts represented 66.0 percent and 34.0 percent of total deposits, respectively, at December 31, 2007 and 35.9 percent and 64.1 percent of total deposits, respectively, at December 31, 2006.

Centennial had outstanding loans of $643.1 million, or 113.9 percent of total deposits, at December 31, 2007 and $535.5 million, or 86.6 percent of total deposits, at December 31, 2006. The average loan balance outstanding was $0.8 million at December 31, 2007 and $1.2 million at December 31, 2006. Centennial makes loans only on a secured basis at loan-to-value percentages typically no greater than 75 percent. Substantially all of Centennial's loans are made on a variable rate basis. Loans that Centennial made or acquired during 2007 ranged in amount from $12 thousand to $7.7 million and $0.3 million to $5.3 million made or acquired during 2006. Centennial's commercial real estate loans are typically smaller in size and more tailored to fit the customer than those issued by large financial institutions that maintain minimum size requirements of $5 million or more. Centennial's primary competitors in the California market are local community banks, thrift and loan companies and, to a lesser extent, commercial banks.

The average yield on Centennial's loan portfolio as of December 31, 2007 was 7.1 percent. A number of factors are included in the determination of average yield, principal among which are interest, loan fees and closing points amortized to income, prepayment penalties recorded as income, and amortization of premiums on purchased loans.

The following table presents Centennial's outstanding loans, by category, as of the dates indicated.

	Year Ended December 31,				
	2007	2006	2005	2004	2003
	(In millions)				
Commercial, financial, and agricultural	$ –	$ –	$ –	$ –	$ 0.1
Real estate – mortgage	643.1	535.5	435.8	342.3	253.9
Installment loans to individuals	–	–	0.3	1.5	4.3
Total	$ 643.1	$ 535.5	$ 436.1	$ 343.8	$ 258.3

The performance of Centennial's loan portfolio is evaluated on an ongoing basis by our management. Loans are typically classified as non-accrual if they miss three or more contractual payments. Loans may be returned to accrual status when all principal and interest amounts contractually due (including arrearages) are reasonably assured of repayment within an acceptable period of time, in accordance with the contractual payment terms of interest and principal. While a loan is classified as non-accrual and future collectibility of the recorded loan balance is doubtful, collections of both interest and principal are generally applied as a reduction to principal outstanding. When the future collectibility of the recorded loan balance is expected, interest may be recognized on a cash basis. There have been no loans classified as non-accrual during the past five years.

The allowance for loan losses is established through a provision for loan losses. A loan is charged off against the allowance for loan losses when we believe that collectibility of the principal is unlikely. The allowance is an amount that we believe is adequate to absorb estimable and probable losses on existing loans and contracts. We take into consideration changes in the nature and volume of our portfolio, overall portfolio quality, prior loss experience, review of specific problem loans and contracts, regulatory guidelines and current economic conditions that may affect the borrower's ability to pay. Additionally, certain regulatory agencies, as part of their examination process, periodically review our allowance for loan losses. These agencies may require adjustments to the allowance based on their judgment regarding information made available to them. See Note 1 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

The following table provides certain information with respect to Centennial's allowance for loan losses and charge-off and recovery activity for the periods indicated.

	Year Ended December 31,				
	2007	2006	2005	2004	2003
	(Dollars in millions)				
Balance at beginning of period	$ 4.9	$ 4.2	$ 3.4	$ 2.6	$ 2.1
Charge-offs:					
Installment loans to individuals	–	–	–	0.1	0.3
Total loans charged off	–	–	–	0.1	0.3
Recoveries:					
Installment loans to individuals	–	–	–	–	0.1
Total recoveries	–	–	–	–	0.1
Net charge-offs	–	–	–	0.1	0.2
Provision for loan losses	–	0.7	0.8	0.9	0.7
Balance at end of period	$ 4.9	$ 4.9	$ 4.2	$ 3.4	$ 2.6
Ratio of net charge-offs to average loans outstanding during the period	0.0%	0.0%	0.0%	0.0%	0.1%

The following table shows the allocation of Centennial's allowance for loan losses and the percent of loans in each category to total loans as of the dates indicated.

	Year Ended December 31,									
	2007		2006		2005		2004		2003	
	(Dollars in millions)									
	Amount	%[1]	Amount	%[1]	Amount	%[1]	Amount	%[1]	Amount	%[1]
Real estate – mortgage	$ 4.7	95.9%	$ 4.7	95.9%	$ 2.1	50.0%	$ 1.7	50.0%	$ 1.3	50.0%
Installment loans to individuals	–	–	–	–	–	–	0.1	2.9	0.2	7.7
Unallocated	0.2	4.1	0.2	4.1	2.1	50.0	1.6	47.1	1.1	42.3
Total	$ 4.9	100.0%	$ 4.9	100.0%	$ 4.2	100.0%	$ 3.4	100.0%	$ 2.6	100.0%

[1] Each percentage represents the percent of the loans in the applicable category to total loans.

Corporate and Other

The Corporate and Other group of businesses include LandAmerica Assessment Corporation, LandAmerica Valuation Corporation, LandAmerica Property Inspection Services, and Buyers Home Warranty Company.

LandAmerica Assessment Corporation – LandAmerica Assessment Corporation offers due diligence services to assist clients in determining the initial feasibility of commercial real estate transactions and ongoing due diligence requirements in the United States, Canada, Mexico, the Caribbean, Europe and Asia. Our field professionals provide coverage for a variety of due diligence services including property condition assessment services, environmental assessment services, construction monitoring services, and project consultancy. The 2007 acquisition of CNP, Limited, a building and project consultancy firm with offices throughout Europe, significantly increased LandAmerica Assessment Corporation's service offerings and capacity in the United Kingdom and continental Europe.

Property condition assessment services typically involve the assessment of the condition of a property and its systems including structural integrity, HVAC, mechanical and electrical, fire and safety, as well as zoning, building code and handicap compliance. LandAmerica Assessment Corporation also will assess seismic vulnerability, providing our clients with a statement of probable maximum loss based on field observation, geotechnical information, seismicity, liquefaction and slope gradient.

Environmental assessment services are used to determine the environmental liability risk of a given property. LandAmerica Assessment Corporation is well-versed in a wide variety of scope variations and has experience with most major lending institutions and investment banking criteria including ASTM E 1528, Fannie Mae, Freddie Mac, Thrift Bill 16, and S&P.

Construction monitoring services include construction cost analysis and construction progress monitoring on all types of projects such as commercial/retail, residential tract development and assisted living, hospitality, and industrial developments.

Project consultancy consists of providing professional advice on all aspects of the construction process, including, but not limited to, planning supervision, project management and monitoring, cost control and contract administration.

LandAmerica Valuation Corporation – LandAmerica Valuation Corporation offers commercial appraisals and valuations on all types of commercial property including office, retail, industrial, multi-family, special purpose, and hospitality. Custom report formats are offered based on lender specifications in addition to all standard commercial reports.

LandAmerica Property Inspection Services – LandAmerica Property Inspection Services provides primarily residential inspections for real estate transactions in Arizona, California, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, New Jersey, North Carolina, Ohio, Texas, Washington, and Wisconsin.

Buyers Home Warranty Company – Buyers Home Warranty has the ability to provide and service home warranty contracts in every state.

Corporate and Other also includes the unallocated portion of the corporate expenses related to our corporate offices in Richmond, Virginia (including unallocated interest expense).

Business Strategy

Our long-term goal is to be the premier provider of integrated real estate transaction services while maximizing our profitability throughout the real estate market cycle.

Focusing on the Customer – We employ a customer-focused strategy to strengthen our relationships with our customers. In conjunction with this strategy, we have leadership positions and teams to support our primary customer groups: agency services, lender services, residential services and commercial services. With the objective of fostering customer loyalty, these leaders and teams are responsible for consistent service quality and operational excellence by providing common support platforms and structures for the various markets in which we operate. Our shared support resources are organized to provide direct support to our customer-focused operations. Production and Process Improvement is a shared resource providing title production services to our teams that support our primary customer groups. Technology Resources focuses on providing superior customer service and increasing our operational efficiency through electronic business solutions and technology support. Our other shared resources, such as Human Resources, Financial and Legal, provide direct support to our internal customers.

Expanding Title Insurance Distribution Capabilities and Broadening Real Estate Transaction Services Offerings – We seek to increase our share of the title insurance market by expanding and enhancing our distribution channels through the hiring and retention of experienced industry professionals with strong local relationships, the opening of new offices in markets with the potential for significant transaction volume, acquisitions of title insurance agencies or underwriters, and selectively engaging in title insurance agency joint ventures in order to strengthen our presence in particularly attractive markets. In the case of the acquisition of agencies or small to medium-size underwriters, we review the agency's or underwriter's profitability, location, growth potential in its existing market, claims experience and, in the case of an underwriter, the adequacy of its reserves. In 2007, we acquired a building and project consultancy, a commercial appraisal business, and a title insurance agency. Throughout our title customer base, there is demand for providers of multiple, diverse real estate transaction services. Our strategy is to continue to expand our array of real estate transaction products and services available to title customers as well as our distribution channels.

Maintaining Commercial Real Estate Market Strength – Participation in the commercial real estate market partially offsets some of the cyclicality of the residential real estate market, where transaction volumes are more susceptible to changes in interest rates. We maintain our presence in the commercial real estate market primarily due to the high quality service that we provide and our expertise in handling complex transactions, the financial strength ratings of our underwriting subsidiaries, and our strong capital position. In particular, the combined capital position of our three principal underwriting subsidiaries enables us to underwrite large commercial policies while purchasing less facultative reinsurance, thus increasing profitability.

Reducing Costs and Expenses – Losses resulting from claims under title insurance policies represent a relatively small part of our overall costs. Operating costs constitute the largest portion of expenses relating to providing title insurance and are relatively high compared to other types of insurers. During 2007, we continued work on our initiative referred to as Technology Fusion and we retired approximately 100 of our technology applications during the year. During 2008 and 2009, we expect to continue work on significantly reducing our technology applications. Also during 2007, we consolidated over 50 production centers, which are responsible for the delivery of title products to our direct company operated offices and title insurance agents. In some locations, we utilize a production unit model in which our three principal title operating subsidiaries share a single back office processing platform while continuing to market from separate storefronts under different operating names. We provide escrow support from several centralized locations, thereby increasing service levels and improving efficiency. We have also implemented out-sourcing and off-shoring initiatives to streamline operations in areas where it has been determined that these initiatives will be cost efficient, improve customer service, and provide value to our shareholders.

Enhancing Cost Control Flexibility – We manage our personnel and other operational expenses to reflect changes in the level of activity in the real estate market. As a result, our employee base expands and contracts over time in response to changes in the real estate market and acquisitions we have made. However, personnel and administrative costs do not decrease as rapidly as transaction volumes decrease because there are some fixed costs which cannot be reduced proportionally as volume decreases. In an effort to manage personnel costs more efficiently throughout the real estate cycle, we use temporary or part time employees where appropriate to staff operations so we can respond more rapidly to changes in real estate activity.

Regulation

The title insurance business is regulated by state regulatory authorities that possess broad powers relating to the granting and revoking of licenses, and the type and amount of investments which our title insurance subsidiaries may make. These state authorities also regulate insurance rates, forms of policies, claims handling procedures and the form and content of required annual statements, and have the power to audit and examine financial and other records and the market conduct of these companies. These and other governmental authorities have the power to enforce state and federal laws to which our title insurance subsidiaries are subject, including but not limited to, state anti-rebate and anti-kickback statutes and RESPA. Some states require title insurers to own or lease title plants. A substantial portion of the assets of our title insurer subsidiaries consists of their portfolios of investment securities. Each of these subsidiaries is required by the laws of its state of domicile to maintain assets of a statutorily defined quality and amount. See “Investment Policies” below. Under state laws, certain levels of capital and surplus must be maintained and certain amounts of portfolio securities must be segregated or deposited with appropriate state officials. Various state statutes require title insurers to defer a portion of all premiums in a reserve for the protection of policyholders and to segregate investments in a corresponding amount. State regulatory policies also require prior notice to regulators in the event of a change of control, or a dividend or distribution, and restrict the amount of dividends and distributions that title insurance companies may pay to their shareholders without prior regulatory approval. Generally, all of the title insurers that meet certain financial thresholds are required to engage independent auditors to audit their statutory basis financial statements which, along with the auditor’s report, must be filed with the state insurance regulators.

The National Association of Insurance Commissioners (“NAIC”) has adopted model legislation that, if enacted by individual states, would regulate title insurers and agents nationally and change certain statutory reporting requirements. The model legislation would also require title insurers to audit agents periodically and require licensed agents to maintain professional liability insurance. A number of states have adopted legislation similar to some of the provisions contained in the NAIC model legislation. We cannot predict whether any other legislation further regulating title insurers and agents will be adopted in any other states or federally. Also, the NAIC has adopted an instruction requiring an annual certification of reserve adequacy by a qualified actuary. Most of the states where our title subsidiaries operate have adopted the NAIC instruction and, in these states, each of our title subsidiaries must file an actuarial opinion with respect to the adequacy of its reserves unless it qualifies for an exemption.

Elements of our non-title insurance business are also regulated at both the state and federal levels. Our California-chartered industrial bank, Centennial, is regulated by the Federal Reserve Bank, the Federal Deposit Insurance Corporation and the California Department of Financial Institutions. Our home warranty business is subject to regulation in some states by insurance authorities and other regulatory entities. Our credit operations are subject to regulation under federal and some state laws. Our loan subservicing operation, LoanCare is regulated by state authorities that grant and revoke licenses, and LoanCare must comply with applicable state and federal laws in the operation of its business. Our appraisal operations are subject to licensing and compliance requirements at the state level. Our home inspection operations are also subject to state licensing and compliance requirements in certain states. Our subsidiary that handles exchanges under Section 1031 of the Internal Revenue Code is subject to regulatory requirements in certain states and must comply with applicable federal laws in the operation of its business.

Investment Policies

We earn investment income from our investment portfolio which primarily resides in our title insurance subsidiaries and consists of fixed-maturity and equity securities. Our policy is to invest predominantly in high-quality fixed-maturity securities with a focus on preservation of capital and a secondary focus on maximizing our risk adjusted investment returns. Our investment portfolio is managed by professional investment advisors under guidelines that govern the types of permissible investments, investment quality, maturity, duration, and concentration of issuer to comply with the various state regulatory requirements while maximizing net after-tax yield. These guidelines and our investment strategies are established and periodically reexamined by the Investment Funds Committee of our Board of Directors. In addition, under our investment guidelines, up to 10 percent of the investment portfolio may be invested in equity securities and up to 5 percent of the investment portfolio may be invested in non-fixed-maturity investments which may include real estate, tax credits and private placement securities. Our Investment Funds Committee also reviews the performance of the investment advisors on a quarterly basis. See Note 3 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

The following is a summary of fixed-maturity securities by type at December 31, 2007:

	Fair Value	% of Total
	(Dollars in millions)	
U.S. treasuries	$ 27.3	2.4%
U.S. government corporations and agencies	18.6	1.6
State and political subdivisions	489.6	42.8
Foreign governments	5.5	0.5
Public utilities	22.3	2.0
Corporate:		
Industrials and other	94.1	8.2
Financial	139.4	12.2
Asset backed	30.2	2.6
U.S. agencies:		
Mortgage-backed securities	175.2	15.3
Collateralized mortgage obligation	21.7	1.9
Non-U.S. agencies:		
Collateralized mortgage obligation	114.9	10.1
Preferred stock	4.8	0.4
Total fixed-maturities	$ 1,143.6	100.0%

Substantially all of our fixed-maturity portfolio is investment grade. All of our mortgage-backed securities ("MBS") and collateralized mortgage obligations had a Moody's rating of Aa1 or better at December 31, 2007. In addition, we do not own any sub prime, interest only, principal only or residual tranches of MBS.

MBS, including collateralized mortgage obligations, are subject to prepayment risks that vary with, among other things, interest rates. During periods of declining interest rates, MBS generally prepay faster as the underlying mortgages are prepaid and refinanced by the borrowers in order to take advantage of the lower rates. As a result, during periods of falling interest rates, proceeds from such prepayments generally must be reinvested at lower prevailing yields. In addition, MBS that have an amortized cost that is greater than par (i.e., purchased at a premium) may incur a reduction in yield or a loss as a result of such prepayments. Conversely, during periods of rising interest rates, the rate of prepayments generally slows. MBS that have an amortized value that is less than par (i.e., purchased at a discount) may incur a decrease in yield as a result of a slower rate of prepayments. Changes in estimated cash flows due to changes in prepayment assumptions from the original purchase assumptions are revised based on current interest rates and the economic environment.

Additionally, we earn investment income from our portfolio of loans receivable at Centennial. These loans consist primarily of moderately sized commercial real estate loans to individuals, corporations, LLCs and partnerships. Loan applications go through a rigorous underwriting process before being submitted for approval to the Loan Committee of Centennial's Board of Directors. Although the vast majority of loans are secured by real estate located in California, the portfolio is well diversified by borrower, property location and property type. Beginning in 2006, Centennial started to underwrite loans in Nevada and Arizona. Loans typically meet maximum loan to value requirements of 75 percent. Operating income and rental income generated by the real estate of the borrower generally results in a debt coverage ratio in excess of 1.15x. Monthly loan portfolio performance reports are reviewed by Centennial's Board of Directors.

Employees

At December 31, 2007, we had approximately 11,050 full-time equivalents. Our relationship with our employees is good. No employees are covered by any collective bargaining agreements, and we are not aware of any union organizing activity relating to our employees.

ITEM 1A. RISK FACTORS

Our business is subject to various risks, including the risks described below. Our business, operating results and financial condition could be materially and adversely affected by any of these risks. Please note that additional risks not presently known to us or that we currently deem immaterial may also impair our business and operations.

Our results of operations and financial condition are susceptible to changes in mortgage interest rates, the availability of mortgage financing, and general economic conditions.

The demand for our title insurance and other real estate transaction products and services is dependent upon, among other things, the volume of commercial and residential real estate transactions, including mortgage refinancing transactions. The volume of these transactions has historically been influenced by factors such as interest rates, the availability of mortgage financing, and the state of the overall economy. When interest rates are increasing, the availability of mortgage financing is limited, or during an economic downturn or recession, real estate activity typically declines and we tend to experience lower revenue and profitability. In addition, foreign hostilities could adversely impact the demand for real estate transactions. The cyclical nature of our business has caused fluctuations in revenue and profitability in the past and is expected to do so in the future. In addition, changes in interest rates may have an adverse impact on our return on our investments, the market value of our investment portfolio and interest paid on our bank debt.

Changes to the participants in the secondary mortgage market could affect the demand for title insurance products.

The demand for our title insurance products and services depends upon, among other things, the volume of commercial and residential real estate transactions, including mortgage refinancing transactions. In turn, the volume of commercial and residential real estate transactions depends in part upon the requirements of participants in the secondary mortgage market, who purchase large volumes of real estate loans secured by commercial and residential real property (including but not limited to Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association) to obtain title insurance policies on such real property. Therefore, changes to the composition of the participants in the secondary mortgage market or their requirements that title insurance policies be obtained could adversely affect the demand for our title insurance products.

We are subject to government regulation.

We are subject to federal and state laws and regulations that are administered and enforced by insurance regulators and other governmental authorities. These laws and regulations are generally intended for the protection of policyholders and consumers rather than security holders. The nature and extent of these laws and regulations vary from jurisdiction to jurisdiction, and their applicability varies from subsidiary to subsidiary, but typically involve:

- prior approval of the acquisition and control of an insurance company, any company controlling an insurance company or Centennial;
- regulation of certain transactions, including dividend payments, entered into by an insurance company with any of its affiliates;
- approval of premium rates for insurance;
- standards of solvency and minimum amounts of capital surplus that must be maintained;
- limitations on types and amounts of investments;
- restrictions on the size of risks that may be insured by a single company;
- licensing of insurers, agents, inspectors, appraisers, home warranty, loan subservicing and other companies and/or employees and independent contractors;
- deposits of securities for the benefit of policyholders;
- approval of policy forms;
- methods of accounting;
- establishing reserves for losses and loss adjustment expenses;
- regulation of underwriting, marketing and business practices;
- regulation of reinsurance;
- regulation of escrow accounts;
- regulation regarding the use of personal information; and
- filing of annual and other reports with respect to financial condition and other matters.

Centennial is subject to regulation and supervision by the Federal Reserve Bank, the Federal Deposit Insurance Corporation and the California Department of Financial Institutions. Banking regulations are intended primarily to protect depositors and the federal deposit insurance funds and not shareholders. Regulatory requirements affect, among other things, our banking subsidiary's practices, capital level, investment practices, dividend policies and growth.

These laws and regulations are subject to change and may impede, impose burdensome conditions on, or cause rate adjustments or other actions that could materially and adversely affect our business, operating results and financial condition. In addition, state regulatory examiners perform periodic examinations of insurance companies. We can make no assurances regarding the potential impact of state or federal laws, regulations, policies or interpretations that may change the nature or scope of title insurance or other regulation.

Heightened regulatory scrutiny of us and the title insurance industry, including pricing of title insurance products and services, could materially and adversely affect our business, operating results, and financial condition.

We have been subject to information requests and subpoenas from various regulatory authorities relating to investigations of our business practices and those of the title insurance industry. Various states are studying the title insurance product, market, pricing, business practices, and potential regulatory and legislative changes. Multiple states are examining pricing levels and/or title insurance regulations. If it is determined that prices are not justified, rate changes may be implemented, including potential reductions. These rate actions could result in decreased levels of revenue. If we fail to reduce our staffing and other costs to a level consistent with decreased revenues, there could be a material and adverse effect on our business, operating results, and financial condition. Any restrictions imposed or actions taken by states with respect to us or the title insurance industry in general may adversely affect our business, operating results, and financial condition.

We may not be able to fuel our growth through acquisitions.

Our growth has been facilitated by acquisitions, which may or may not be available on acceptable terms in the future, and which, if consummated, may or may not be advantageous to us. While we expect to continue making acquisitions or entering into joint ventures as part of our long-term business strategy to expand the services we provide and their distribution, no assurances can be given that we will do so or that we will continue to acquire businesses at the levels previously experienced. We may not be able to identify suitable acquisition candidates or complete acquisitions on satisfactory terms. Our competitors also have adopted the strategy of expanding and diversifying through acquisitions, and as a result, we may be forced to pay more to acquire companies.

Our inability to integrate and manage successfully our acquired businesses could adversely affect our business, operating results, and financial condition.

Our acquisitions and joint ventures may or may not be outside of our traditional business operations. The process of integrating any acquired business involves a number of special risks, including our inexperience in managing businesses that provide products and services beyond our traditional business; new regulatory requirements; diversion of management's attention; failure to retain key acquired personnel (resulting from changes in compensation, reporting relationships, future prospects, or the direction of the business); increased costs to improve managerial, operational, financial and administrative systems; legal liabilities; amortization of acquired intangible assets; and failure in the implementation of controls, procedures and policies appropriate for a larger public company that the acquired business lacked prior to acquisition. In addition, there can be no assurance that acquired businesses will achieve anticipated levels of revenue, earnings or performance. Our failure to manage acquisitions successfully could materially and adversely affect our business, operating results, and financial condition.

Regulatory non-compliance, fraud or defalcations by our title insurance agents or employees could adversely affect our business, operating results, and financial condition.

Our title insurance agents are entities that often represent more than one title insurance underwriter and operate their businesses independently, but subject to various underwriting guidelines from their title underwriter(s). In addition to potential liability on policies written by our agents, governmental authorities or litigants may seek to assign liability to us for the actions of our agents in circumstances where they were acting outside the scope of their authority as agents. In certain circumstances, we may incur losses for the fraud, defalcation, regulatory noncompliance and other misconduct of our agents and employees. To the extent that any loss is substantial, there could be a material adverse effect on our business, operating results, and financial condition.

Competition in our industry affects our revenue.

The business of providing real estate transaction products and services is very competitive. Competition for residential title insurance business is based primarily on quality of service and price within regulatory parameters. With respect to national and regional mortgage lenders, service quality includes a large distribution network and the ability to deliver a broad array of real estate services quickly, efficiently and through a single point of contact. Competition for commercial title business is based primarily on price within regulatory parameters, service, expertise in complex transactions and the size and financial strength of the insurer. Title insurance underwriters also compete for agents on the basis of service and commission levels. Although we are one of the largest providers of real estate transaction products and services in the United States, four other companies—Fidelity National Financial, Inc., The First American Corporation, Old Republic International Corporation and Stewart Information Services, Inc.— have the size, capital base and agency networks to compete effectively with our products and services, both in the United States and abroad. In addition, some of our competitors may have now or in the future greater capital and other resources than us. Competition among the major providers of real estate transaction products and services and any new entrants could materially and adversely affect our business, operating results, and financial condition.

Significant industry changes and new product and service introductions require timely and cost-effective responses.

As a national provider of real estate transaction products and services, we participate in an industry that is subject to significant change, frequent new product and service introductions, evolving industry standards and increased customer leverage. In addition, alternatives to traditional title insurance, such as lien protection products, have emerged in recent years. We believe that our future success will depend on our ability to anticipate changes in technology and customer demands and to offer products and services with state of the art technological attributes that meet evolving standards on a timely and cost-effective basis. The development and implementation of new products, services and technology may require significant capital expenditures and other resources and involve new risks we have not previously managed. There is a risk that customers may not accept our new products, services or technology and we may not successfully identify, develop and introduce new product and service opportunities or simplify and update our technology to be more operationally efficient and/or better able to deliver superior customer service in a timely and cost-effective manner. In addition, products and services that our competitors and other real estate industry participants develop or introduce may render certain of our products and services obsolete or noncompetitive. We license software and technology from third parties, including some competitors, and incorporate it into or sell it in conjunction with our own software products, some of which is critical to the operation of our business. If any of the third party software vendors were to change product offerings, increase prices or terminate our licenses, we might need to seek alternative vendors and incur additional internal or external development costs to ensure continued performance of our products. Such alternatives may not be available on attractive terms, or may not be as widely accepted or as effective as the software provided by our existing vendors. The costs associated with licensing or maintenance of these third party software products or other technology or simplification and updating of our technology could cause our gross margin levels to decrease significantly. Further, our third party vendors may not have the capacity to develop and support software and systems that are necessary to process large volumes of transactions. In addition, interruption in functionality of our products could adversely affect future sales of licenses and services. Advances in technology could also reduce the useful lives of our products, preventing us from recovering fully our investment in particular products and services. As a result, our inability to anticipate industry changes and to respond with competitive and profitable products and services could materially and adversely affect our business, operating results, and financial condition.

Our litigation risks include substantial claims by large classes of claimants.

From time to time we are involved in litigation arising in the ordinary course of our business. In addition, we currently are and have in the past been subject to claims and litigation not arising in the ordinary course of business from large classes of claimants seeking substantial damages. Material pending legal proceedings not arising in the ordinary course of business are disclosed in our filings with the Securities and Exchange Commission. See Part I, Item 3 “Legal Proceedings” set forth elsewhere in this report. An unfavorable outcome in any class action suit or other claim, inquiry, investigation or litigation against us could have a material adverse effect on our business, operating results, and financial condition.

Our claims experience may require us to increase our provision for title losses or to record additional reserves, either of which may adversely affect our earnings.

Estimating future loss payments is difficult, and our assumptions about future losses may prove inaccurate, particularly losses involving new products and services and business in foreign markets. Claims are often complex and involve uncertainties as to the dollar amount and timing of individual payments. Claims are often paid many years after a policy is issued. From time to time, we experience large losses from title policies that have been issued, which require us to increase our title loss reserves. These events are unpredictable and may adversely affect our earnings.

Key accounting and essential product delivery systems are concentrated in a few locations.

Our corporate headquarters, accounting and technology operations are concentrated in Richmond, Virginia. Our agency services center is located in Louisville, Kentucky, which is operated by Intellihub Solutions and Services, LLC, a joint venture in which we own a minority interest. These critical business operations are subject to interruption by natural disasters, fire, power shortages, and other events beyond our control. Although we are upgrading our disaster recovery functionality and have prepared a business continuity plan, a catastrophic event that results in the destruction or disruption of any of our critical business operations or systems could severely affect our ability to conduct normal business operations and, as a result, there could be a material and adverse effect on our business, operating results, and financial condition.

Provisions of our articles of incorporation and bylaws and applicable state corporation, insurance, and banking laws could limit another party's ability to acquire us and could deprive shareholders of the opportunity to obtain a takeover premium for shares of common stock owned by them.

Provisions in our articles of incorporation and bylaws may make it difficult for another company to acquire us and for shareholders to receive any related takeover premium for our common stock. These provisions include, among other things:

- a staggered board of directors in which the board of directors is divided into three classes, with one class elected each year to serve a three year term;

- the absence of cumulative voting in the election of directors;

- the removal of directors only for cause and only upon the affirmative vote of the holders of at least 80 percent of the outstanding shares entitled to vote; and

- a vote of at least 80 percent of the outstanding shares entitled to vote is required for the approval of a merger or consolidation with, or a sale, lease or exchange of substantially all our assets to, any shareholder that directly or indirectly owns or controls 10 percent or more of the voting power of us.

The laws of Virginia also contain provisions designed to deter certain takeovers of Virginia corporations. The "affiliated transaction" provisions of Virginia law prohibit, subject to certain exceptions, a Virginia corporation from engaging in specified transactions with the beneficial owner of more than 10 percent of any class of the corporation's voting securities for a period of three years following the date upon which the shareholder acquires the requisite number of securities. The types of transactions covered by the law include certain mergers, share exchanges, material dispositions of corporate assets not in the ordinary course of business, dissolutions, reclassifications and recapitalizations.

Other provisions of Virginia corporation law generally deny voting rights to shares of a public corporation acquired in a "control share acquisition," which is an acquisition by any person of beneficial ownership of shares that meet or exceed a specified threshold percentage (20 percent, 33.33 percent or 50 percent) of the total votes entitled to be cast for the election of directors, unless approved by a majority vote of all outstanding shares other than those held by the acquiring person. Although our articles of incorporation currently makes these provisions inapplicable to acquisitions of shares of our common stock, these provisions could become applicable in the future if an amendment to our articles is approved by our Board of Directors and shareholders.

Many state insurance regulatory laws intended primarily for the protection of policyholders contain provisions that require advance approval by state agencies of any change in control of an insurance company or insurance holding company that is domiciled (or, in some cases, doing business) in that state. Under such current laws, any future transaction that would constitute a change in control would generally require approval by the state insurance departments of California, Nebraska, New Jersey, and Texas. Such a requirement could have the effect of delaying or preventing certain transactions affecting the control or the ownership of our common stock, including transactions that could be advantageous to our shareholders.

In addition, state banking laws applicable to our business also contain provisions that require advance approval by state agencies that regulate banks, loan subservicers and other financial institutions, of any change of control of any such institution licensed in that state. Similar to the insurance laws, such a requirement could have the effect of delaying or preventing certain transactions affecting the control or the ownership of our common stock, including transactions that could be advantageous to our shareholders.

Our future success depends on our ability to continue to attract and retain qualified employees.

Our success depends upon our ability to continue to attract and retain highly skilled technical, managerial, sales and marketing personnel, especially sales and marketing personnel who control customer relationships critical to our business. If our efforts in these areas are not successful, our costs may increase, development and sales efforts may be hindered and our customer service may suffer. Although we invest significant resources in recruiting and retaining employees, there is intense competition for personnel in the title insurance industry. From time to time, we experience difficulties in locating enough highly qualified candidates in desired geographic locations, or with required industry-specific expertise.

Our conduct of business in foreign markets creates financial and operational risks and uncertainties that may materially and adversely affect our business, operating results, and financial condition.

We currently provide title insurance and other real estate transaction products and services in foreign countries. As of December 31, 2007, we conducted business in a number of foreign markets, including Mexico, Canada, the Caribbean, Latin America, Europe and Asia. In certain countries where we do business, our products and services have a limited history and are not well-established. As a result, market acceptance of our products and services is uncertain, and we may not be able to successfully implement our business plan. Government regulations may determine how we operate in various countries, which could limit our growth and strategy plans. Our foreign business is subject to potential changes in political and economic conditions in the local markets in which they operate, which could adversely affect their performance. We are also subject to foreign taxes in the countries in which we operate, and changes in tax laws or the interpretation of tax laws may reduce our earnings or may increase our tax cost.

The trading volatility and price of our common stock may be affected by various external factors.

The volatility and price of our common stock are subject to various factors over which we have no control, such as general market conditions and governmental actions or reports about economic activity that may have a market-moving impact, regardless of whether the action or activity directly relates to our business. In addition, shareholder activism that seeks to influence corporate policies or affect our business strategies may lead to speculative trading activity in our common stock. Any substantial trading activity, whether due to speculation or otherwise, has the potential to affect the market price and volatility of our stock. We cannot predict the timing or impact of these factors on the volatility or price of our common stock.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We lease a three building complex in Glen Allen, Virginia that is currently used for our corporate offices. This property consists of approximately 298,000 square feet of office space and parking facilities. Our subsidiaries conduct their business operations primarily in leased office space in forty-one states, Washington DC, Puerto Rico, Canada, Mexico, Germany, Switzerland and the United Kingdom. In addition, we own certain properties that, in the aggregate, are not material to our business taken as a whole.

Our title plants constitute a principal asset. Title plants consist of copies of public records, maps, documents, previous reports, and policies indexed to specific properties in an area. The title plants are generally located at the office which serves a particular locality or in “service centers” serving multiple localities in major metropolitan areas. They enable title personnel to examine title matters relating to a specific parcel of real property as reflected in the title plant, and eliminate or reduce the need for a separate search of the public records. They contain material dating back a number of years and are updated (with the exception of certain title plants) through the addition of copies of documents filed of record which affect real property. We maintain title plants covering many of the areas in which we operate, although certain offices utilize title plants jointly owned and maintained with other title insurers. We capitalize only the initial cost of title plants. The cost of maintaining such plants is charged to expense as incurred. The title plants and title examination procedures have been automated and computerized to a large extent in many areas.

On February 23, 1998, we entered into an Agreement Containing Consent Order (the "Consent Order") with the Federal Trade Commission (the "FTC") in connection with the acquisition of Commonwealth and Transnation. The Consent Order required, and we completed, the divestiture of certain title plants in 12 localities named in the Consent Order. Seven of such localities were in Florida, three were in Michigan, and one each was in Washington, D.C. and St. Louis, Missouri. Pursuant to the terms of the Consent Order, we may not acquire, without prior notice to the FTC, any interest in a title plant in any of the named localities for a period of 10 years following the date of the Consent Order.

We believe that our properties are maintained in good operating condition and are suitable and adequate for our purposes.

ITEM 3. LEGAL PROCEEDINGS

General

We are involved in certain litigation arising in the ordinary course of our businesses. Although the ultimate outcome of these matters cannot be ascertained at this time and the results of legal proceedings cannot be predicted with certainty, based on current knowledge we believe that the resolution of these matters will not have a material adverse effect on our financial position or results of operations.

Litigation Not in the Ordinary Course of Business

On January 25, 2002, Miles R. Henderson and Patricia A. Henderson ("Plaintiffs in the Henderson Suit") filed a putative class action suit (the "Henderson Suit") against Lawyers Title Insurance Corporation ("Lawyers Title") in the Court of Common Pleas for Cuyahoga County, Ohio. Lawyers Title removed the case to the District Court for the Northern District of Ohio on March 6, 2002, and Plaintiffs in the Henderson Suit amended the complaint on March 8, 2002. On June 28, 2002, the District Court remanded the case to the Court of Common Pleas for Cuyahoga County, Ohio. A similar putative class action suit was filed against Commonwealth, by Rodney P. Simon and Tracy L. Simon ("Plaintiffs in the Simon Suit") in the Court of Common Pleas for Cuyahoga County, Ohio on March 5, 2003. Plaintiffs' complaints in both suits alleged that the defendants charged original rates for owners' title insurance policies instead of a lower, reissue rate for which the customers were eligible. Both defendants moved to compel arbitration of the Plaintiffs' claims, but lost the motion in both the trial court and on appeal to the Ohio Supreme Court. On remand to the trial court, Plaintiffs in the Henderson Suit are now seeking to have the case certified as a class action on behalf of all sellers and buyers of residential property in Ohio who paid the higher original rate from 1992 to the present. Plaintiffs in the Simon Suit are seeking to have the case certified as a class action on behalf of all sellers of residential property in Ohio, who paid the original rate from 1993 to the present, as requested in the original complaint. Plaintiffs' complaints in both cases demand an unspecified amount of compensatory damages, declaratory and injunctive relief, punitive damages, and attorneys' fees and costs. In December 2007, a voluntary mediation was held in the Henderson Suit and the parties agreed in principle on several key terms of a settlement that is within the reserve established during third quarter 2007. Should the parties be unable to finalize their agreement, a class certification hearing will be scheduled in March 2008. A hearing date on the Motion for Class Certification filed by the Plaintiffs' in the Simon Suit has not been scheduled. Should further litigation prove necessary, defendants believe that they have meritorious defenses.

On September 20, 2004, Kenneth and Deete Higgins ("Plaintiffs in the Higgins Suit") filed a putative class action suit (the "Higgins Suit") against Commonwealth Land Title Insurance Company ("Commonwealth") in the Circuit Court of Nassau County, Florida. On February 3, 2005, Plaintiffs in the Higgins Suit filed an Amended Class Action Complaint. Plaintiffs in the Higgins Suit allege that Commonwealth charged refinance borrowers higher basic rates for title insurance, rather than the lower reissue rates for which they are alleged to have qualified. The Amended Class Action Complaint also states that Commonwealth failed to disclose the potential availability of the lower rates to customers. Plaintiffs in the Higgins Suit seek to have the case certified as a class action on behalf of all Florida persons or entities who refinanced their mortgages or fee interests on the identical premises from July 1, 1999 to the present where there was no change in the fee ownership and who were charged a premium in excess of the reissue premium. Plaintiffs' complaints in the Higgins Suit demand an unspecified amount of compensatory damages, declaratory relief, attorneys' fees, costs and pre-judgment interest. Initial discovery has been exchanged between the parties. Commonwealth objected to answering interrogatories and producing documents in the possession of the company's agents. Plaintiffs in the Higgins Suit moved to compel this discovery, which motion was granted by the trial court. Commonwealth filed a Petition for Writ of Certiorari to the First District Court of Appeal to overturn the trial court's ruling. Briefing was completed and oral argument heard on July 24, 2007. No motion for class certification has been filed to date, and Commonwealth believes it has meritorious defenses.

On July 24, 2006, A. D. Alberton ("Plaintiff in the Alberton Suit") filed a putative class action suit (the "Alberton Suit") against Commonwealth which is currently pending in the United States District Court for the Eastern District of Pennsylvania. A similar putative class action suit was filed against Lawyers Title by Shariee L. De Cooman ("Plaintiff in the De Cooman Suit") in the Court of Common Pleas of Allegheny County, Pennsylvania on or about August 12, 2005. On November 1, 2005, Plaintiff in the De Cooman Suit filed an Amended Complaint. Plaintiff's complaint in the Alberton Suit alleges that Commonwealth charged rates for title insurance in excess of statutorily mandated rates and/or failed to disclose to consumers that they were entitled to reduced title insurance premiums. The Alberton Suit seeks to certify a class on behalf of all consumers who paid premiums for the purchase of title insurance on Pennsylvania properties from Commonwealth at any time from January 2000 until August 2005 and did not receive a discounted refinance or reissue rate for which they qualified. Plaintiff's complaint in the De Cooman Suit alleges that Lawyers Title charged the basic rate rather than a reissue or discounted rate to certain consumers. The DeCooman Suit seeks to certify a class on behalf of all owners of residential real estate in Pennsylvania who, at any time during the ten years prior to August 12, 2005 paid premiums for the purchase of title insurance from Lawyers Title, qualified for a reissue or other discounted rate, and did not receive such rate. A class certification hearing in the Alberton Suit was held on October 16, 2007. On January 31, 2008, the court issued an order granting in part the motion of Plaintiff in the Alberton Suit for class certification and certifying a class of all persons who from July 25, 2000 until August 1, 2005 paid premiums for the purchase of title insurance from Commonwealth in connection with a refinance of a mortgage or fee interest on Pennsylvania properties that were insured by a prior title insurance policy within ten years of the refinance transaction and were not charged the applicable reissue rate or refinance rate discount for title insurance on file with the Pennsylvania Insurance Commissioner. The parties are engaged in negotiations to settle the Alberton Suit. A class certification hearing in the De Cooman Suit was held on October 9, 2007. Plaintiff's complaint in the Alberton Suit demands an unspecified amount of compensatory damages, declaratory relief, triple damages, restitution, pre-judgment and post-judgment interest and expert fees, attorneys' fees and costs. Plaintiff's complaint in the De Cooman Suit demands an unspecified amount of compensatory damages, punitive damages, triple damages, prejudgment interest, and attorneys' fees, litigation expenses and costs. The defendants believe they have meritorious defenses.

With respect to the class action litigation disclosed above, the cases are subject to many uncertainties and complexities, including but not limited to: the underlying facts of each matter; variations between jurisdictions in which matters are being litigated; differences in applicable laws and judicial interpretations; the length of time before many of these matters might be resolved by settlement or through litigation; the timing and structure of their resolution relative to other similar cases brought against other companies; the fact that many of these matters are putative class actions in which a class is not clearly defined and has not been certified; and the current challenging legal environment faced by large corporations and insurance companies. For the reasons specified above, at this stage of the litigation, the amount or range of loss that could result from an unfavorable outcome cannot be reasonably estimated, except with respect to a reserve of $10 million established during third quarter 2007 in connection with the Henderson and Alberton cases.

We are defendants in a number of other purported class action cases pending in various states that include allegations that certain consumers were overcharged for title insurance and/or related services. The dollar amount of damages sought has generally not been specified in these cases except for jurisdictional limits. We intend to vigorously defend these actions.

Regulatory Proceedings

We have received certain information requests and subpoenas from various regulatory authorities relating to our business practices and those of the title insurance industry.

The Government Accountability Office released its final report on the title insurance industry on April 17, 2007 (the "Report"). The Report makes recommendations regarding federal and state oversight of the title insurance industry, including but not limited to, better consumer information, consideration of the need for modification to the Real Estate Settlement Procedures Act and increased cooperation among regulators.

Various states are studying the title insurance product, market, pricing, business practices, and potential regulatory and legislative changes. Multiple states, including California, Florida, New Mexico, New York, Texas, and Washington, are examining pricing levels and/or title insurance regulations. If it is determined that prices are not justified, rate changes may be implemented, including potential rate reductions.

Some of the pricing examinations, like those conducted in Texas and New Mexico, are conducted annually or biannually and usually result in adjustments to the prices we can charge. Subsequent to the 2004 Texas Title Insurance Biennial Hearings in August 2006, the Texas Commissioner of Insurance ordered a rate reduction of 3.2 percent effective February 1, 2007. The Texas Commissioner of Insurance issued a Consent Order on February 25, 2008 agreeing to settle the ratemaking phase of the 2006 Texas Title Insurance Biennial Hearing with no change to current rates.

Subsequent to a hearing of the New Mexico title rate case for 2006, which concluded on January 18, 2007, the New Mexico Superintendent of Insurance (the "Superintendent") issued an order on July 20, 2007 (the "Final Order") mandating a rate reduction of 6.36 percent and a change in the agent/underwriter split from 80/20 to 84.2/15.8 effective September 1, 2007. The New Mexico Land Title Association (the "NMLTA") filed a Motion for Reconsideration with the Superintendent on August 3, 2007. As a result of the Superintendent taking no action with respect to that Motion, on August 20, 2007, the NMLTA filed a Request for Review of Superintendent's Final Order, a stay and hearing by the New Mexico Public Regulatory Commission (the "Commission"). Various underwriters also filed an appeal to the Commission. On August 28, 2007, the Superintendent issued an Order denying the NMLTA's Motion for Reconsideration and granting the stay request until the Commission completes its review of the case with a requirement that the rate differential be escrowed during the stay and a notice of potential refund be provided to consumers. The Commission heard oral argument on the issues January 23, 2008. If the Commission upholds the Final Order, it can then be appealed to a New Mexico district court, with further appellate review available up to the New Mexico Supreme Court. The NMLTA and certain underwriters filed motions on October 19, 2007 seeking various remedies relating to the 2006 rate case, which resulted in certain Commissioners recusing themselves and if granted could result in the 2006 rate decision being vacated. The Superintendent has not yet issued an order on the completed 2007 rate case. The New Mexico Attorney General has asked the Superintendent to reduce title insurance rates in the 2007 rate case by more than 11 percent.

The California Department of Insurance ("CA DOI") submitted to the Office of Administrative Law ("OAL") proposed regulations governing the rating of title insurance and related services that could impose future rate reductions and filing of mandated statistical plans that impose substantially higher costs on title insurance operations in California. On February 21, 2007, OAL disapproved the regulatory action for failure to comply with certain standards and requirements and on February 28, 2007 issued a written decision detailing the reasons for disapproval. On June 28, 2007, CA DOI submitted revised regulations to OAL that were approved by OAL on July 25, 2007 and subsequently released by the California Secretary of State. The date for compliance with the requirements of the regulations varies by provision during 2009 and 2010. LandAmerica and other title companies doing business in the California market have been engaged in discussions with CA DOI regarding alternative approaches to the regulations but may pursue an appeal if such discussions are unsuccessful. The Commissioner of CA DOI has agreed to propose substantial changes to the data call (i.e. a request to submit information for the insurance experience) and statistical plan portion of the regulations to simplify them and minimize compliance costs, including delaying the effective dates by one year, through a new rulemaking file. The Commissioner has committed further to (i) eliminate the interim rate reduction if the industry helps CA DOI obtain an alternative method to enforce the data call and (ii) eliminate the maximum rate formula if the industry works with CA DOI to enact substantive alternate reforms. An External Title Insurance Working Group is working directly with CA DOI on these matters.

The Florida Office of Insurance Regulation and Department of Financial Services held a public hearing on August 23, 2007, in which numerous title insurance executives were questioned about Florida title insurance issues.

In addition, a number of state inquiries have focused on captive reinsurance. Captive reinsurance involves the provision of reinsurance by a reinsurance company that is owned by another entity, typically a lender, developer or other party that is a provider of real estate-related services. From the inception of our captive reinsurance programs in 1997 through 2004, reinsurance premiums paid by us to captive reinsurers totaled approximately $12.0 million. The revenues from these programs were not material to our results of operations. We voluntarily terminated our captive reinsurance arrangements as of February 2005, notwithstanding our belief that we had operated the programs in accordance with applicable law. We settled these investigations with six states, representing approximately 81.4 percent of our captive reinsurance business, without admitting any liability.

In June 2005, we established reserves of $19.0 million to cover anticipated exposure to regulatory matters nationwide, an amount which includes settlements with the California, Arizona, Nevada, Virginia, Colorado, and North Carolina departments of insurance. Based on these settlements and the status of inquiries, we released $8.5 million of this reserve back into earnings during fiscal years 2005-2007. The remaining reserve at December 31, 2007 was approximately $1.3 million.

We may receive additional subpoenas and/or requests for information in the future from state or federal government agencies. We will evaluate, and we intend to cooperate in connection with, all such subpoenas and requests.

Based on the information known to management at this time, it is not possible to predict the outcome of any of the currently pending governmental inquiries and investigations into the title insurance industry's market, business practices, pricing levels, and other matters, or the market's response thereto. However, any material change in our business practices, pricing levels, or regulatory environment may have an adverse effect on our business, operating results and financial condition.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of 2007.

EXECUTIVE OFFICERS OF THE REGISTRANT

Set forth below are the persons who serve as our executive officers, their ages and positions as of February 28, 2008, and their business experience during the prior five years. There are no family relationships between any of such persons and any director, executive officer or person nominated or chosen to become a director or executive officer.

Name	Age	Office and Experience
Kenneth Astheimer	59	President – Agency Services since January 1, 2007 and Executive Vice President – Agency Services of LandAmerica from September 2002 through December 31, 2006. Mr. Astheimer also serves as Executive Vice President for each of Lawyers Title, Commonwealth and Transnation, positions held for more than five years.

Name	**Age**	**Office and Experience**
Theodore L. Chandler, Jr.	55	Chairman and Chief Executive Officer of LandAmerica since January 1, 2007; President and Chief Executive Officer of LandAmerica from January 1, 2005 through December 31, 2006 and Chairman and Chief Executive Officer of each of Lawyers Title, Commonwealth and Transnation since January 1, 2005. Mr. Chandler served as Chief Operating Officer of LandAmerica and each of Lawyers Title, Commonwealth and Transnation from July 24, 2002 to December 31, 2003.
Ross W. Dorneman	61	Executive Vice President and Chief Administrative Officer of LandAmerica since January 1, 2007 and Executive Vice President – Human Resources of LandAmerica from December 2002 through December 31, 2006.
G. William Evans	53	Executive Vice President and Chief Financial Officer of LandAmerica since September 15, 1999. Mr. Evans previously served as Chief Financial Officer of each of Lawyers Title, Commonwealth and Transnation from September 15, 1999 to December 1, 2005. Mr. Evans also serves as Senior Executive Vice President each of Lawyers Title, Commonwealth and Transnation, positions he has held since December 1, 2005.
Michelle H. Gluck	48	Executive Vice President and Chief Legal Officer of LandAmerica since May 15, 2007; Executive Vice President, Chief Legal Officer and Corporate Secretary from January 1, 2007 to May 15, 2007; Executive Vice President, General Counsel and Secretary of LandAmerica from January 1, 2004 through December 31, 2006 and Executive Vice President of each of Lawyers Title, Commonwealth and Transnation since January 1, 2004. Ms. Gluck served previously as Vice President, Associate General Counsel and Assistant Secretary of Kmart Corporation from June 2001 to September 2003.
Richard P. Gonzalez	66	Executive Vice President and Chief Technology Officer since January 1, 2007; Senior Vice President and Chief Technology Officer from May 1, 2005 to December 31, 2006. Mr. Gonzalez served previously as an independent management consultant from March 2003 until March 2005. Prior to that time, he served as a Senior Vice President of the NASDAQ Stock Market.
Melissa A. Hill	51	President – Residential Services since January 1, 2007 and Executive Vice President – Production and Process Improvement of LandAmerica from January 1, 2004 through December 31, 2006. Ms. Hill previously served as President of LandAmerica OneStop from August 2002 to December 2003.

Name	Age	Office and Experience
Jeffrey C. Selby	62	President – Commercial Services since January 1, 2007 and Executive Vice President – Commercial Services of LandAmerica from January 1, 2004 through December 31, 2006. Mr. Selby also serves as Executive Vice President of Commonwealth, Lawyers Title and Transnation, positions he has held for more than five years. Mr. Selby served as Executive Vice President - Director of National Commercial Services and Manager of National Agents and Affiliates of LandAmerica from February 17, 1999 to December 31, 2003.
Christine R. Vlahcevic	45	Senior Vice President - Corporate Controller of LandAmerica since January 1, 2005. Ms. Vlahcevic also serves as Chief Financial Officer for each of Lawyers Title, Commonwealth and Transnation, positions she has held since December 1, 2005. Ms. Vlahcevic previously served as Senior Vice President – Corporate Controller of each of Lawyers Title, Commonwealth and Transnation from January 1, 2005 to December 1, 2005. Ms. Vlahcevic served as Controller of Chesapeake Corporation from October 2000 to December 2004.
Albert V. Will	52	President – Lender Services since January 1, 2007 and Executive Vice President – Lender Services from March 15, 2005 through December 31, 2006. Mr. Will previously served as President of Lincoln Abstract, LLC, a position he held from April 2004 to March 2005. Prior to April 2004, Mr. Will served as Executive Vice President, Radian Guaranty and President, Radianexpress.com of Radian Group, Inc., positions he held for more than five years.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Price of Common Stock and Dividends

Our common stock trades on the New York Stock Exchange ("NYSE") under the symbol "LFG."

The following table sets forth the reported high and low sales prices per share of our common stock on the NYSE Composite Tape, based on published financial sources, and the cash dividends per share declared on the common stock for the calendar quarter indicated.

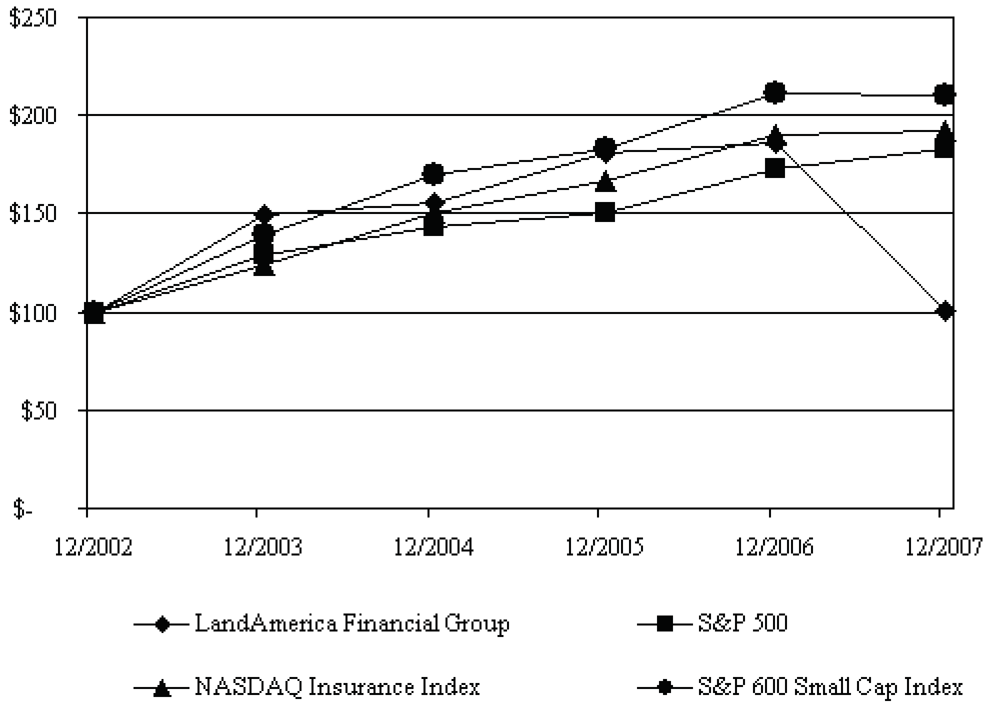
	Price Range		
	High	Low	Dividends
Year Ended December 31, 2006			
First quarter	$69.50	$60.14	$0.18
Second quarter	71.04	61.08	0.18
Third quarter	67.59	58.75	0.22
Fourth quarter	69.85	59.15	0.22
Year Ended December 31, 2007			
First quarter	$75.55	$60.58	$0.22
Second quarter	106.66	74.00	0.22
Third quarter	96.90	36.85	0.30
Fourth quarter	41.22	23.60	0.30

Our current dividend policy anticipates the payment of quarterly dividends in the future. The declaration and payment of dividends to holders of common stock will be at the discretion of the Board of Directors and will be dependent upon our future earnings, financial condition, capital requirements and other factors.

Because we are a holding company, our ability to pay dividends will depend largely on the earnings of, and cash flow available from, our subsidiaries. During 2006, our three principal title underwriting subsidiaries, Commonwealth, Lawyers Title and Transnation, redomesticated to Nebraska. These insurance subsidiaries are subject to state regulations that require approval of the Nebraska Department of Insurance prior to payment of any extraordinary dividends or distributions. Under Nebraska's laws and regulations, an extraordinary dividend or distribution is any amount which exceeds the greater of (a) ten percent of such insurer's policyholders surplus as of the preceding year end or (b) net income not including realized capital gains, for the preceding calendar year. In determining whether a dividend or distribution is extraordinary, an insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. For the 12-month period ending December 31, 2007, our three principal underwriters are permitted to distribute approximately $186.1 million to us without prior regulatory approval.

Stock Performance Graph

The following graph compares the cumulative total return to our shareholders for the last five fiscal years with the total return on the S&P 500 Index and the NASDAQ Insurance Index. The graph makes the same comparison to the S&P 600 Small Cap Index. The graph assumes the investment of $100 in our common stock on December 31, 2002, and the reinvestment of all dividends.



SOURCE: Bloomberg Financial Database

Index Data	12/2002	12/2003	12/2004	12/2005	12/2006	12/2007
LandAmerica Financial Group	$100	$149	$155	$181	$186	$101
S&P 500	$100	$129	$143	$150	$173	$183
NASDAQ Insurance Index	$100	$124	$150	$167	$190	$192
S&P 600 Small Cap Index	$100	$139	$170	$183	$211	$210

Number of Shareholders of Record

As of February 22, 2008, there were approximately 1,448 shareholders of record of our common stock, including the Depository Trust Corporation, which acts as a clearinghouse and nominee for multiple brokerage and custodial accounts.

Issuer Purchases of Equity Securities

The following table sets forth the details of purchases of common stock under our share purchase plans and our Executive Voluntary Deferral Plan and Outside Directors Deferral Plan that occurred in the fourth quarter of 2007:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
October 1 through October 31, 2007	304,630	$37.46	302,900	1,851,329
November 1 through November 30, 2007	165,924	$28.06	164,130	1,685,405
December 1 through December 31, 2007	32,742	$28.06	29,850	1,652,663

(1) A total of 6,416 shares of our common stock were purchased in connection with the Executive Voluntary Deferral Plan and the Outside Directors Deferral Plan during fourth quarter 2007. These repurchases were made in open-market transactions on behalf of a trust maintained by us for the Executive Voluntary Deferral Plan and the Outside Directors Deferral Plan. For additional information on these plans, see Part II, Item 8, “Financial Statements and Supplementary Data.”

(2) In February 2007, the Board of Directors approved a share repurchase program expiring in October 2008 (the “2007 Program”) that authorizes us to repurchase 1.5 million shares of our common stock. Under the 2007 Program, we repurchased 106,500 shares during fourth quarter 2007 for $4.4 million, at an average cost of $40.92 per share. As of December 31, 2007, there were no authorized shares remaining under the 2007 Program.

(3) In August 2007, the Board of Directors approved a share repurchase program expiring in March 2009 (the “2007 II Program”) that authorizes us to repurchase 1.5 million shares of our common stock. Under the 2007 II Program, we repurchased 390,380 shares during fourth quarter 2007 for $12.4 million at an average cost of $31.82 per share. As of December 31, 2007, there were approximately 1,109,620 authorized shares remaining under the 2007 II Program.

ITEM 6. SELECTED FINANCIAL DATA

The information set forth in the following table should be read in conjunction with Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and Part II, Item 8, “Financial Statements and Supplementary Data.”

	2007	2006	2005	2004	2003
	(Dollars in millions, except per share amounts)				
For the year ended December 31:					
Total revenue	$ 3,705.8	$ 4,015.9	$ 3,959.6	$ 3,522.1	$ 3,406.0
Net (loss) income	(54.1) [1]	98.8 [2]	165.6 [3]	171.6 [4]	202.8 [5]
Net (loss) income per share	(3.31)	5.80	9.45	9.46	11.01
Net (loss) income per share assuming dilution	(3.31)	5.61	9.29	9.39	10.88
Dividends per share	1.04	0.80	0.66	0.50	0.34
At December 31:					
Notes payable	579.5	685.3	479.3	465.4	327.4
Total assets	3,853.7	4,174.8	3,695.0	3,264.9	2,710.1
Shareholders' equity	1,200.7	1,395.8	1,278.5	1,197.7	1,065.8

[1] In 2007, we incurred $25.3 million, or $15.4 million after taxes, for the write-off of intangible and long-lived assets and $6.4 million, or $4.2 million after taxes, for the early extinguishment of debt.

[2] In 2006, we incurred $14.7 million, or $9.5 million after taxes, for the write-off of intangible and long-lived assets.

[3] In 2005, we (1) recorded the recognition of deferred income of $33.8 million, or $20.0 million after taxes, (2) recorded the write-off of intangible and long-lived assets of $39.1 million, or $23.2 million after taxes, and (3) incurred legal and settlement costs of $22.6 million, or $15.4 million after taxes.

[4] In 2004, we (1) incurred litigation settlement costs of $9.2 million, or $5.9 million after taxes, (2) amended our pension plan effective December 31, 2004 to cease future accruals resulting in a curtailment gain of $4.8 million, or $3.1 million after taxes, (3) recorded exit and termination costs of $6.5 million, or $4.2 million after taxes, and (4) recorded title plant impairments of $5.0 million, or $3.2 million after taxes.

[5] In 2003, we recorded title plant impairments of $4.9 million, or $3.2 million after taxes.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of financial condition and results of operations is provided to supplement, and should be read in conjunction with, Part I, Item 1, "Business" and Part II, Item 8, "Financial Statements and Supplementary Data." For information on risks and uncertainties related to our business that may make past performance not indicative of future results, or cause actual results to differ materially from any forward-looking statements made by us, see Part I, "Forward-Looking and Cautionary Statements," and Part I, Item 1A, "Risk Factors."

Executive Overview

Our long-term goal is to be the premier provider of integrated real estate transaction services while maximizing our profitability throughout the real estate market cycle. To accomplish this objective, we have expanded our operations through internal growth and selective strategic acquisitions. Our business operations are organized under three primary business segments: Title Operations, Lender Services, and Financial Services. Other operating business segments not required to be reported separately are combined with unallocated corporate expenses and reported in a category called Corporate and Other. In 2007, we refined our definition and measurement of commercial revenue and have revised our 2005 and 2006 commercial revenue to be comparable to the 2007 presentation.

Given our relative size and market share, we believe that our business generally trends with the overall real estate industry. The Mortgage Bankers Association ("MBA") estimated that there were $2.3 trillion residential mortgage originations in 2007, $2.7 trillion in 2006, and $3.0 trillion in 2005. The MBA's statistics at February 15, 2008 estimate that approximately 50 percent of new mortgage originations in 2007, 2006, and 2005 were refinance transactions. Similar to the real estate industry, we experienced a record year in 2005 due to a low interest rate environment and strong commercial activity. During 2006, rising mortgage interest rates coupled with several years of strong appreciation in home prices, reduced consumer housing affordability and caused a decline in housing sales and the volume of refinance activity. The sharp contraction in the mortgage credit markets in 2007 further compounded the deterioration in the residential real estate market. In 2007, commercial revenue was 30.8 percent of direct title business. Commercial revenue tends to be less sensitive to interest rate fluctuations. Both 2006 and 2007 benefited from strong levels of commercial activity. The MBA forecast anticipates a decrease in overall mortgage originations of approximately 16 percent to $2.0 trillion in 2008, with refinancing transactions accounting for 53 percent of the market. We believe that our results for 2008 will mirror the MBA expectations. In addition, we believe that the commercial real estate cycle may have reached its peak in 2007 and may level off in 2008.

Operating revenues were $3,569.4 million, $3,885.2 million, and $3,853.6 million in 2007, 2006, and 2005, respectively. Pretax operating (loss) income was $(81.6) million, $154.0 million, and $261.3 million in 2007, 2006, and 2005, respectively. Our predominant business operation continues to be our Title Operations segment which accounted for 88.1 percent of our operating revenue in 2007 and 90.3 percent of our operating revenue in 2006 and 2005. In 2007, we experienced a decline in operating revenues from agency and direct title operations in the Title Operations segment and declines in certain lines of the mortgage originations and loan servicing businesses in the Lender Services segment, as well as declines in the home warranty and property inspections businesses when compared with 2006. These declines were offset in part by increased business volume as the result of the merger with Capital Title Group, Inc. ("Capital Title") and other acquisitions, growth in the title and non-title commercial operations, and growth in the default management services business.

The pretax operating loss in 2007 was primarily due to the effects of the sharp decline in the residential housing market. In addition, the following items affected the results for 2007: (1) we recorded an impairment charge in first quarter 2007 for a customer relationship intangible in our Lender Services segment, (2) we incurred a higher claims provision ratio in our Title Operations segment, (3) we recorded a legal accrual for two class action lawsuits, (4) we incurred incremental costs to close offices in response to current market conditions, and (5) we incurred a charge related to the prepayment of certain senior notes. Pretax operating losses were offset in part by continued strength in the commercial real estate market, proceeds from a lawsuit settlement, and growth in the default services line of our loan servicing business.

As conditions in the real estate market became increasingly difficult in 2007, we aggressively sought to reduce our operating costs while remaining focused on activities designed to improve our underlying fundamentals. We reviewed our operating performance and related staffing requirements during the year in each of the local markets we serve. Based on this review, we reduced full-time equivalent ("FTE") counts by approximately 3,200, or 22 percent, as of December 31, 2007 and we closed or consolidated approximately 285 offices. As a result of these actions, we incurred approximately $43.9 million of related pretax charges in 2007 compared to $6.6 million in 2006.

Additionally, we are transforming our cost structure through our Fusion initiatives. In order to transform LandAmerica into a unified operating company, we are actively engaged in a number of initiatives to maximize our operating efficiency and thereby improve our return on equity. We call these initiatives Fusion. Under Production Fusion, we have consolidated just over 50 production centers, or a decrease of 60 percent, from the beginning of the year. Technology Fusion is our initiative to reduce the complexity and cost of over 300 operating applications to a substantially reduced number when completely phased in during 2009. In 2007, we met our goal to decommission approximately 100 systems and will continue this process in 2008.

In first quarter 2007, we recorded a customer relationship intangible impairment charge of $20.8 million, or $12.5 million net of taxes, as a result of the probable loss of business from one of our tax and flood processing customers, Fremont General Corporation. For further details, see Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Our provision for claims as a percentage of operating revenue has trended upward recently, primarily due to claims frequency and severity for recent policy years. We have noted a similar upward trend in provisions for claims occurring throughout the title insurance industry. Since we are subject to liability for claims for an extended period of time, slight increases in claims frequency and severity for more recent policy years can result in a significant increase in the amount of liability required for potential claims.

In August 2007, we settled a lawsuit with Mercury Companies, Inc. and received a payment in the amount of $12.5 million as part of the settlement. The payment is reflected as a reduction of legal fees and costs expended in the litigation in the "General, administrative and other" line (approximately $11.7 million) and in the "Salaries and employee benefits" line (approximately $0.3 million) of the Consolidated Statements of Operations. In September 2007, we established reserves of $10.0 million for anticipated exposure to class action litigation. For further details, see Note 14 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

On October 10, 2007, we received net proceeds of $100 million under our existing $200 million revolving credit agreement with SunTrust Bank. All of the proceeds received were used to prepay certain of our senior notes. We exercised our option to prepay the senior notes to enhance our financial flexibility. We recorded a charge of $6.4 million in fourth quarter 2007 primarily as a result of a "make-whole" payment applicable to the senior notes. For further details, see Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Title Operations

Our Title Operations segment is affected by the level of real estate activity which itself is often driven by the cost and availability of mortgage funds and by economic developments. The demand for our title insurance products and services is dependent upon, among other things, the volume of residential and commercial real estate transactions, including mortgage refinancing transactions. The volume of these transactions has historically been influenced by factors such as interest rates and the state of the overall economy. For example, when interest rates are increasing or the economy is experiencing a downturn or recession, real estate activity typically declines and we experience lower revenue and profitability. The cyclical nature of our business has caused fluctuations in revenue and profitability in the past and is expected to do so in the future. Earnings pressure during a cyclical downturn can be further pressured by the fixed cost components of our operating structure. In addition to cyclicality in our title business, we also experience seasonality. Residential real estate activity is generally slower in the winter, when fewer families buy or sell homes, with increased volumes in the spring and summer. Residential refinancing activity is generally more uniform throughout the seasons, but is subject to interest rate variability. We typically report our lowest revenue in the first quarter, with revenue increasing into the second quarter and through the third quarter. The fourth quarter may be as strong as the third quarter, depending on the level of activity in the commercial real estate market and residential refinancing activity. Commercial real estate volumes are less sensitive to changes in interest rates, but fluctuate based on local supply and demand. Due to a downturn in the residential real estate environment that began in 2006 and continued into 2007 and the contraction in the mortgage credit markets in 2007, our results did not follow the typical seasonal patterns as evidenced by sharp declines in revenue in the third and fourth quarters. See Part I, Item 1, "Cyclicality and Seasonality."

Revenue from our Title Operations segment includes title premiums, escrow fees, and fees for other ancillary services. Premiums and fees are determined both by competition and by state regulation in those states that regulate rates that we can charge for our services. In addition, revenue from our Title Operations segment is influenced by our sales and marketing efforts. Revenue from title operations owned by us is recognized at the time the real estate transaction closes. There can be a delay of up to several months between the point in time that a title order is opened and the real estate transaction closes. Consequently, expenses may be incurred and recognized related to a direct title order in advance of revenue being recognized. Operating revenue from independent agents is recognized when we receive notification from the agent that a policy has been issued. Agent notification typically occurs later than the closing of the real estate transaction. The delay in notification varies from year to year, from agent to agent, and between regions of the country. During 2007, we experienced an average delay between closing and reporting by agents of approximately 110 days. The delay in notification by agents defers revenue recognition and may also create a lag between changes in general real estate activity and the effect of such changes on the portion of our Title Operations segment revenue attributable to agents.

On September 8, 2006, we completed the merger with Capital Title, which consisted of a title insurance underwriter, several title and escrow agency operations, a property appraisal company, a settlement services provider, and other related companies. Capital Title serviced customers primarily in Arizona, California, and Nevada in addition to providing lender services on a national basis. Under the terms of the merger, we acquired 100 percent of Capital Title's common stock for approximately $252.6 million which included direct transaction costs of $3.6 million. Our merger with Capital Title strengthened our title operations presence in key western states and added scale to the services we provide to our mortgage lending customers. During 2007, we achieved annualized pretax cost savings of approximately $16 million in conjunction with our integration.

Our profit margins are affected by several factors including: the volume of real estate transactions, the type of title policies issued, the distribution channel used to issue our policies, the amount of liability insured, and the level of cancellations.

- Volume is an important determinant of profitability because we, like any other real estate services company, have a significant level of fixed costs arising from personnel, occupancy costs, and maintenance of title plants. While we utilize title orders opened as a forward-looking indicator of business volume, our results are affected during times of rapidly increasing or decreasing volumes since we cannot immediately match our staffing requirements to changes in business volumes.
- The type of title policies issued affects our profitability margin. Profit margins from refinancing activity are generally lower than those from buy/sell activity because, in many states, there are premium discounts on refinance transactions.
- The distribution channel used to issue our policies affects our profitability margin. Our direct operations generally provide higher margins because we retain the entire premium from each transaction instead of paying a commission to an independent agent. We regularly review the profitability of our agents, adjust commission levels or cancel certain agents where profitability objectives are not being met, and expand operations where acceptable levels of profitability are available.
- The amount of liability insured is also a determinant of profitability. Because premiums are based on the face amount of the policy, larger policies generate higher premiums although expenses of issuance do not necessarily increase in proportion to policy size.
- Cancellations affect profitability because costs incurred both in opening and in processing orders typically are not offset by premiums and fees.

We continually evaluate our cost structure in relation to anticipated changes in business levels discussed above. Our profit margin (which is defined as income before taxes as a percentage of total revenue) was 0.9 percent in 2007 compared to 6.3 percent in 2006 and 9.2 percent in 2005. The decline in profit margin in 2007 from 2006 was due primarily to the decline in the residential real estate market. See "Executive Overview" above for further discussion of factors that affected 2007 profit margin.

Generally, title insurance claims rates are lower than other types of insurance because title insurance policies insure against prior events affecting the quality of real estate titles rather than against unforeseen, and therefore less predictable, future events. Based on our review of the underlying claims data and trends therein, we have provided for title losses at 8.6 percent of operating revenue from the Title Operations segment for 2007 compared to 6.1 percent in 2006 and 5.2 percent in 2005. The increase in the loss percentage in 2007 compared to 2006 was due to upward development primarily in policy years 2004, 2005, and 2006 and a higher claims rate for the 2007 policy year. Since there is an extended time period for which we are liable, slight changes in frequency and severity of claims in more recent policy years can have a significant affect on the amount of liability required for Incurred But Not Reported ("IBNR") claims. See "Critical Accounting Estimates – Policy and Contract Claims" below for further discussion.

Lender Services

Our Lender Services segment provides services to regional and national lending institutions which complement those offered in our title insurance business. The management of the Lender Services segment is focused on three lines of business: mortgage origination, loan servicing, and loan subservicing. Our mortgage origination business consists primarily of centralized transaction management services, flood zone determinations, appraisal and valuation services, and consumer mortgage credit reporting. Our loan servicing business provides real estate tax processing services and default management services, and our loan subservicing business provides national loan subservicing through our subsidiary LoanCare Servicing Center, Inc. Over the past three years, we have expanded our Lender Services platform through strategic acquisitions. In 2005, we expanded the national scope of our businesses in these areas through the purchase of one flood certification business, four credit reporting businesses, and one default management business. Our merger with Capital Title in 2006 further expanded our Lender Services platform with the addition of a centralized management services business and an appraisal and valuation business. In 2006, we also acquired a business that developed a web-based application that manages the default mortgage process and we acquired a flood determination business. We expect to continue expanding organically and through small acquisitions or partnerships in this segment and to build on cross-selling opportunities.

Lender Services currently realizes approximately 17 percent of its reported revenue through service revenue associated with tracking and reporting of real estate tax payments related to mortgage loans for lending institutions. Our servicing agreements typically call for us to service the mortgage loan until cancellation or sale. The lenders pay for these services at the time they add a loan to their servicing portfolio. We defer a significant portion of the revenue received for these services to account for the life of loan servicing aspects of the contracts. As a result, revenue reported in the financial statements represents the amortization of both current and prior service fees and is not representative of new contract sales levels. Expenses on the other hand are charged to the income statement as incurred and are not deferred. Thus, an understanding of the levels of deferred revenue or new contract cash received in this area is critical to understanding the relative strength of the underlying business related to tax and flood services. The estimated life of loans is reviewed regularly to determine if there have been changes in contract lives and/or changes in the number or timing of prepayments and adjusted to reflect current trends. In certain instances, we are required to reimburse part of the fees if the lender sells a loan to another party. See further discussion in "Critical Accounting Estimates" below.

Financial Services

The business reported in this segment includes Centennial, whose primary business is the origination and bulk purchase of commercial real estate loans in the Southern California market and, to a lesser degree, in Arizona and Nevada; Centennial's business is dependent on the viability of the commercial real estate market in these markets. Deposits are solicited through the internet for both certificates of deposit and passbook savings accounts. As an industrial bank, Centennial does not accept demand deposits, such as checking accounts, that provide for payment to third parties. Centennial does not offer banking services such as credit cards or automated teller machines. We utilize Centennial to hold a portion of our escrow deposits. At December 31, 2007, the escrow balance was approximately $87.7 million. We expect to continue to expand the depository service capabilities of Centennial to facilitate escrow transactions.

We facilitate tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code. In second quarter 2007, the governor of the State of Nevada approved a consumer protection law that affects tax-deferred property exchanges in that state. Under the new state law, funds related to tax-deferred property exchanges are required to be deposited in federally insured or similar financial institutions. In addition, the Internal Revenue Service and U.S. Treasury Department are proposing similar regulations. In response to this new state law and proposed federal regulation, during 2007 we began moving the location and administration of affected funds to Centennial. At December 31, 2007, Centennial held $131.9 million of tax-deferred property exchange deposits previously held in third party accounts, which were not considered to be our assets. We are not certain whether or when similar laws will be approved in other states or on a national level and what effect such laws may have on the location and administration of other funds related to tax-deferred real property exchanges. For further details, see Note 1 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Corporate and Other

This category includes businesses that are not significant enough in size to be reported as separate segments as well as the unallocated portion of the corporate expenses related to our corporate offices in Glen Allen, Virginia and unallocated interest expense. The businesses reported in this category provide residential property inspections, home warranties, commercial property valuations and assessments, and due diligence services.

During the past three years, we have expanded the scope and scale of businesses included in Corporate and Other through strategic acquisitions. We acquired residential home inspection businesses during 2005 and 2006. In 2007, we acquired a commercial appraisal business and a building and project consultancy.

Commercial revenue was 62.7 percent of operating revenue in Corporate and Other and, as discussed above, tends to be less sensitive to interest rate fluctuations. The full year 2007 continued to benefit from strong levels of commercial activity. Consequently, operating revenue in 2007 increased 18.4 percent over 2006. We believe that the commercial real estate cycle may have reached its peak in 2007 and may level off in 2008.

Critical Accounting Estimates

This discussion and analysis of our financial condition and results of operations is based upon our accompanying Consolidated Financial Statements which have been prepared in accordance with accounting principles generally accepted in the United States. We are required to make estimates and judgments about future events that can affect the reported amounts of certain assets, liabilities, and disclosures with respect to contingent liabilities and commitments at the date of our financial statements and the reported amounts of revenues and expenses during the period. We consider the following accounting estimates to be critical in preparing and understanding such statements. Actual results could differ from those estimates. Significant accounting policies are disclosed in Note 1 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

A quantitative sensitivity analysis is provided where that information is reasonably available, can be reliably estimated, and provides material information to financial statement users. The amounts used to assess sensitivity (e.g., 1 percent, 6 months, etc.) are included to allow users of our financial statements to understand a general direction cause and effect of changes in the estimates and do not represent our predictions of variability.

Policy and Contract Claims

Claims payment experience has historically extended for more than 20 years after the issuance of a policy. Due to the length of time over which claim payments are made and changes in underlying economic conditions, these estimates are subject to variability. We review our claims experience quarterly to evaluate the adequacy of our claims reserve. We consider factors such as historical timing of reported claims and claims payments over the period in which policies are effective against actual experience by year of policy issue to determine the amount of claims liability required for each year for which policies are outstanding. We also consider the effect of current trends in marketplace activity, including refinance activity, which may shorten the time period a policy is outstanding, bankruptcies and individual large claims attributable to any particular period in determining the expected liability associated with each year. These projections are compared to recorded reserves to evaluate the adequacy of such recorded reserves and any necessary adjustments are included in current expenses. Our recorded liability for claim losses at December 31, 2007 includes reserves for known claims of $165.8 million and reserves for losses that have been incurred but have not yet been reported of $710.7 million. Reserves for known claims include the estimated amount of the claim and the costs required to resolve the claim. A provision for estimated claims that are incurred but not yet reported is established at the time premium revenue is recognized based on reported claims, historical loss experience, and other factors, including industry trends.

Provisions for title losses as a percentage of operating revenues from the Title Operations segment were 8.6 percent for 2007, 6.1 percent for 2006, and 5.2 percent for 2005. A change of 1 percent in this percentage would have changed the provision for title losses and pretax earnings by approximately $31.4 million for the year ended December 31, 2007. We review our loss provision rates quarterly and adjust as experience develops or new information becomes known.

Valuation of Investments

We review our available-for-sale investment portfolio quarterly for factors that may indicate that a decline in fair value of an investment is other-than-temporary. Some factors considered in evaluating whether or not the decline in fair value is other-than-temporary include: (1) the significance of the decline; (2) whether the investments were rated below investment grade; (3) how long the securities have been in the unrealized loss position; and (4) our ability and intent to retain the investment for a significant period of time for it to recover. Investments are selected for analysis whenever an unrealized loss is greater than a certain threshold that we determine based on our judgment. Fixed-maturity investments that have unrealized losses caused by interest rate movements are not at risk as we have the ability and intent to hold them to maturity. Unrealized losses on investments in equity securities and fixed-maturity instruments that are susceptible to credit related declines are evaluated based on the aforementioned factors. We believe that our monitoring and analysis has allowed for the proper recognition of other-than-temporary impairments over the past three year period. Any change in estimate in this area will have an effect on the results of operations of the period in which a charge is taken. See also “Investment Policies” under Part I.

Purchase Accounting and Goodwill and Long-Lived Assets Valuations

We completed 3 acquisitions with a total purchase price of $26.0 million in 2007, 11 acquisitions with a total purchase price of $266.5 million in 2006, and 9 acquisitions with a total purchase price of $26.1 million in 2005. These acquisitions were intended to grow our title operations and expand our real estate transaction services portfolio. As a result of these acquisitions, we assigned fair values to the assets and liabilities purchased and increased the amount of goodwill and other intangibles recorded on our balance sheet.

In accordance with Statement of Financial Accounting Standard (“SFAS”) No. 142, *Goodwill and Other Intangibles* (“SFAS 142”), we assess the recoverability of goodwill for each of our reporting units. Reporting units are business components of an operating segment, and goodwill is assigned to the reporting unit which benefits from the synergies arising from each business acquisition. We test for the recoverability of goodwill annually or sooner if events or changes in circumstances indicate that the carrying amount of our reporting units, including goodwill, may exceed their fair values. The fair value of the reporting units is determined using cash flow analysis which projects the future cash flows produced by the reporting units and discounts those cash flows to the present value. The projection of future cash flows is necessarily dependent upon assumptions on the future levels of income as well as business trends, prospects, and market and economic conditions. When the fair value is less than the carrying value for the net assets of the reporting unit, including goodwill, an impairment loss may be charged to operations. Based on our annual analysis, no impairment was identified for the year ending December 31, 2007.

Our intangible assets primarily include capitalized customer relationships and non-competition arrangements which are amortized over their useful lives. Pursuant to SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (“SFAS 144”), tests for impairment must be performed for intangible assets that are amortizable with definite lives if conditions exist that indicate the carrying value may not be recoverable. Such conditions may include a loss of a significant customer or a change in the assessment of future operations. During 2007, we became aware that one of our tax and flood processing customers, Fremont General Corporation, received a cease and desist order from the Federal Deposit Insurance Corporation relating to lending practices in its mortgage origination business. As a result of this probable loss of business from this customer, we conducted an impairment test of LandAmerica Tax and Flood’s customer relationship intangible asset and determined that its customer relationship intangible asset was impaired. We recorded an impairment charge of $20.8 million, or $12.5 million net of taxes, which has been reflected in our results of operations for the year ended December 31, 2007.

During 2005, LandAmerica Tax & Flood ceased providing future tax services in two states, California and Colorado, for one of its largest tax and flood customers. We determined that LandAmerica Tax & Flood's customer relationship intangible was impaired by $37.6 million, which was reflected in our results of operations for the year ended December 31, 2005. At December 31, 2007, there was approximately $4.5 million of customer relationship intangibles remaining related to the acquisition of LandAmerica Tax & Flood in 2003.

Additionally, we determined that certain non-competition intangible assets in our Title Operations segment were impaired and we recorded impairment losses of $3.0 million in 2007 and $1.5 million in 2005. There were no impairments of non-competition intangible assets in 2006. See further details in Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

We also review the status of our title plants at least annually. As a result of these reviews, we periodically determine that a title plant will no longer be used or has been abandoned at which time we take a charge to earnings. During 2007 and 2006, we identified several title plants in the Title Operations segment that will not continue to be used or maintained. Accordingly, in 2007 and 2006 we recorded an impairment loss of $1.5 million and $4.4 million, respectively, which was reflected in "Impairment of intangible and long-lived assets" in Part II, Item 8, "Financial Statements and Supplementary Data." We did not have any material charges related to title plants in 2005. We anticipate that additional charges in future periods may be taken as state and local courts and municipalities continue to automate their property records and make them available through electronic media.

Income Taxes

We are subject to income taxes primarily in the U.S. and some foreign jurisdictions. Significant judgments are required to determine the consolidated provision for income taxes. During the ordinary course of business, there are many transactions and calculations for which the ultimate tax determination is uncertain including certain positions that may be challenged and may not be fully sustained upon review by tax authorities. To the extent that the final outcome of matters is different from the amounts recorded, such differences will affect income tax expense in the period in which such determination is made.

Significant judgment is also required to determine any valuation allowance recorded against deferred tax assets. Many deductions for tax return purposes cannot be taken until the expenses are actually paid, rather than when the expenses are recorded under Generally Accepted Accounting Principles ("GAAP"). In these circumstances, under GAAP, we accrue for the tax benefit expected to be received in future years if, in our judgment, it is "more likely than not" that we will receive such benefits. The most significant factor in this determination is the projected future timing and amounts of taxable income. If we determine that it is no longer "more likely than not" that an asset will be utilized, we record a valuation allowance which would reduce net income in the period recorded. Deferred tax assets created from tax benefits expected to be realized were $174.1 million at December 31, 2007 and $156.4 million at December 31, 2006. Valuation allowances have been provided against a portion of our deferred tax assets of $11.0 million at December 31, 2007 and $1.0 million at December 31, 2006. See Note 9 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Pension and Other Postretirement Benefits

We have pension and other postretirement benefit plans covering a portion of our employees. These plans are valued annually using assumptions that are critical in determining our projected liabilities and related expenses for pension and other postretirement benefits. The assumptions used in the valuations are reviewed annually. We believe the most critical assumptions are the discount rate and the expected long-term rate of return on plan assets ("EROA").

A lower discount rate increases the projected benefit obligation and subsequent-year expense. Changes in the projected benefit obligation resulting from changes in discount rate may also affect our funding decisions in the future. The discount rate utilized is based on rates on high quality fixed income debt instruments that mature in a pattern similar to the expected payments to be made under the plans. We utilized a discount rate of 6.0 percent in determining our 2007 benefit obligations.

A lower EROA increases the amount of subsequent-year pension expense. Differences between actual returns and expected returns are deferred, along with other actuarial gains and losses, and are amortized into expense over the expected remaining service life of participants. We use current and targeted asset mix, in conjunction with historical and expected future long-term investment returns, to develop our EROA. Our EROA was 8.0 percent as of the 2007 valuation date.

Changing the discount rate and EROA would have the following impact:

	2007 Projected Benefit Obligation	Estimated 2008 Expense
	(In millions)	
Increase of 0.5% in discount rate	$ (10.2)	$ (0.2)
Decrease of 0.5% in discount rate	$ 11.2	$ 0.3
Increase of 0.5% in EROA	N/A	$ (1.0)
Decrease of 0.5% in EROA	N/A	$ 1.1

See further information in Note 12 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Deferred Service Arrangements

When we acquire tax processing and home warranty companies, all of their assets and liabilities are adjusted to fair value in accordance with purchase method accounting. In making these adjustments, any balance in the deferred revenue account at the acquisition date, which represents amounts that have been deferred prior to acquisition and would have been amortized over the remaining lives of the contracts are eliminated. The deferred revenue account is replaced with an account called deferred service obligations representing the estimated fair value of the obligation to provide the required services over the remaining life of the subject contracts. This account, established as of the acquisition date, is amortized over the remaining lives of existing contracts.

As previously noted, real estate tax processing and home warranty service fees received on new contracts entered into subsequent to the acquisition dates are deferred and amortized over the estimated lives of the contracts to which they relate. The sum of amortization of the "initial deferred service obligation" and amortization related to fees accrued on new contracts represent the earned fee amount for the period.

The estimated remaining contractual life for real estate tax processing services can vary depending on a number of factors, including but not limited to: type of loan, lender, credit quality of the borrower, interest rates, and portfolio turnover. We evaluate the portfolio of loans under service quarterly to determine the appropriate portfolio life for loans under service. An increase/decrease of six months in the average service life for all loans serviced would result in the following approximate changes to revenue recognized for real estate tax monitoring revenue:

	Revenue Recognized
	(In millions)
Increase of 6 months	$ (2.7)
Decrease of 6 months	$ 3.3

Recently Issued Accounting Standards

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 141(R), *Business Combinations* ("SFAS 141(R)"). SFAS 141(R) establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) replaces SFAS 141, *Business Combinations* ("SFAS 141"), but retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. SFAS 141(R) also retains the guidance in SFAS 141 for identifying and recognizing intangible assets separately from goodwill. SFAS 141(R) is to be applied prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after January 1, 2009. The effect of adopting SFAS 141(R) will be dependent on future business combinations that we may pursue after its effective date.

In December 2007, FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51* ("SFAS 160"). SFAS 160 amends ARB 51 to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement changes the way the consolidated statement of operations are presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. SFAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after January 1, 2009 and is to be applied prospectively except for the presentation and disclosure requirements which shall be applied retrospectively for all periods presented. We are evaluating the effect of adopting SFAS 160 on our financial statements.

In September 2006, FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for us beginning January 1, 2008 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in the financial statements. In February 2008, FASB issued Staff Position No. 157-b, *Effective Date of FASB Statement No. 157* ("FSP 157-b"). FSP 157-b delayed the effective date of SFAS 157 for all non financial assets and liabilities to fiscal years beginning January 1, 2009. The provisions of SFAS 157 that are to be applied prospectively for financial assets and liabilities will not have a material effect on our financial statements. We are evaluating the effect of adopting SFAS 157 on our financial statements for non financial assets and liabilities **.**

In February 2007, FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value ("fair value option"). The fair value option may be elected on an instrument-by-instrument basis and is irrevocable unless a new election date occurs. SFAS 159 is effective for us on January 1, 2008. We did not apply the fair value option to any of our outstanding instruments; therefore, SFAS 159 did not have an effect on our financial statements.

In March 2007, FASB ratified Emerging Issues Task Force ("EITF") Issue No. 06-10, *Accounting for Collateral Assignment Split-Dollar Life Insurance Arrangements* ("EITF No. 06-10"). EITF No. 06-10 requires an employer to recognize a liability for the post-retirement benefit related to a collateral assignment split-dollar life insurance arrangement in accordance with either SFAS 106 or Accounting Principles Board ("APB") Opinion No. 12 if the employer has agreed to maintain a life insurance policy during the employee's retirement or provide the employee with a death benefit. EITF No. 06-10 also requires an employer to recognize and measure an asset based on the nature and substance of the collateral assignment split-dollar life insurance arrangement. EITF No. 06-10 is effective for us January 1, 2008. We have determined that the adoption of EITF No. 06-10 will not have a material effect on our financial statements.

Recently Adopted Accounting Standards

In September 2006, FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R)* ("SFAS 158"). This standard requires employers to recognize the underfunded or overfunded status of a defined benefit postretirement plan as an asset or liability in its statement of financial position and to recognize changes in the funded status in the year in which the changes occur through accumulated other comprehensive income. Additionally, SFAS 158 requires employers to measure the funded status of a plan as of the date of its year-end statement of financial position. The new reporting requirement and related new footnote disclosure rules of SFAS 158 were adopted in 2006. See Note 12 for additional information. The new measurement date requirement applies for the years beginning January 1, 2009.

In February 2006, FASB issued SFAS No. 155, *Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140* ("SFAS 155"). SFAS 155 permits remeasurement for certain financial instruments, clarifies which financial instruments are not subject to the requirements of Statement No. 133, establishes a requirement to evaluate certain interests in securitized financial assets, and makes certain amendments to Statement No. 140 regarding a qualifying special-purpose entity's ability to hold certain types of financial instruments. SFAS 155 was effective January 1, 2007 and did not have a material effect on our financial statements.

In June 2006, FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48) and in May 2007, FASB issued FASB Staff Position FIN-48-1, *Definition of Settlement in FASB Interpretation No. 48* ("FSP FIN 48-1"). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FSP FIN-48-1 provides guidance on how an enterprise should determine whether a tax provision is effectively settled for the purpose of recognizing previously unrecognized tax benefits. We adopted the provisions of FIN 48 on January 1, 2007. Upon adoption, the balance of the unrecognized tax benefits was $4.0 million.

Cyclicality and Seasonality

The title insurance business is closely related to the overall level of residential and commercial real estate activity, which is generally affected by the relative strength or weakness of the United States economy. In addition, title insurance volumes fluctuate based on changes in interest rates. Periods of increasing interest rates and reduced mortgage financing availability usually have an adverse effect on residential real estate activity and therefore decrease our title insurance premiums and fee revenue. In contrast, periods of declining interest rates and good mortgage financing liquidity usually have a positive effect on residential real estate activity which increase our title insurance premiums and fee revenue.

Commercial real estate volumes are less sensitive to changes in interest rates, but fluctuate based on local supply and demand conditions for space and mortgage financing availability.

The title insurance business tends to be seasonal as well as cyclical. Residential buy/sell activity is generally slower in the winter, when fewer families buy or sell homes, with increased volumes in the spring and summer. Residential refinancing activity is generally more uniform throughout the seasons, but is subject to interest rate variability. We typically report our lowest revenue in the first quarter, with revenue increasing into the second quarter and through the third quarter. The fourth quarter customarily may be as strong as the third quarter, depending on the level of activity of residential refinancing and of commercial real estate transactions. Due to a downturn in the residential real estate environment that began in 2006 and continued into 2007, and the contraction in the mortgage credit markets in 2007, our results did not follow the typical seasonal patterns as evidenced by sharp declines in revenue in the third and fourth quarters.

Results of Operations

Operating Revenue

A summary of our operating revenue for the years ended December 31, 2007, 2006, and 2005 is as follows:

	2007		2006		2005	
			(Dollars in millions)			
Title Operations						
Direct Operations	$ 1,383.4	38.7%	$ 1,528.3	39.3%	$ 1,523.9	39.5%
Agency Operations	1,761.9	49.4	1,981.9	51.0	1,958.2	50.8
	3,145.3	88.1	3,510.2	90.3	3,482.1	90.3
Lender Services	279.4	7.8	252.7	6.6	268.4	7.0
Financial Services	0.8	–	0.8	–	1.2	0.1
Corporate and Other	143.9	4.1	121.5	3.1	101.9	2.6
Total	$ 3,569.4	100.0%	$ 3,885.2	100.0%	$ 3,853.6	100.0%

Title Operations – Operating revenue from direct title operations decreased by $144.9 million, or 9.5 percent, in 2007 from 2006. Direct operating revenue during 2007 was affected by the decline in residential mortgage originations and the contraction in the credit markets partially offset by incremental volume from the merger with Capital Title and strong commercial revenues. Title insurance revenue from commercial operations was $426.5 million for 2007, an increase of 12.9 percent over 2006.

Closed orders from direct title operations were approximately 597,000 in 2007 with an average fee per closed order (which includes title insurance premiums and other revenue related to completed transactions by direct operations) of approximately $2,300, compared to 731,000 in 2006 with an average fee per closed order of approximately $2,100.

Operating revenue from agency title operations decreased by $220.0 million, or 11.1 percent, in 2007 compared to 2006. This decrease was due to the decline in residential market conditions, particularly in certain southeastern markets.

Operating revenue from direct title operations increased by $4.4 million, or 0.3 percent, in 2006 from 2005. Capital Title contributed approximately $66.9 million to operating revenue from direct operations for 2006. Direct operating revenue during 2006 was affected by the decline in volume from residential operations offset, in part, by strong commercial revenues. Title insurance revenue from commercial operations was $377.9 million for 2006, an increase of 4.9 percent over 2005.

Closed orders from direct title operations were approximately 731,000 in 2006 with an average fee per closed order of approximately $2,100 compared to 861,000 in 2005 with an average fee per closed order of approximately $1,800. Closed orders from acquired companies were approximately 31,000 in 2006.

Operating revenue from agency title operations increased by $23.7 million, or 1.2 percent, in 2006 compared to 2005. This increase was due to growth in the agency business, particularly in certain southeastern and southwestern markets, partially offset by declines in midwest markets. An additional factor is the timing in the reporting of transactions by agents. The timing of policy reporting, and therefore revenue reporting by agents, varies from year to year, from agent to agent and between regions of the country.

Lender Services – Operating revenue in the Lender Services segment increased by $26.7 million, or 10.6 percent, in 2007 compared to 2006. Operating revenue for 2007 was also positively affected by incremental volume from the merger with Capital Title, growth in default management services, and the acceleration of deferred revenue in the loan servicing business in first quarter 2007. These increases were offset in part by lower volumes in certain product lines in the mortgage origination and loan servicing businesses due to declines in the residential real estate market. The default management services business experienced growth in volume during 2007 due to increased demand for lien monitoring, broker price opinion and appraisal, foreclosure, reconveyance, and other related services as a result of the downturn in the residential real estate market.

The real estate tax processing and flood zone certification business receives cash in advance to provide service over the life of the loan. We are required to defer a significant portion of the revenue received for these services over the anticipated service life of contracts. As a result, revenue reported in the financial statements represents the amortization of both current and prior service fees. In 2007, real estate tax processing and flood certification services revenue was made up of gross receipts of $51.7 million, reduced by deferred recognition of revenue for $37.0 million of these receipts and increased by the recognition into revenue of approximately $49.8 million of our previously deferred service arrangements. The expected service life of the portfolio increases with an increasing mortgage interest rate environment because loans tend to be outstanding longer in periods when interest rates increase. This reduces the amount of deferred service arrangements that is amortized into revenue for each period on our life of loan products. If interest rates vary from the current expected trend, the estimated service life is expected to increase or decrease inversely to changes in interest rates. In 2007, the service life of our portfolio had not significantly increased compared to 2006.

Operating revenue in the Lender Services segment decreased by $15.7 million, or 5.8 percent, in 2006 compared to 2005. Acquired companies contributed approximately $18.3 million to operating revenue for 2006. Results for 2005 included accelerated deferred revenue related to our tax and flood business of $33.8 million. In 2006, real estate tax processing and flood certification services revenue was made up of gross receipts of $71.3 million, reduced by deferred recognition of revenue for $54.4 million of these receipts and increased by the recognition into revenue of approximately $49.9 million of our previously deferred service arrangements. In 2006, the service life of our portfolio had not significantly increased compared to 2005.

Corporate and Other – Operating revenue in Corporate and Other increased by $22.4 million, or 18.4 percent, in 2007 from 2006, primarily due to strong commercial revenues offset in part by declines in the home warranty and property inspection businesses. Operating revenue in Corporate and Other increased by $19.6 million, or 19.2 percent, in 2006 from 2005, primarily due to strong commercial business and increased revenue in the home warranty business.

Investment and Other Income

Investment and other income was $121.2 million in 2007, $123.6 million in 2006, and $101.8 million in 2005. Investment and other income decreased by $2.4 million, or 1.9 percent, in 2007 compared to 2006. Investment and other income includes income generated from our investment and loan portfolios and income generated from our equity interests in unconsolidated affiliates.

Investment and other income increased by $21.8 million, or 21.4 percent, in 2006 compared to 2005. The Financial Services segment generated $11.4 million of additional investment income during 2006 compared to 2005, which was due to higher balances in the portfolio of loans receivable and investments and a modest increase in interest rates. The remaining increase in investment and other income was due to increased yields and higher invested balances in our remaining investment portfolio.

Net Realized Investment Gains

Net realized investment gains totaled $15.2 million in 2007, $7.1 million in 2006, and $4.2 million in 2005. The increase in net realized investment gains from 2006 to 2007 was primarily due to net gains from the continued repositioning of our REIT and bond portfolios and the reclassification of unrealized net gains on trading investments from accumulated other comprehensive income (loss) in first quarter 2007, and gains on the sale of equity securities.

The increase in net realized investment gains from 2005 to 2006 was primarily due to the repositioning of our REIT portfolio. Net realized investment gains in 2006 included a charge of $2.9 million related to the other-than-temporary impairment of certain securities. We had no other-than-temporary impairments on investments in 2007. See Note 3 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Agents' Commissions

A summary of agents' commissions and related revenue in the Title Operations segment is as follows:

	2007	2006	2005
	(Dollars in millions)		
Agents' commissions	$ 1,420.9	$ 1,585.1	$ 1,561.8
Agent revenue	1,761.9	1,981.9	1,958.2
Percent retained by agents	80.6%	80.0%	79.8%

The commission rate paid to agents varies by geographic area in which the commission was paid and by individual agent agreement, and has varied around 80 percent over the past several years.

Salaries and Employee Benefits

A summary of our salaries and employee benefits expenses is as follows:

	2007		2006		2005	
	(Dollars in millions)					
Title Operations	$ 936.0	81.6%	$ 990.3	83.8%	$ 945.8	84.6%
Lender Services	101.6	8.9	98.4	8.3	91.4	8.2
Financial Services	3.2	0.3	2.6	0.2	2.4	0.2
Corporate and Other	106.1	9.2	91.4	7.7	78.7	7.0
Total	$ 1,146.9	100.0%	$ 1,182.7	100.0%	$ 1,118.3	100.0%

Title Operations – Our Title Operations segment accounted for approximately 81.6 percent of our total salaries and other personnel expenses in 2007. In particular, the direct operations portion of the Title Operations segment is labor intensive and, as a result, salaries and employee benefits are a significant component of variable expense for this segment. We manage personnel expenses to reflect changes in the level of activity in the real estate market. As a result, our employee base expands and contracts over time. In order to manage personnel costs more effectively throughout the real estate cycle, we use temporary or part time employees where appropriate to staff operations so that we can respond promptly to changes in real estate activity. We continuously monitor personnel levels in connection with changes in real estate transaction volumes. Depending on the speed and severity of change in real estate activity, we may not be able, in the short run, to match decreasing levels of title orders with reduced staffing levels. As a result, in periods of declining activity, personnel costs as a percentage of revenue, may increase.

Salaries and employee benefit expenses in the Title Operations segment decreased by $54.3 million, or 5.5 percent, in 2007 from 2006. Average FTE counts decreased to approximately 10,500 in 2007 from approximately 10,900 in 2006, a decrease of 3.7 percent. Salary and employee benefit costs and average FTE counts decreased primarily due to declines in staffing levels in the agency and direct title operations in response to declines in the residential real estate market. These declines were offset in part by increases to service additional business from the merger with Capital Title and the increase in commercial business during the first nine months of 2007.

Salaries and employee benefit expenses in the Title Operations segment increased by $44.5 million, or 4.7 percent, in 2006 over 2005. Before the effect of the Capital Title merger, salary and employee benefit costs declined by $2.3 million, or 0.2 percent, in 2006 primarily due to reduced staffing levels in response to lower business volume. Average FTE counts increased to approximately 10,900 in 2006 from approximately 10,800 in 2005, an increase of approximately 0.9 percent (a decrease of approximately 4.2 percent before Capital Title).

Lender Services – Lender Services personnel costs tend to increase during periods of increased sales volume and decrease when sales volume is lower. This is the case because a significant amount of work is required to set up new accounts. Once accounts are established, monitoring and maintenance activities are less labor intensive. Salaries and employee benefit expenses in the Lender Services segment increased by $3.2 million, or 3.3 percent, in 2007 from 2006 primarily to service additional business as the result of the merger with Capital Title. This increase was offset in part by declines in staffing levels in certain product lines in the loan servicing and mortgage origination businesses to adjust for lower business volume.

Salaries and employee benefit expenses in the Lender Services segment increased by $7.0 million, or 7.7 percent, in 2006 from 2005. Before the effect of acquisitions, salaries and employee benefit expenses increased to $91.6 million, or 0.2 percent, in 2006 due to compensation increases partially offset by decreased FTE counts in the loan servicing business of 3.1 percent. Taking into account the effect of acquisitions, FTE counts increased to approximately 1,600 in 2006 from approximately 1,500 in 2005, an increase of 6.7 percent.

Financial Services – Salary and employee benefit expenses for the Financial Services segment increased by 23.1 percent from 2006 to 2007 primarily due to incremental average FTE counts and higher incentives accrued in 2007. Salary and employee benefit expenses were essentially flat from 2005 to 2006.

Corporate and Other – Salary and employee benefit expenses for Corporate and Other increased by $14.7 million, or 16.1 percent, in 2007 from 2006 primarily as a result of acquisitions and to support continued strong commercial business. Salary and employee benefit expenses for Corporate and Other increased by $12.7 million, or 16.1 percent, in 2006 from 2005. In 2006, we incurred higher personnel costs in response to growth in the non-title commercial and home warranty businesses and investments in technology resources.

Provision for Title Policy and Contract Claims

The provision for title policy and contract claims includes an estimate of known and anticipated claims. The estimate for anticipated claims that are incurred but not yet reported is established at the time premium revenue is recognized based on reported claims, historical loss experience and other factors, including industry trends.

Provisions for title losses as a percentage of operating revenues from the Title Operations segment were 8.6 percent for 2007, 6.1 percent for 2006, and 5.2 percent for 2005. The increase in the loss percentage in 2007 compared to 2006 was due to upward development primarily in policy years 2004, 2005, and 2006 and a higher claims rate for the 2007 policy year. The increase in the loss percentage in 2006 compared to 2005 reflects upward development primarily in the 2003 and 2004 policy years. We review our loss provision rates quarterly and adjust the rates as experience develops or new information becomes known.

Impairment of Intangible and Long-Lived Assets

In first quarter 2007, we recorded an impairment of $20.8 million related to a customer relationship intangible asset of the tax and flood business in our Lender Services segment. The effect of the impairment is expected to reduce amortization expense by approximately $3.2 million on an annual basis. In fourth quarter 2007, we wrote off $3.0 million of a non-competition intangible asset related to one of our title acquisitions.

In first quarter 2006, we announced our plan to relocate and consolidate our corporate offices and shared resources operations. As a result, we wrote down the corporate office building and related assets to fair value less cost to sell by $10.3 million, which was reflected in our results of operations for the year ended December 31, 2006. In fourth quarter 2006, we sold the corporate office building and related assets.

In 2005, we wrote off $37.6 million of a customer relationship intangible asset related to our tax and flood business and $1.5 million of a non-competition intangible asset related to one of our title acquisitions.

We identified certain title plants in 2007 and 2006 that will not continue to be used or maintained. As a result, we took a charge to earnings of $1.5 million in 2007 and $4.4 million in 2006 to reflect the reduction in value of these plants. We did not have any material charges related to title plants in 2005. We anticipate that as a result of the trend toward automation of property records by municipalities and courts, we will continue to record charges related to the lessening in value of our title plants in future periods.

For further details, see Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Amortization

Amortization expense decreased by $4.0 million in 2007 compared to 2006 and decreased by $2.9 million in 2006 compared to 2005. The decrease from 2006 to 2007 was primarily due to the impairment of a customer relationship intangible asset in the tax and flood business of our Lender Services segment. The decrease from 2005 to 2006 was primarily the result of the write-off of customer relationship intangible assets of $37.6 million in 2005 within our Lender Services segment, offset by increases in intangible assets due to acquisitions. We are amortizing the intangible assets acquired as part of these businesses over their estimated useful lives. See Note 13 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Interest Expense

Interest expense is comprised of interest paid on long-term debt primarily in the Corporate and Other category and interest paid to holders of deposits in the Financial Services segment. Interest expense increased by $5.1 million in 2007 from 2006 and increased by $11.4 million in 2006 from 2005. The increase in interest expense in 2007 was primarily due to an increase in senior debt balances and interest on increased deposits. The increase in interest expense in 2006 was due to increases in interest-bearing deposits and borrowings at Centennial and interest on our senior notes issued in third quarter 2006 and on the revolving credit facility. Our senior notes issued in third quarter 2006 and the revolving credit facility were used to pay a portion of the purchase price for Capital Title and replace maturing senior notes.

General, Administrative, and Other

A summary of general, administrative, and other expenses is as follows:

	2007		2006		2005	
			(Dollars in millions)			
Title Operations	$ 509.8	65.0%	$ 502.5	68.7%	$ 473.9	70.0%
Lender Services	155.1	19.8	121.4	16.6	113.4	16.8
Financial Services	1.4	0.2	1.6	0.2	1.4	0.2
Corporate and Other	117.4	15.0	106.3	14.5	87.9	13.0
Total	$ 783.7	100.0%	$ 731.8	100.0%	$ 676.6	100.0%

Title Operations – General, administrative, and other expenses for the Title Operations segment increased by $7.3 million, or 1.5 percent, in 2007 compared to 2006 primarily to support additional business as a result of the merger with Capital Title and commercial operations as well as $10.0 million related to a legal accrual for two class action lawsuits and approximately $31.6 million of incremental costs to close offices. These increases were partially offset by cost reductions to match declines in residential business volume and by the proceeds from a lawsuit settlement of $12.0 million.

General, administrative, and other expenses for the Title Operations segment increased by $28.6 million, or 6.0 percent, in 2006 compared to 2005. Incremental costs from Capital Title contributed $26.2 million of the increase in 2006. The reductions to Capital Title's overhead costs in response to softening market conditions did not have a significant effect on 2006 costs.

Lender Services – General, administrative, and other expenses for the Lender Services segment increased by $33.7 million, or 27.8 percent, in 2007 from 2006 and increased by $8.0 million, or 7.1 percent, in 2006 from 2005. The increase in 2007 was primarily due to the merger with Capital Title and other acquisitions and to support growth in the default management services line within the loan servicing business. These increases were offset in part by declines in the credit services line of the mortgage origination business to match declines in business volume. Before the effect of acquisitions, general, administrative, and other expenses decreased 4.0 percent in 2006 from 2005 as a result of lower volumes in the mortgage origination business.

Corporate and Other – General, administrative, and other expenses in Corporate and Other increased by $11.1 million, or 10.4 percent, in 2007 from 2006. The increase in these expenses was primarily due to investments in technology, acquisitions, and to support increased commercial business. General, administrative, and other expenses in Corporate and Other increased by $18.4 million, or 20.9 percent, in 2006 from 2005. The increase in these expenses was primarily related to increased expenses associated with improvement in our commercial assessment business and $5.2 million of relocation and related exit costs of our corporate offices.

Early Extinguishment of Debt

Early extinguishment of debt of $6.4 million in 2007 is primarily due to a "make-whole" amount applicable to the prepayment of certain of our senior notes. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Operating Income

Title Operations – The Title Operations segment reported pretax income of $27.4 million in 2007, $226.5 million in 2006, and $326.9 million in 2005. Pretax income for 2007 compared to 2006 was negatively affected by the decline in the residential housing market, a higher claims provision ratio, higher charges to close offices, and a $10.0 million legal accrual for two class action lawsuits, partially offset by continued strength in the commercial market and proceeds from a lawsuit settlement of approximately $12 million. We incurred charges to close offices of $34.5 million in 2007 compared to $2.9 million in 2006. Before acquisitions, pretax income for 2006 compared to 2005 was negatively affected by lower volumes in the residential real estate market, increased interest expense, an increase in the write-down in the value of certain title plants, and a higher claims provision ratio.

Lender Services – The Lender Services segment had pretax (loss) income of $(10.3) million in 2007, $26.4 million in 2006, and $8.3 million in 2005. Pretax losses in 2007 reflect an impairment charge of $20.8 million for a customer relationship intangible asset and the effects of the decline in the residential housing market, partially offset by growth in the default management services line within the loan servicing business. Before acquisitions, the increase in pretax income from 2005 to 2006 was due to a gain realized from the sale of a joint venture of $4.5 million combined with cost reductions in response to lower volumes in the mortgage originations business.

Financial Services – The Financial Services segment reported pretax income of $18.3 million in 2007, $17.7 million in 2006, and $13.5 million in 2005. The increase in pretax income from 2006 to 2007 was due primarily to an increase in interest income related to growth in loans receivable and a modest increase in interest rates offset in part by higher interest expense due to an increase in interest rates on certificate of deposit liabilities and increased deposit liability balances. The increase in pretax income from 2005 to 2006 was due to growth in the loans receivable and investment portfolios that exceeded the increase in interest-bearing deposits. Pretax income in 2006 was also affected by a modest increase in interest rates that had a positive effect on the investment portfolio.

Corporate and Other – Corporate and Other reported pretax losses of $(117.0) million in 2007, $(116.6) million in 2006, and $(87.4) million in 2005. Corporate and Other includes unallocated corporate expenses and our home warranty, residential inspection, and commercial appraisal and assessment businesses. The increase in pretax losses from 2006 to 2007 was due primarily to a $6.4 million charge related to the prepayment of certain of our senior notes offset in part by increased commercial business. The increase in pretax losses from 2005 to 2006 was due in part to the write-down of the corporate offices building of $10.3 million, relocation and related exit cost of our corporate offices of $5.2 million, higher interest expense related to the merger with Capital Title, and increases in personnel costs from investments in technology resources.

Income Taxes

The effective income tax rate, which includes a provision for state income and franchise taxes, was 33.7 percent for 2007, 35.8 percent for 2006, and 36.6 percent for 2005. The difference in the effective tax rates was primarily due to pretax income/loss in relation to permanent differences and the mix of state taxable income/loss from our non-insurance subsidiaries. In addition, the difference in the effective tax rates between 2007 and 2006 also included the recognition of valuation allowances and the release of a tax liability.

Net (Loss) Income

We reported net (loss) income for 2007 of $(54.1) million, or $(3.31) per share on a diluted basis, compared to $98.8 million, or $5.61 per share on a diluted basis, for 2006, and $165.6 million, or $9.29 per share on a diluted basis, for 2005.

Liquidity and Capital Resources

Consolidated

Liquidity and capital resources represent our overall financial strength and our ability to generate strong cash flows from our businesses, borrow funds at competitive rates, and raise new capital to meet our operating and growth needs.

The following table sets forth our condensed consolidated cash flows for the years indicated:

	Years Ended December 31,		
	2007	2006	2005
		(In millions)	
Net cash from operating activities	$ 114.2	$ 178.6	$ 422.5
Net cash provided by (used in) investing activities	217.2	(386.6)	(526.4)
Net cash (used in) provided by financing activities	(315.7)	201.4	120.0

Cash flows from operating activities are affected by the timing of premiums received, fees received, investment income, and expenses paid. Principal sources of cash at the operating subsidiary level include sales of our products and services. The decrease in cash flows from operating activities for the year ended December 31, 2007 compared to December 31, 2006 was primarily the result of lower business volumes which led to a decline in net income offset in part by the timing of income tax payments. The decrease in cash flows from operating activities for the year ended December 31, 2006 compared to December 31, 2005 was primarily the result of timing of payments for federal income taxes and other accrued expenses as well as lower business volumes which led to a decline in net income.

The principal sources of cash provided by investing activities for the three year period ended December 31, 2007 were proceeds from investment sales or maturities. The principal uses of cash in investing activities during this period were additions to the investment portfolio and the acquisition of businesses, net of cash acquired; including $202.9 million to merge with Capital Title in 2006.

The most significant uses of cash in financing activities for the three year period ended December 31, 2007 were debt repayments, including a repayment of $100 million in 2007 of the credit liability associated with the Capital Title merger; share repurchases; and dividend payments to shareholders. The most significant sources of cash provided by financing activities during this period were proceeds from the issuance of debt, including $150.0 million in senior notes and the draw down of $100.0 million on a new credit facility in 2006 to fund the Capital Title merger and replace maturing senior notes. Escrow deposits held by Centennial declined during 2007 trending with the general decline in the real estate market.

Total assets were $3.9 billion at December 31, 2007 compared to $4.2 billion at December 31, 2006. The decrease in total assets was driven primarily by a reduction in investment balances. Total liabilities were $2.7 billion at December 31, 2007 compared to $2.8 billion at December 31, 2006.

Parent Company

We conduct all our operations through our operating subsidiaries. Dividends from our subsidiaries and permitted payments to us under our tax sharing arrangements with our subsidiaries are our principal sources of cash to pay shareholder dividends to meet our holding company obligations, including payments of principal and interest on our outstanding indebtedness and for share repurchases as well as other items.

Our primary uses of funds at our holding company level include payment of general operating expenses, payment of principal, interest and other expenses related to holding company debt, payment of dividends on our common stock, and share repurchases. At December 31, 2007, there was approximately $27.0 million of cash, short-term investments, and marketable securities at the holding company level available for general corporate purposes and to pay dividends to our shareholders.

Our operating results and cash flows are heavily dependent on the real estate market. While we have continued to diversify our products and services portfolio over the last several years, a significant downturn in the real estate market would adversely affect our cash flows. Our business is labor intensive. Changes to the real estate market are monitored closely and staffing levels are adjusted accordingly. There is typically a lag between changes in the real estate market and changes in personnel levels resulting in higher personnel costs in periods where the real estate market declines in advance of headcount reductions. The Lender Services segment provides real estate tax payment and flood certification services for the life of loans for which we receive cash at loan closing. This revenue related to the long-term servicing is deferred and amortized over the life of the loan. As a result, our cash flows in the Lender Services segment may be greater than reported earnings. Revenue, cash receipts, and loans in our Financial Services segment are dependent on the ability of the bank to attract deposits and qualified commercial customers. We believe that our product diversification efforts along with our management of operating expenses and significant working capital position will aid our ability to manage cash resources through declines in the real estate market.

Investment Strategy

Our investment strategy is intended to assure funding of our long-term obligations to insurance policyholders among others. As such, substantially all of our fixed-maturity portfolio is investment grade with no exposure to sub prime, interest only, principal only or residual tranches of mortgage-backed securities.

At December 31, 2006, our investment portfolio was designated as available-for-sale. During first quarter 2007, we transferred $142.6 million of our fixed-maturity securities from available-for-sale securities to trading securities. We did not transfer any of our securities between investment categories during the last nine months of 2007. We review the status of our available-for-sale investment portfolio quarterly to determine whether an other-than-temporary impairment has occurred. In making our determination, we consider a number of factors including: (1) the significance of the decline, (2) whether the investments were rated below investment grade, (3) how long the securities have been in the unrealized loss position, and (4) our ability and intent to retain the investment for a significant period of time for it to recover. See Note 3 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

We do not match maturities of our investments with anticipated claims payments, which may result in our having periods in which cash flows from operations are positively or negatively affected by the difference between the liability for claims being established and the actual payment stream. As opposed to insurance companies where claims account for a substantial portion of premiums, our title insurance claims have typically ranged from approximately 5 percent to 8 percent of title insurance operating revenue since 1997. Additionally, the time period in which we are liable for a claim is long, with potential claims being paid over 20 years after a title policy is issued and the timing of claims payments may vary from period to period. Over the past several years, exclusive of our operating cash flows, our investment income returns plus maturities of fixed obligation securities have resulted in a maturity and investment income to claims payment ratio in excess of two times.

Mergers and Acquisitions

We completed a number of acquisitions during 2007, none of which were material individually or in the aggregate.

During 2006, we acquired 100 percent of Capital Title's common stock for approximately $252.6 million, which consisted of $202.9 million of cash, including direct transaction costs of $3.6 million, and $49.7 million of our common stock which represented 775,576 shares. Our merger with Capital Title strengthened our title operations presence in key western states and added scale to the services we provide to our mortgage lending customers. We funded approximately $100.0 million of the merger through our line of credit and an additional $100.0 million through the issuance of senior notes. The remaining cash consideration was funded through a mixture of cash and short-term investments. During 2007, we have achieved annualized pretax cost savings of approximately $16 million in conjunction with our integration. We will continue to selectively evaluate additional acquisitions should attractive candidates be identified. See Note 2 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data" for further details about the merger.

Financing

On November 30, 2007, we entered into an amendment ("First Amendment to the Note Purchase Agreement") to our Note Purchase and Master Shelf Agreement dated July 28, 2006 with Prudential Investment Management Inc. and the other purchasers thereunder (the "Note Purchaser Agreement"). The First Amendment to the Note Purchase Agreement decreased the interest coverage ratio from its then current level of 3.0:1.0 to 1.5:1.0 through December 31, 2008, after which time the interest coverage ratio will return to 3.0:1.0. Prior to execution of the First Amendment to the Note Purchase Agreement, we were not in breach of or in default under the Note Purchase Agreement. We executed the First Amendment to the Note Purchase Agreement as a proactive measure given current market conditions. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

On November 29, 2007, we entered into an amendment ("First Amendment") to our $200 million revolving credit agreement dated July 28, 2006 (the "Credit Agreement") with the lenders party thereto and SunTrust Bank, as administrative agent for the lenders, issuing bank, and swingline lender. The First Amendment made the following significant changes to our Credit Agreement: (1) decreased the interest coverage ratio from its then current level of 3.0:1.0 to 1.5:1.0 through September 30, 2008, after which time the interest coverage ratio will return to 3.0:1.0, and (2) modified the consolidated net worth requirement from 85% to 80% of shareholders' equity as of December 31, 2005. Prior to execution of the First Amendment, we were not in breach of or default under our Credit Agreement prior to the execution of the First Amendment. We executed the First Amendment as a proactive measure given current market conditions. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

On October 10, 2007, we received net proceeds of $100 million under our existing Credit Agreement. All of the proceeds received were used to prepay our outstanding 7.45% Senior Notes, Series B, Due 2008 (the "Series B Notes"), and all of our outstanding 7.88% Senior Notes, Series C, Due 2011 (the "Series C Notes," and collectively with the Series B Notes, the "Notes"), issued pursuant to that certain Note Purchase Agreement dated August 31, 2001 (the "Note Agreement"), by and among LandAmerica and each of the purchasers of the Notes. As of October 10, 2007, the aggregate principal amount of the Notes was $100 million. The Notes were prepaid at our option in accordance with the terms of the Note Agreement at a price of $107.6 million, representing the aggregate principal amount of the Notes plus accrued and unpaid interest and a "make-whole" amount applicable to the Notes. We recorded a charge of $6.7 million in fourth quarter 2007 as a result of the make-whole payment. The prepayment of the Notes was funded from the $100 million draw under the Credit Agreement and available cash. As a result of the prepayment of the Notes, the Notes were surrendered to us and cancelled and will not be reissued. We exercised our option to prepay the Notes to enhance our financial flexibility. See Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Regulatory

In June 2006, we completed the process of redomesticating our three principal title insurance subsidiaries, Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation, and Transnation Title Insurance Company from the States of Pennsylvania, Virginia, and Arizona, respectively, to the State of Nebraska. In 2007, we redomesticated an additional insurance underwriter, Title Insurance Company of America, from the State of Tennessee to the State of Nebraska. The redomestication of these title insurance subsidiaries has resulted in streamlined regulatory, tax, and statutory accounting functions derived from having these subsidiaries subject to the same laws and regulations. Under Nebraska insurance laws and regulations, $186.1 million of the net assets of our three principal insurance subsidiaries are available during 2008 for ordinary dividends, loans, or advances to us. As part of our annual release of statutory premium reserves, our subsidiaries released $147.2 million of excess statutory over GAAP claims reserves in third quarter 2007. We received approximately $126.2 million in dividends from our three principal title insurance subsidiaries during 2007. We anticipate that any such additional dividends will be used for general corporate purposes, including but not limited to the repayment of debt, acquisitions, and the repurchase of our common stock. As of December 31, 2007, statutory claims reserve exceeded GAAP claims reserves by $119.1 million before income taxes.

Shareholders' Equity

In December 2005, we filed a universal shelf registration statement on Form S-3 with the U.S. Securities and Exchange Commission which permits us to offer and sell, from time to time, various types of securities, including debt securities, preferred stock, common stock, warrants, stock purchase contracts and stock purchase units, having an aggregate offering price up to $400.0 million. We are ineligible to use the universal shelf registration statement following the late filing of a current report on Form 8-K with the Securities and Exchange Commission regarding the resignation of a senior officer. We will again be eligible to use our universal shelf registration statement on January 1, 2009.

We issued Convertible Senior Debentures totaling $125.0 million in 2004 and $115.0 million in 2003. These Debentures are convertible only upon the occurrence of certain events. In February 2005, we made an irrevocable election under the terms of our 2003 Debentures to satisfy in cash 100 percent of the principal amount of the 2003 Debentures converted after February 15, 2005. Prior to the election, we had the ability to make payment upon conversion for the principal amount of the 2003 Debentures in cash or shares of our common stock.

In connection with the issuance of the 2004 debentures, we entered into a call option designed to mitigate the potential dilution from the conversion of the 2004 debentures. Under the ten-year term of the call option, we may require a counterparty to deliver approximately 2.3 million shares of our common stock to us at a price which approximates the conversion price of the 2004 debentures.

In December 2004, the Board of Directors approved a program that authorized us to repurchase up to 1 million shares at a cost not to exceed $60.0 million. During fourth quarter 2005, we fully executed the share repurchase program approved in December 2004. In October 2005, the Board of Directors approved a program that authorized us to repurchase an additional 1.25 million shares. As of March 31, 2007, we had fully executed the share repurchase program approved in October 2005.

In February 2007, the Board of Directors approved a repurchase program expiring in October 2008 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had fully executed the share repurchase program approved in February 2007.

In August 2007, the Board of Directors approved a repurchase program expiring in March 2009 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had repurchased 390,380 shares for $12.4 million under the current repurchase program and there were approximately 1,109,620 shares remaining at December 31, 2007. See Note 11 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Other

Centennial maintains an allowance for loan losses related to our loans receivable. During 2007, we did not experience a significant change in the underlying components of the allowance for loan losses or the balance in total. There have been no significant changes in the underlying rationale for our provision for loan losses or significant changes in asset quality.

Summary

We believe our revolving credit facilities and anticipated cash flows from operations will provide us with sufficient liquidity to meet our operating requirements for the foreseeable future. For further information about our borrowings, see Note 10 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Off-Balance Sheet Arrangements

We administer escrow and trust deposits as a service to our customers. These deposits totaled $2,545.5 million and $3,747.3 million at December 31, 2007 and 2006, respectively. Except for Centennial, escrow and trust deposits are not considered our assets and are not included in the accompanying balance sheets. However, we remain contingently liable for the disposition of these deposits. Of the $2,545.5 million in escrow, we have deposited $87.7 million in Centennial and those assets and liabilities have been reflected in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Additionally, we facilitate tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code ("like-kind" exchanges). As a facilitator and intermediary, we hold the proceeds from sales transactions until a qualified acquisition occurs. These deposits totaled $863.2 million and $1,702.3 million at December 31, 2007 and 2006, respectively. Similarly, we also facilitate tax-deferred reverse exchanges pursuant to Revenue Procedure 2000-37. These exchanges require us, using the customer's funds, to acquire qualifying property on behalf of the customer and take temporary title to the customer's property until a qualifying acquisition occurs. Reverse property exchanges totaled $1,900.0 million and $179.5 million at December 31, 2007 and 2006, respectively. Funds related to like-kind exchange transactions held on deposit at Centennial and included in the accompanying consolidated balance sheet were $131.9 million at December 31, 2007. Due to the structure utilized to facilitate these transactions, reverse exchanges and like-kind exchanges not held at Centennial are not considered our assets and are not included in the accompanying consolidated balance sheets. However, we remain contingently liable for the transfers of property, disbursement of proceeds, and the return on the proceeds at the agreed upon rate.

In the ordinary course of business, we enter into business arrangements that fall within the scope of FIN No. 45, *Guarantors Accounting and Disclosure Requirements Including Guarantees of Indebtedness of Others,* and FIN No. 46, *Variable Interest Entities*. There were no arrangements in these categories that are reasonably likely to have a material impact, individually or in the aggregate, on our financial condition or results of operations. See Notes 14 and 15 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Contractual Obligations

A summary of our contractual obligations and commercial commitments is as follows:

	Payment Due by Period				
	(In millions)				
Contractual Obligations	Total	Less than 1 Year	1-3 years	4-5 Years	More than 5 Years
Long-term debt obligations	$ 579.5	$ 43.0	$ 45.5	$ 115.6	$ 375.4
Operating lease obligations	296.4	90.0	116.1	49.8	40.5
Purchase obligations [1]	97.5	55.7	26.4	10.4	5.0
Total obligations	$ 973.4	$ 188.7	$ 188.0	$ 175.8	$ 420.9

(1) We included all purchase obligations in excess of $100,000 in value irrespective of their termination dates. These include annually renewable corporate insurance programs, payments required under software licensing agreements, vehicle leasing arrangements, annual line of credit availability fees and fees to certain joint venture partners. Purchase obligations not exceeding $100,000 were not material to us, either individually or in the aggregate.

Our policy and contract claims loss reserve projected annual payments as of December 31, 2007 were as follows:

	2008	2009	2010	2011	2012	Thereafter	Total
	(Dollars in millions)						
Policy and contract claims loss reserve	$172.0	$141.1	$111.9	$84.7	$65.0	$301.8	$876.5
Percentage of total	19.6%	16.1%	12.8%	9.7%	7.4%	34.4%	100.0%

As of December 31, 2007, we had a policy and contract claims reserve of $876.5 million. The amounts and timing of these obligations are estimated and are not set contractually. Nonetheless, based on historical insurance claim experience, we anticipate the above payment patterns. While we believe that historical loss payments are a reasonable source for projecting future claim payments, there is significant inherent uncertainty in this payment pattern estimate. Changes in claim reporting patterns, claim settlement patterns, judicial decisions, legislation, economic conditions and other factors could affect the timing and amount of actual claims payments.

We maintain an Executive Voluntary Deferral Plan and an Outside Directors Deferral Plan. The Executive Voluntary Deferral Plan allows executives to defer eligible compensation into deferred stock units or a cash account bearing interest at a fixed rate of return. The Outside Directors Deferral Plan allows directors to defer eligible compensation into deferred stock units bearing interest at a fixed rate of return. We funded the purchase of 42,451 shares of common stock related to these plans in 2007. The shares are held in a trust to be used for payments to participants under the plans. The trustee held 342,784 shares at December 31, 2007. Further information on these plans can be found in Note 11 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data.”

We have no required employer contributions to our Cash Balance Pension Plan at this time. We do not anticipate making any contributions to the Plan during 2008. See Note 12 in our financial statements under Part II, Item 8, “Financial Statements and Supplementary Data” for estimated future benefit payments related to unfunded postretirement benefit plans.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The matters discussed in this Item may contain “forward-looking statements” as described in the introductory paragraph of Part I and, as such, should be read in conjunction with that paragraph as well as Part I, Item 1A, “Risk Factors” for discussion of various risks and uncertainties that may affect our future.

Our primary exposure to market risk relates to interest rate risk and equity price risk. Interest rate risk is generally related to certain investment securities, loans receivable, debt, and certain deposits. We are subject to equity price risk through various portfolios of equity securities. We have operations in certain foreign countries, but these operations, in the aggregate, are not material to the Company’s financial condition or results of operations.

Interest Rate Risk

The following table provides information about our financial instruments that are sensitive to changes in interest rates. For investment securities and loans receivable, the table presents principal cash flows and related weighted-average interest rates by expected maturity dates. Actual cash flows could differ from the expected amounts.

Principal Amount by Expected Maturity
Average Interest Rate

(Dollars in millions)

	2008	2009	2010	2011	2012	2013 and after	Total	Fair Value
Assets:								
Taxable available-for-sale securities:								
Book value	$ 22.7	35.6	28.5	48.9	49.2	372.2	$ 557.1	$ 561.3
Average yield	4.6%	5.1%	4.9%	5.4%	5.2%	5.5%	5.3%	
Non-taxable available-for-sale securities:								
Book value	$ 18.6	15.8	25.1	30.3	28.8	323.7	$ 442.3	$ 453.0
Average yield	4.6%	4.1%	4.1%	4.3%	4.2%	4.2%	4.3%	
Taxable trading securities:								
Book value	$ 1.1	2.2	1.9	4.6	4.5	76.0	$ 90.3	$ 90.3
Average yield	5.3%	5.9%	5.5%	5.8%	5.2%	5.7%	5.7%	
Non-taxable trading securities:								
Book value	$ –	2.3	0.5	3.3	1.6	26.5	$ 34.2	$ 34.2
Average yield	–	4.3%	3.6%	3.7%	4.6%	4.2%	4.2%	
Preferred stock:								
Book value	$ –	–	–	–	–	5.9	$ 5.9	$ 4.8
Average yield	–	–	–	–	–	5.9%	5.9%	
Loans receivable, excluding reserves, discounts and other costs:								
Book value	$ 0.7	2.9	1.9	8.2	7.7	620.2	$ 641.6	$ 647.2
Average yield	9.2%	7.5%	7.2%	7.1%	7.7%	7.1%	7.1%	
Liabilities:								
Interest bearing passbook liabilities:								
Book value	$ 104.4	–	–	–	–	–	$ 104.4	$ 104.4
Average yield	3.6%	–	–	–	–	–	3.6%	
Interest bearing certificate of deposit liabilities:								
Book value	$ 282.2	51.1	28.1	6.8	4.2	–	$ 372.4	$ 389.1
Average Yield	5.1%	4.7%	4.8%	5.2%	5.0%	–	5.1%	

Changes in maturities and yields from 2006 to 2007 primarily relate to timing of purchases and sales of securities and the effect that the securities sold or purchased have on the average portfolio yield, timing of payments received from, and the extension of loans to, customers in the commercial real estate market, and timing of amounts held for customers.

We have long-term debt of $579.5 million bearing interest at an average rate of 4.9 percent at December 31, 2007. Our debt portfolio is primarily fixed rate obligations and not subject to variability. Additionally, we have non-interest bearing passbook deposit liabilities of $87.7 million at December 31, 2007 that are included in the accompanying consolidated balance sheets.

During first quarter 2007, we transferred $142.6 million of our fixed-maturity securities from available-for-sale securities to trading securities. This transfer introduced incremental interest rate risk into our statements of operations. We do not expect the incremental interest rate risk to have a material effect on our financial statements. See Note 3 in our financial statements under Part II, Item 8, "Financial Statements and Supplementary Data."

Equity Price Risk

At December 31, 2007 we were invested in $81.1 million of equity securities. A 10 percent change in market prices of those securities would affect the fair value of those equity securities by approximately $8.1 million based on an instantaneous market shock analysis of our equity portfolio.

The carrying values of investments subject to equity price risks are based on quoted market prices. Market prices are subject to fluctuation and, therefore, the amount realized in the sale of an investment may differ significantly from the reported market value. Fluctuation in the market prices of securities may result from perceived changes in the underlying economic characteristics of the investee, the price of alternative investments, and general market conditions. Also, amounts realized in the sale of securities may be affected by the relative quantities of the securities being sold.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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Financial statement schedules not listed are either omitted because they are not applicable or the required information is shown in the consolidated financial statements or in the notes thereto.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM ON INTERNAL CONTROL OVER FINANCIAL REPORTING

The Board of Directors and Shareholders of
LandAmerica Financial Group, Inc**.**

We have audited LandAmerica Financial Group, Inc. and subsidiaries' internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). LandAmerica Financial Group, Inc. and subsidiaries' management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, LandAmerica Financial Group, Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2007, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of LandAmerica Financial Group, Inc. and subsidiaries as of December 31, 2007 and 2006, and the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2007 and our report dated February 22, 2008 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Richmond, Virginia
February 22, 2008

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
LandAmerica Financial Group, Inc.

We have audited the accompanying consolidated balance sheets of LandAmerica Financial Group, Inc. and subsidiaries as of December 31, 2007 and 2006, and the related consolidated statements of operations, changes in shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2007. Our audits also included the financial statement schedules listed in the Index at Item 15(a). These financial statements and schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of LandAmerica Financial Group, Inc. and subsidiaries at December 31, 2007 and 2006, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2007, in conformity with U. S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedules, when considered in relation to the basic financial statements taken as a whole, present fairly in all material respects the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), LandAmerica Financial Group Inc. and subsidiaries' internal control over financial reporting as of December 31, 2007, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 22, 2008 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Richmond, Virginia
February 22, 2008

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS, DECEMBER 31

(In millions)

	2007	2006
ASSETS		
INVESTMENTS:		
Fixed maturities available-for-sale – at fair value (amortized cost: 2007 – $1,005.3; 2006 – $1,267.2)	$ 1,019.1	$ 1,275.8
Equity securities available-for-sale – at fair value (cost: 2007 – $85.6; 2006 – $111.3)	81.1	129.8
Fixed maturities trading – at fair value	124.5	–
Federal funds sold	59.6	50.4
Short-term investments	160.3	403.0
Total Investments	1,444.6	1,859.0
CASH	98.2	82.5
LOANS RECEIVABLE	638.4	535.8
ACCRUED INTEREST RECEIVABLE	16.8	20.2
NOTES AND ACCOUNTS RECEIVABLE;		
Notes (less allowance for doubtful accounts: 2007 – $1.8; 2006 – $1.5)	22.7	19.3
Trade accounts receivable (less allowance for doubtful accounts: 2007 – $11.1; 2006 – $10.2)	127.9	139.2
Total Notes and Accounts Receivable	150.6	158.5
INCOME TAXES RECEIVABLE	22.7	60.4
PROPERTY AND EQUIPMENT - at cost (less accumulated depreciation and amortization: 2007 – $233.6; 2006 – $224.5)	133.4	164.2
TITLE PLANTS	102.4	105.0
GOODWILL	809.9	783.4
INTANGIBLE ASSETS (less accumulated amortization: 2007 – $100.1; 2006 – $78.2)	94.4	135.2
DEFERRED INCOME TAXES	120.1	84.1
OTHER ASSETS	222.2	186.5
Total Assets	$ 3,853.7	$ 4,174.8

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS, DECEMBER 31

(In millions, except share amounts)

	2007	2006
LIABILITIES		
POLICY AND CONTRACT CLAIMS	$ 876.5	$ 789.1
DEPOSITS	564.5	618.2
ACCOUNTS PAYABLE AND ACCRUED LIABILITIES	365.3	400.0
NOTES PAYABLE	579.5	685.3
DEFERRED SERVICE ARRANGEMENTS	199.9	218.6
OTHER	67.3	67.8
Total Liabilities	2,653.0	2,779.0
SHAREHOLDERS' EQUITY		
Common stock, no par value, 45,000,000 shares authorized, shares issued and outstanding: 2007 – 15,351,550; 2006 – 17,604,632	335.4	465.3
Accumulated other comprehensive loss	(26.2)	(32.2)
Retained earnings	891.5	962.7
Total Shareholders' Equity	1,200.7	1,395.8
Total Liabilities and Shareholders' Equity	$ 3,853.7	$ 4,174.8

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31

(In millions, except per share amounts)

	2007	2006	2005
REVENUES			
Operating revenue	$ 3,569.4	$ 3,885.2	$ 3,853.6
Investment and other income, net	121.2	123.6	101.8
Net realized investment gains	15.2	7.1	4.2
	3,705.8	4,015.9	3,959.6
EXPENSES			
Agents' commissions	1,420.9	1,585.1	1,561.8
Salaries and employee benefits	1,146.9	1,182.7	1,118.3
General, administrative and other	783.7	731.8	676.6
Provision for policy and contract claims	288.5	231.3	197.2
Premium taxes	43.5	45.2	42.7
Interest expense	50.3	45.2	33.8
Amortization of intangible assets	21.9	25.9	28.8
Impairment of intangible and long-lived assets	25.3	14.7	39.1
Early extinguishment of debt	6.4	–	–
	3,787.4	3,861.9	3,698.3
(LOSS) INCOME BEFORE INCOME TAXES	(81.6)	154.0	261.3
INCOME TAX (BENEFIT) EXPENSE	(27.5)	55.2	95.7
NET (LOSS) INCOME	$ (54.1)	$ 98.8	$ 165.6
NET (LOSS) INCOME PER SHARE	$(3.31)	$5.80	$9.45
WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING	16.3	17.0	17.5
NET (LOSS) INCOME PER SHARE ASSUMING DILUTION	$(3.31)	$5.61	$9.29
WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING ASSUMING DILUTION	16.3	17.6	17.8

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

(In millions)

	2007	2006	2005
Cash flows from operating activities:			
Net (loss) income	$ (54.1)	$ 98.8	$ 165.6
Adjustments to reconcile net (loss) income to cash provided by operating activities:			
Depreciation and amortization	69.1	60.5	58.8
Amortization of bond premium	5.8	6.6	6.2
Impairment of intangible and long-lived assets	25.3	14.7	39.1
Early extinguishment of debt	6.4	–	–
Net realized investment gains	(15.2)	(7.1)	(4.2)
Net change in fair value of trading securities	20.5	–	–
Deferred income tax (benefit) expense	(38.5)	36.5	(27.8)
Loss on disposal of property and equipment	10.6	2.0	1.0
Change in assets and liabilities, net of businesses acquired:			
Accounts and notes receivable	21.4	(3.4)	(16.3)
Income taxes receivable/payable	30.9	(77.2)	65.3
Accounts payable and accrued expenses	(23.7)	(31.6)	62.7
Policy and contract claims	87.4	69.5	53.8
Deferred service arrangements	(18.7)	4.0	8.8
Other	(13.0)	5.3	9.5
Net cash provided by operating activities	114.2	178.6	422.5
Cash flows from investing activities:			
Purchases of title plants, property and equipment	(24.5)	(66.2)	(39.7)
Purchases of business, net of cash acquired	(27.7)	(213.1)	(24.0)
Change in short-term investments, net of businesses acquired	242.9	107.9	(208.1)
Cost of investments acquired:			
Fixed maturities available-for sale	(251.0)	(394.0)	(450.4)
Equity securities available-for sale	(83.0)	(66.6)	(77.0)
Proceeds from investment sales or maturities:			
Fixed maturities available-for-sale	359.6	314.3	366.1
Equity securities available-for sale	124.8	61.3	18.8
Net change in federal funds sold	(9.2)	(46.2)	0.3
Change in loans receivable	(108.6)	(98.4)	(94.1)
Other	(6.1)	14.4	(18.3)
Net cash provided by (used in) investing activities	217.2	(386.6)	(526.4)
Cash flows from financing activities:			
Net change in deposits	(53.7)	71.0	174.1
Proceeds from the exercise of options and incentive plans	2.8	1.4	7.9
Tax benefit of stock options exercised	1.8	1.2	–
Cost of shares repurchased	(143.6)	(40.1)	(64.0)
Dividends paid	(17.1)	(13.8)	(11.7)
Proceeds from issuance of notes payable	165.2	304.2	45.7
Payments on notes payable	(271.1)	(122.5)	(32.0)
Net cash (used in) provided by financing activities	(315.7)	201.4	120.0
Net increase (decrease) in cash	15.7	(6.6)	16.1
Cash at beginning of year	82.5	89.1	73.0
Cash at end of year	$ 98.2	$ 82.5	$ 89.1
Supplemental cash flow information:			
Non cash investing activities – transfer of fixed maturities from available-for-sale to trading	$ 142.6	$ –	$ –
Non cash financing activities – common shares issued for Capital Title merger	$ –	$ 49.7	$ –

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

(In millions, except per share amounts)

	Common Stock		Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Shareholders' Equity
	Shares	Amounts			
BALANCE – December 31, 2004	18.0	$ 491.5	$ (17.6)	$ 723.8	$ 1,197.7
Comprehensive income:					
Net income	–	–	–	165.6	165.6
Other comprehensive loss					
Net unrealized loss on securities, net of tax benefit of $10.8	–	–	(20.1)	–	(20.1)
Pension liability adjustment, net of tax benefit of $2.6	–	–	(4.6)	–	(4.6)
					140.9
Purchase of call options, net of tax	–	(1.0)	–	–	(1.0)
Common stock retired	(1.1)	(64.0)	–	–	(64.0)
Stock options and incentive plans	0.4	16.6	–	–	16.6
Common dividends ($0.66/share)	–	–	–	(11.7)	(11.7)
BALANCE – December 31, 2005	17.3	443.1	(42.3)	877.7	1,278.5
Comprehensive income:					
Net income	–	–	–	98.8	98.8
Other comprehensive income (loss)					
Net unrealized gain on securities, net of tax expense of $(3.5)	–	–	6.1	–	6.1
Pension liability adjustment, net of tax expense of $(4.0)	–	–	8.4	–	8.4
SFAS 158 adoption adjustment, net of tax benefit of $2.7	–	–	(4.4)	–	(4.4)
					108.9
Common stock retired	(0.6)	(40.1)	–	–	(40.1)
Common stock issued	0.8	49.7	–	–	49.7
Stock options and incentive plans	0.1	12.6	–	–	12.6
Common dividends ($0.80/share)	–	–	–	(13.8)	(13.8)
BALANCE – December 31, 2006	17.6	465.3	(32.2)	962.7	1,395.8
Comprehensive loss:					
Net loss	–	–	–	(54.1)	(54.1)
Other comprehensive income (loss)					
Net unrealized loss on securities, net of tax benefit of $6.2	–	–	(11.2)	–	(11.2)
Postretirement benefits liability adjustment, net of tax expense of $(10.3)	–	–	17.5	–	17.5
Foreign currency translation	–	–	(0.3)	–	(0.3)
					(48.1)
Common stock retired	(2.5)	(143.6)	–	–	(143.6)
Stock options and incentive plans	0.2	13.7	–	–	13.7
Common dividends ($1.04/share)	–	–	–	(17.1)	(17.1)
BALANCE – December 31, 2007	15.3	$ 335.4	$ (26.2)	$ 891.5	$ 1,200.7

See Notes to Consolidated Financial Statements.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2007, 2006 AND 2005

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The consolidated financial statements of LandAmerica Financial Group, Inc. and its wholly owned subsidiaries have been prepared in conformity with accounting principles generally accepted in the United States which differ from statutory accounting practices prescribed or permitted by regulatory authorities for its insurance company subsidiaries.

When used in these notes, the terms “LandAmerica,” “we,” “us” or “our” means LandAmerica Financial Group, Inc. and all entities included in our consolidated financial statements.

Organization

We are engaged principally in the title insurance business. Title insurance policies are insured statements of the condition of title to real property, showing ownership as indicated by public records, as well as outstanding liens, encumbrances and other matters of record and certain other matters not of public record. Our business results primarily from resales and refinancings of residential real estate and to a lesser extent, from commercial transactions and the sale of new housing.

Through our subsidiaries, we are one of the largest title insurance companies in the United States. Our principal title insurance underwriters – Commonwealth Land Title Insurance Company, Lawyers Title Insurance Corporation and Transnation Title Insurance Company – together provide the majority of our insurance products in the United States, Mexico, Canada, the Caribbean, Latin America, Europe, and Asia. We also provide escrow and closing services, commercial real estate services and other real estate transaction management services that are included in the Title Operations segment.

Additionally, we provide real estate transaction products and services to national and regional mortgage lenders including centralized real estate transaction management services, appraisal and valuation services, flood zone determinations, consumer mortgage credit reporting, real estate tax processing services, default management services, and mortgage loan subservicing. These businesses are included in the Lender Services segment.

We operate a California industrial bank which makes up the Financial Services segment. The bank’s primary business is the origination and bulk purchase of commercial real estate loans in the Southern California market, and to a lesser degree, in the Arizona and Nevada markets.

We also provide inspection services primarily on residential real estate, home warranties to buyers of residential real estate, commercial property valuations and assessments, and due diligence services. These services, along with the unallocated portion of the corporate expenses related to our corporate offices in Richmond, Virginia (including unallocated interest expense) have been included in Corporate and Other in our segment disclosures.

See Note 19 for additional information regarding our business segments.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires that we make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts and operations, after intercompany eliminations, of LandAmerica and its subsidiaries. We also consolidate any variable interest entity of which we are the primary beneficiary in accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 46, *Variable Interest Entities.* Our investments in non-majority owned partnerships and affiliates that are not variable interest entities are accounted for under the equity method.

Investments

Available-for-sale fixed-maturity and equity securities are carried at fair value. Debt securities and mandatorily redeemable preferred stock are classified as fixed maturities. The change in the unrealized appreciation and depreciation on such available-for-sale securities is reported as a separate component of shareholders' equity. The amortization of premiums and accretion of discounts related to debt securities acquired at other than par value is included in net investment income.

Trading fixed-maturity securities are carried at fair value with the holding gains and losses included in net realized investment gains and losses in the current period.

Mortgage-backed securities in our available-for-sale portfolio are accounted for on the retrospective method.

Federal funds sold are carried at cost, which approximates fair value.

Short-term investments consist primarily of securities purchased under agreements to resell, commercial paper and money market instruments and have an original maturity of one year or less. Short-term investments are carried at amortized cost, which approximates fair value.

Realized gains and losses on the sale of investments, as well as declines in value of a security considered to be other than temporary, are recognized in operations on the specific identification basis.

Loans Receivable

Loans receivable are carried at face value net of participations sold, unearned discounts, deferred loan fees and an allowance for losses. Loans are typically classified as non-accrual if the borrowers miss three or more contractual payments. Loans may be returned to accrual status when all principal and interest amounts contractually due (including arrearages) are reasonably assured of repayment within an acceptable period of time, in accordance with the contractual interest and principal payment terms of interest and principal.

While a loan is classified as non-accrual and future collectibility of the recorded loan balance is doubtful, collections of interest and principal are generally applied as a reduction to principal outstanding. When the future collectibility of the recorded loan balance is expected, interest may be recognized on a cash basis.

Loans Receivable Allowance

The allowance for loans receivable losses is established through a provision for loan losses. A loan is charged off against the allowance for loan losses when we believe that collectibility of the principal is unlikely. The allowance is an amount that we believe is adequate to absorb estimable and probable losses on existing loans and contracts. When establishing the allowance, we consider changes in the nature and volume of our portfolio, overall portfolio quality, prior loss experience, review of specific problem loans and contracts, regulatory guidelines and current economic conditions that may affect the borrower's ability to pay. Additionally, certain regulatory agencies, as part of their examination process, periodically review our allowance for loan losses. These agencies may require adjustments to the allowance based on their judgment regarding information made available to them.

Loans receivable are impaired when, based on current information and events, it is probable that we will be unable to collect all amounts due according to the contractual terms of the loan agreement. Impaired loans receivable are generally measured at the present value of expected cash flows discounted at the loan's effective interest rate. In the case of collateral-dependent loans, impairment is based on the fair value of the collateral.

Notes and Accounts Receivable

The carrying value of notes and accounts receivable approximates fair value. The allowance for doubtful accounts represents an estimate of amounts considered uncollectible and is determined based on our evaluation of historical collection experience, adverse situations which may affect an individual customer's ability to repay and prevailing economic conditions.

Property and Equipment

Property and equipment, including capitalized software costs, is recorded at cost less accumulated depreciation. Software costs are capitalized when it reaches the application development stage until the software is ready for use.

Property and equipment is depreciated principally on a straight-line basis over the estimated useful lives of the various assets. Leasehold improvements are depreciated on a straight-line basis over the lesser of the term of the applicable lease or the estimated useful lives of such assets. Depreciation lives range from 3 to 10 years for furniture and equipment, 5 to 40 years for buildings and leasehold improvements, 3 to 5 years for capitalized software, and 15 years for the airplane.

Title Plants

Title plants are compilations of copies of public records, maps, and documents that are indexed to specific properties in an area and are generally carried at cost. The costs of acquiring existing title plants and building new title plants, prior to the time that a plant is put into operation, are capitalized. Costs associated with current maintenance, such as salaries and supplies, are charged to expense in the year incurred. Properly maintained title plants are not amortized or depreciated because there is no indication of decline in their value. We review our title plants for impairment on an annual basis or sooner if events or changes in circumstances are deemed to be an indicator of impairment.

Goodwill

Goodwill is the excess of the purchase price over the fair value of net assets acquired. Goodwill is tested for recoverability annually, or sooner if events or changes in circumstances indicate that the carrying amount of the reporting units, including goodwill, may exceed their fair values. Our reporting units are determined in accordance with SFAS No. 142, *Goodwill and Other Intangible Assets.* The fair value of the reporting units is determined using cash flow analysis which projects the future cash flows produced by the reporting units and discounts those cash flows to the present value. The projection of future cash flows is necessarily dependent upon assumptions on the future levels of income as well as business trends, prospects and market and economic conditions. When the fair value is less than the carrying value for the net assets of the reporting unit, including goodwill, an impairment loss may be charged to operations. Based on our annual analysis on October 1, no impairment was identified for the three years ended December 31, 2007. See Notes 2 and 6 for additional information.

Intangible Assets

Intangible assets primarily include capitalized customer relationships and non-competition arrangements. These assets were initially recognized and measured at fair value in accordance with SFAS No. 141, *Business Combinations*. These assets are amortized on a straight-line basis over their expected useful lives of 18 months to 10 years. See Notes 2 and 6 for additional information.

Impairment of Long-lived Assets

Long-lived assets, other than goodwill, are tested for impairment whenever recognized events or changes in circumstances indicate that the carrying value of these assets may exceed fair value. If indicators of impairment are present, we test the recoverability of such assets by projecting undiscounted cash flows expected to be generated from the use of those assets and their eventual disposal. If the projected undiscounted cash flows are less than the carrying values, the recovered amounts are written down to fair value. In 2007, 2006 and 2005, we identified certain intangible and long-lived assets that were impaired. See Note 13 for additional information.

Policy and Contract Claims Liability

Policy and contract claims represent the estimated ultimate net cost of all reported and unreported losses incurred for policies for which revenue has been recognized through December 31, 2007. We reserve for reported claims based on a review of the estimated amount of the claims and costs required to settle the claim. The reserves for unreported losses and loss adjustment expenses are estimated using historical loss and loss development analyses.

Title insurance reserve estimates are subject to a significant degree of inherent variability due to the length of time over which claim payments are made and the effects of external factors, such as general economic conditions. Although we believe that the reserve for policy and contract claims is reasonable, it is possible that our actual incurred policy and contract claims will not conform to the assumptions inherent in the determination of these reserves. Accordingly, the ultimate settlement of policy and contract claims may vary significantly from the estimates included in our financial statements. We believe that the reserve for policy and contract claims is our best estimate of the future costs to settle claims at December 31, 2007. The estimates are continually reviewed and adjusted as experience develops or new information becomes known; such adjustments are included in current operations.

Income Taxes

Deferred income taxes reflect the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts. Future tax benefits are recognized to the extent that realization of such benefits are more likely than not. We record interest and penalties as tax expense in our consolidated statements of operations.

Escrow and Trust Deposits

As a service to our customers, we administer escrow and trust deposits which represent undisbursed amounts received for settlements of real estate transactions. These escrow and trust deposits totaled approximately $2,545.5 million at December 31, 2007 and $3,747.3 million at December 31, 2006. Escrow funds held on deposit at Centennial and included in the accompanying consolidated balance sheets were $87.7 million at December 31, 2007 and $288.5 million at December 31, 2006. The remaining balance in escrow funds of $2,457.8 million at December 31, 2007 and $3,458.8 million at December 31, 2006 are not considered our assets and are excluded from the accompanying consolidated balance sheets.

Revenue Recognition

Title Insurance

Premiums on title insurance policies issued by our insurance subsidiaries are recognized as revenue when we are legally or contractually entitled to collect the premium. Revenues from title policies issued through independent agents are recognized when the policies are reported by the agent and are recorded on a "gross" basis (before the deduction of agent commissions). Title search and escrow fees are recorded as revenue when the order is closed.

Lender Services

Fees for real estate tax processing services are received in advance for the entire period that a loan will be serviced. Revenue is recognized for real estate tax processing services on a straight-line basis over the anticipated life of the loan. The amount not recognized as revenue in the financial statements in the period received is reported in the accompanying balance sheet as deferred service arrangements in accordance with Staff Accounting Bulletin No. 104, *Revenue Recognition in Financial Statement*s. The amortization period is evaluated quarterly to determine if there have been changes in the estimated life of the loan and/or changes in the number and/or timing of prepayments.

Revenue is primarily recognized on other Lender Services products at the time of delivery, as we have no significant ongoing obligation after delivery.

Financial Services

Interest income is recognized by our California industrial bank on the outstanding principal balance using the accrual basis of accounting. Unearned discounts and deferred loan fees are recognized using the interest method. Interest is accrued daily on outstanding balances using the simple-interest method.

In accordance with SFAS No. 91, *Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases*, certain origination fees and direct costs associated with lending activities are capitalized and amortized over the respective lives of the loans receivable as a yield adjustment using the effective interest method.

Corporate and Other

Fees for home warranty revenue are received in advance for the entire period the contract is in force and revenue is recognized over the term of the contract. The amount not recognized as revenue in the financial statements in the period received is reported in the accompanying balance sheet as deferred service arrangements. Revenue is recognized on other products in this group of businesses at the time of delivery, as we have no significant ongoing obligations after delivery.

Like Kind Exchanges

We facilitate tax-deferred property exchanges for customers pursuant to Section 1031 of the Internal Revenue Code ("like-kind" exchanges). As a facilitator and intermediary, we hold the proceeds from sales transactions until a qualified acquisition occurs. These deposits totaled $863.2 million and $1,702.3 million at December 31, 2007 and 2006, respectively. Similarly, we also facilitate tax-deferred reverse exchanges pursuant to Revenue Procedure 2000-37. These exchanges require us, using the customer's funds, to acquire qualifying property on behalf of the customer and take temporary title to the customer's property until a qualifying acquisition occurs. Reverse property exchanges totaled $1,900.0 million and $179.5 million at December 31, 2007 and 2006, respectively. Funds related to like-kind exchange transactions held on deposit at Centennial and included in the accompanying consolidated balance sheet were $131.9 million at December 31, 2007. Due to the structure utilized to facilitate these transactions, reverse exchanges and like-kind exchanges not held at Centennial are not considered our assets and are not included in the accompanying consolidated balance sheets. However, we remain obligated for the transfers of property, disbursement of proceeds and the return on the proceeds at the agreed upon rate.

Fair Values of Financial Instruments

The carrying amounts reported in the balance sheet for cash, federal funds sold, short-term investments, and notes and accounts receivable approximate those assets' fair values. Fair values for investment securities are based on quoted market prices, to the extent they are available, or pricing models that vary by asset class and incorporate available trade, bid and other market information. The fair value of loans receivable was estimated based on the discounted value of future cash flows using the current rates offered for loans with similar terms to borrowers of similar credit quality. The fair value of the fixed-rate portion of our notes payable are estimated using discounted cash flow analyses, based on our current incremental borrowing rates for similar types of borrowing arrangements. The remaining portion of our notes payable approximates fair value since the interest rate is variable. The fair value of deposits was estimated based on the discounted value of future cash flows using a discount rate approximating current market for similar liabilities. We have no other material financial instruments. See Notes 3, 4, 7 and 10 for additional information.

A summary of the fair value of our financial assets and liabilities is as follows:

	2007		2006	
	Fair Value	Carrying Value	Fair Value	Carrying Value
	(In millions)			
Investments	$ 1,444.6	$ 1,444.6	$ 1,859.0	$ 1,859.0
Loans receivable	644.0	638.4	532.6	535.8
Deposits	581.2	564.5	643.9	618.2
Notes payable	559.5	579.5	625.4	685.3

Stock-Based Compensation

Effective January 1, 2006, we adopted the provisions of SFAS No. 123, *Accounting for Stock-Based Compensation* ("SFAS 123") as revised by SFAS 123(R), *Share-Based Payment* ("SFAS 123-(R)"). We have used the modified prospective adoption method. Under this method, the share-based compensation cost recognized beginning January 1, 2006 includes compensation cost for (1) all share-based payments granted prior to, but not vested as of January 1, 2006, based on the grant date fair value originally estimated in accordance with the provisions of SFAS 123 and (2) all share-based payments granted subsequent to December 31, 2005, based on the grant date fair value estimated in accordance with the provisions of SFAS 123-(R). Compensation cost under SFAS 123-(R) is recognized ratably using the straight-line attribution method over the expected vesting period or to the retirement eligibility date, if less than the vesting period when vesting is not contingent upon any future performance. The cumulative effect of adopting SFAS 123-(R) was not significant.

Prior to January 1, 2006, we accounted for share-based compensation plans in accordance with the provisions of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, as permitted by SFAS 123. Accordingly, no compensation expense was recognized for our stock options since all options granted had an exercise price equal to the market value of the underlying stock on the date of grant. The pro forma effect on 2005 net income and earnings per share from compensation expense for our employee stock options based on the fair value method of accounting was not material. No stock options have been granted since 2002. See Note 11 for additional information.

Earnings Per Share

The following table sets forth the computation of basic and diluted (loss) earnings per share for the years ended December 31:

	2007	2006	2005
	(In millions, except per share amounts)		
Numerator:			
Net (loss) income for basic and diluted earnings per share	$ (54.1)	$ 98.8	$ 165.6
Denominator:			
Weighted average shares – for basic earnings per share	16.3	17.0	17.5
Effect of dilutive securities:			
Convertible debt (See Note 11)	–	0.4	0.1
Employee stock options and restricted stock	–	0.2	0.2
Denominator for diluted earnings per share	16.3	17.6	17.8
Basic (loss) earnings per share	$ (3.31)	$ 5.80	$ 9.45
Diluted (loss) earnings per share	$ (3.31)	$ 5.61	$ 9.29

For the year 2007, 0.5 million common shares, representing all potential dilutive shares for the period, were excluded from the diluted common share total as they are anti-dilutive due to the net loss for the year.

Recently Issued Accounting Standards

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standard ("SFAS") No. 141(R), *Business Combinations* ("SFAS 141(R)"). SFAS 141(R) establishes principles and requirements for how the acquirer in a business combination recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree; recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase; and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141(R) replaces SFAS 141, *Business Combinations* ("SFAS 141"), but retains the fundamental requirements in SFAS 141 that the acquisition method of accounting (which SFAS 141 called the purchase method) be used for all business combinations and for an acquirer to be identified for each business combination. SFAS 141(R) also retains the guidance in SFAS 141 for identifying and recognizing intangible assets separately from goodwill. SFAS 141(R) is to be applied prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after January 1, 2009. The effect of adopting SFAS 141(R) will be dependent on future business combinations that we may pursue after its effective date.

In December 2007, FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51* ("SFAS 160"). SFAS 160 amends ARB 51 to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. This statement changes the way the consolidated statement of operations are presented by requiring consolidated net income to be reported at amounts that include the amounts attributable to both the parent and the noncontrolling interest. SFAS 160 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after January 1, 2009 and is to be applied prospectively except for the presentation and disclosure requirements which shall be applied retrospectively for all periods presented. We are evaluating the effect of adopting SFAS 160 on our financial statements.

In September 2006, FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. SFAS 157 is effective for us beginning January 1, 2008 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in the financial statements. In February 2008, the FASB issued Staff Position No. 157-b, *Effective Date of FASB Statement No. 157* ("FSP 157-b"). FSP 157-b delayed the effective date of SFAS 157 for all non financial assets and liabilities to fiscal years beginning January 1, 2009. The provisions of SFAS 157 that are to be applied prospectively for financial assets and liabilities will not have a material effect on our financial statements. We are evaluating the effect of adopting SFAS 157 on our financial statements for non financial assets and liabilities.

In February 2007, FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS 159"). SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value ("fair value option"). The fair value option may be elected on an instrument-by-instrument basis and is irrevocable unless a new election date occurs. SFAS 159 is effective for us on January 1, 2008. We did not apply the fair value option to any of our outstanding instruments; therefore, SFAS 159 did not have an effect on our financial statements.

In March 2007, FASB ratified Emerging Issues Task Force ("EITF") Issue No. 06-10, *Accounting for Collateral Assignment Split-Dollar Life Insurance Arrangements* ("EITF No. 06-10"). EITF No. 06-10 requires an employer to recognize a liability for the post-retirement benefit related to a collateral assignment split-dollar life insurance arrangement in accordance with either SFAS 106 or Accounting Principles Board ("APB") Opinion No. 12 if the employer has agreed to maintain a life insurance policy during the employee's retirement or provide the employee with a death benefit. EITF No. 06-10 also requires an employer to recognize and measure an asset based on the nature and substance of the collateral assignment split-dollar life insurance arrangement. EITF No. 06-10 is effective for us January 1, 2008. We have determined that the adoption of EITF No. 06-10 will not have a material effect on our financial statements.

Recently Adopted Accounting Standards

In September 2006, FASB issued SFAS No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans, an amendment of FASB Statements No. 87, 88, 106 and 132(R)* ("SFAS 158"). This standard requires employers to recognize the underfunded or overfunded status of a defined benefit postretirement plan as an asset or liability in its statement of financial position and to recognize changes in the funded status in the year in which the changes occur through accumulated other comprehensive income. Additionally, SFAS 158 requires employers to measure the funded status of a plan as of the date of its year-end statement of financial position. The new reporting requirement and related new footnote disclosure rules of SFAS 158 were adopted in 2006. See Note 12 for additional information. The new measurement date requirement applies for the years beginning January 1, 2009.

In February 2006, FASB issued SFAS No. 155, *Accounting for Certain Hybrid Financial Instruments, an amendment of FASB Statements No. 133 and 140* ("SFAS 155"). SFAS 155 permits remeasurement for certain financial instruments, clarifies which financial instruments are not subject to the requirements of Statement No. 133, establishes a requirement to evaluate certain interests in securitized financial assets, and makes certain amendments to Statement No. 140 regarding a qualifying special-purpose entity's ability to hold certain types of financial instruments. SFAS 155 was effective January 1, 2007 and did not have a material effect on our financial statements.

In June 2006, the FASB issued FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48) and in May 2007, the FASB issued FASB Staff Position FIN-48-1, *Definition of Settlement in FASB Interpretation No. 48* ("FSP FIN 48-1"). FIN 48 prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FSP FIN-48-1 provides guidance on how an enterprise should determine whether a tax provision is effectively settled for the purpose of recognizing previously unrecognized tax benefits. We adopted the provisions of FIN 48 on January 1, 2007. Upon adoption, the balance of the unrecognized tax benefits was $4.0 million.

2. MERGERS AND ACQUISITIONS

We completed a number of acquisitions during 2007, none of which were material individually or in the aggregate.

On September 8, 2006, we completed the merger with Capital Title Group, Inc. ("Capital Title") whereby Capital Title became a wholly-owned subsidiary of LandAmerica. Capital Title consisted of a title insurance underwriter, several title and escrow agency operations, a property appraisal company, a settlement services provider and other related companies. Capital Title serviced customers primarily in Arizona, California and Nevada in addition to providing lender services on a national basis. Our merger with Capital Title strengthened our title operations presence in key western states and added scale to the services we provide to our mortgage lending customers.

The merger was accounted for using the purchase method in accordance with FASB SFAS No. 141, *Business Combinations* ("SFAS 141"). Under the terms of the merger, we acquired 100 percent of Capital Title's common stock for approximately $252.6 million which consisted of $202.9 million of cash, including direct transaction costs of $3.6 million, and $49.7 million of our common stock, which represented 775,576 shares. In recording the merger, the value of the 775,576 shares issued was determined based on the measurement criteria in EITF 99-12, *Determination of the Measurement Date for the Market Price of Acquirer Securities Issued in a Purchase Business Combination*.

The following table summarizes the number of acquisitions by segment, as defined in Note 19, for the past three years:

	Year Ended December 31,		
	2007	2006	2005
		(Dollars in millions)	
Number of acquisitions:			
Title Operations	1	3[1]	3
Lender Services	–	2	–
Corporate and Other	2	6	6
	3	11	9
Total purchase price recognized in acquisitions	$ 26.0	$ 266.5	$ 26.1
Total goodwill recognized in acquisitions	$ 15.6	$ 190.9	$ 11.9

[1] Includes the merger of Capital Title.

These acquisitions have been accounted for using the purchase method of accounting and each of the acquisitions' results has been included in the consolidated financial statements since the acquisition date. These businesses were not considered significant individually or in the aggregate for 2007, 2006, and 2005. Substantially all of these acquisitions in 2007, 2006, and 2005 have escrow agreements where a portion of the consideration has been placed in escrow until predetermined criteria have been met. Additionally, in certain instances, we have entered into purchase agreements which contain provisions for additional payments should the acquired company meet certain operating results. Neither the escrow agreements nor the contingent consideration are expected to be material to our financial statements or operations.

The following table summarizes intangible assets acquired during 2007, exclusive of any contingent payments and finalization of purchase accounting adjustments:

	Intangible Assets	Weighted Average Amortization Period
	(In millions)	(In years)
Customer relationships	$ 3.8	10
Non-compete agreements	2.4	3
Other	1.0	5
Intangibles	7.2	7
Goodwill	15.6	
Total intangible assets acquired	$ 22.8	

Approximately $2.1 million of the goodwill acquired in 2007 is expected to be tax deductible.

3. INVESTMENTS

We classify our fixed-maturity and equity investments as trading or available-for-sale. Trading investments are bought and held principally for the purpose of selling them in the near term. All fixed-maturity and equity investments not classified as trading are classified as available-for-sale. During first quarter 2007, we transferred $142.6 million of our fixed-maturity securities from available-for-sale securities to trading securities. Additionally $2.3 million of unrealized gains on these available-for-sale securities which were previously included in accumulated other comprehensive income (loss) were reclassified and recorded in the consolidated statement of operations caption "Net realized investment gains." We did not transfer any of our securities between investment categories during the remainder of 2007.

The amortized cost and estimated fair value of available-for-sale fixed-maturity securities at December 31, 2007 and 2006 were as follows:

	2007			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
	(In millions)			
U.S. treasury securities	$ 20.7	$ 1.0	$ –	$ 21.7
Obligations of U.S. government corporations and agencies	18.1	0.1	–	18.2
Obligations of states and political subdivisions	444.7	11.1	(0.4)	455.4
Fixed maturities issued by foreign governments	5.4	0.1	–	5.5
Public utilities	20.5	0.3	(0.3)	20.5
Corporate securities	241.3	3.1	(2.3)	242.1
Mortgage-backed securities	248.7	3.3	(1.1)	250.9
Preferred stock	5.9	–	(1.1)	4.8
Fixed maturities	$ 1,005.3	$ 19.0	$ (5.2)	$ 1,019.1

	2006			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
	(In millions)			
U.S. treasury securities	$ 26.5	$ 0.3	$ (0.1)	$ 26.7
Obligations of U.S. government corporations and agencies	77.5	–	(0.4)	77.1
Obligations of states and political subdivisions	487.7	10.5	(1.0)	497.2
Fixed maturities issued by foreign governments	5.0	0.1	–	5.1
Public utilities	8.0	–	–	8.0
Corporate securities	473.5	3.8	(3.8)	473.5
Mortgage-backed securities	180.6	1.4	(2.3)	179.7
Preferred stock	8.4	0.1	–	8.5
Fixed maturities	$ 1,267.2	$ 16.2	$ (7.6)	$ 1,275.8

The amortized cost and estimated fair value of available-for-sale fixed-maturity securities at December 31, 2007, by contractual maturity are shown below. Actual maturities will differ from contractual maturities because borrowers may have the right to call or prepay obligations.

	Amortized Cost	Estimated Fair Value
	(In millions)	
Due in one year or less	$ 41.1	$ 41.2
Due after one year through five years	259.5	264.2
Due after five years through ten years	301.1	307.2
Due after ten years	154.9	155.6
Mortgage-backed securities	248.7	250.9
	$ 1,005.3	$ 1,019.1

Realized and unrealized gains (losses) representing the change in fair value and cost on fixed-maturity and equity securities for the three years ended December 31, are summarized below:

	2007	2006	2005
		(In millions)	
Net realized gains (losses):			
Fixed maturities	$ (1.5)	$ (0.6)	$ (0.4)
Equity securities	14.6	10.6	4.6
Change in unrealized holding gains – trading securities	2.1	–	–
Other-than-temporary impairment	–	(2.9)	–
	$ 15.2	$ 7.1	$ 4.2
Change in unrealized:			
Fixed maturities	$ 5.2	$ (0.7)	$ (28.1)
Equity securities	(22.9)	10.6	(2.8)
	$ (17.7)	$ 9.9	$ (30.9)

Gross unrealized gains and (losses) relating to investments in equity securities were $5.2 million and $(9.6) million at December 31, 2007 and $20.3 million and $(1.8) million at December 31, 2006.

Gross unrealized losses and fair value related to our available-for-sale securities and length of time that individual securities have been in a continuous unrealized loss position were as follows:

	December 31, 2007					
	Less Than 12 Months		12 Months or More		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
	(In millions)					
Fixed maturities :						
U.S. treasuries	$ –	$ –	$ 0.8	$ –	$ 0.8	$ –
U.S. government corporations and agencies	0.5	–	2.0	–	2.5	–
States and political subdivisions	26.9	0.3	27.6	0.1	54.5	0.4
Fixed maturities issued by foreign governments	–	–	3.6	–	3.6	–
Public utilities	6.2	0.2	3.0	0.1	9.2	0.3
Corporate securities	43.8	1.2	45.8	1.1	89.6	2.3
Mortgage-backed securities	13.4	0.2	67.8	0.9	81.2	1.1
Preferred stock	4.4	1.1	–	–	4.4	1.1
Equity securities	37.5	8.6	2.2	1.0	39.7	9.6
Total	$ 132.7	$ 11.6	$ 152.8	$ 3.2	$ 285.5	$ 14.8

	December 31, 2006					
	Less Than 12 Months		12 Months or More		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
	(In millions)					
Fixed maturities :						
U.S. treasuries	$ 24.9	$ 0.1	$ 7.4	$ –	$ 32.3	$ 0.1
U.S. government corporations and agencies	0.7	0.2	2.0	0.2	2.7	0.4
States and political subdivisions	65.0	0.3	39.2	0.7	104.2	1.0
Fixed maturities issued by foreign governments	4.1	–	0.4	–	4.5	–
Public utilities	4.7	–	0.5	–	5.2	–
Corporate securities	93.9	0.5	172.7	3.3	266.6	3.8
Mortgage-backed securities	45.4	0.2	105.7	2.1	151.1	2.3
Preferred stock	1.0	–	0.5	–	1.5	–
Equity securities	8.7	1.3	4.2	0.5	12.9	1.8
Total	$ 248.4	$ 2.6	$ 332.6	$ 6.8	$ 581.0	$ 9.4

At December 31, 2007, we held 738 securities which were in an unrealized loss position with a total estimated fair value of $285.5 million and gross unrealized losses of $14.8 million. Of the 738 securities, 217 had been in a continuous unrealized loss position for greater than one year and had a total estimated fair value of $152.8 million and gross unrealized losses of $3.2 million. The 217 securities with unrealized losses in excess of twelve months were investment grade debt and equity securities which we have the intent and the ability to hold those securities until recovery.

At December 31, 2006, we held 805 securities which were in an unrealized loss position with a total estimated fair value of $581.0 million and gross unrealized losses of $9.4 million. Of the 805 securities, 408 had been in a continuous unrealized loss position for greater than one year and had a total estimated fair value of $332.6 million and gross unrealized losses of $6.8 million. The 408 securities with unrealized losses in excess of twelve months were investment grade debt and equity securities which we had the intent and the ability to hold those securities until recovery.

We review the status of each security quarterly to determine whether an other-than-temporary impairment has occurred. In making our determination, we consider a number of factors including: (1) the significance of the decline, (2) whether the securities were rated below investment grade, (3) how long the securities have been in the unrealized loss position, and (4) our ability and intent to retain the investment for a sufficient period of time for it to recover. In 2006, we recognized a loss of $2.9 million as we no longer had the intent to hold certain fixed-maturity securities to recovery. We have concluded that none of the other available-for-sale securities with unrealized losses at December 31, 2007 has experienced an other-than-temporary impairment.

The proceeds and gross realized gains (losses) from the sale of available-for-sale securities, net of calls or maturities, during the years ended December 31, 2007, 2006 and 2005 were as follows:

	2007	2006	2005
		(In millions)	
Fixed maturities:			
Proceeds	$ 228.4	$ 225.6	$ 295.3
Gross realized gains	0.8	0.9	2.5
Gross realized losses	(2.7)	(1.5)	(2.9)
Equity securities:			
Proceeds	$ 124.8	$ 61.3	$ 18.8
Gross realized gains	21.6	12.7	4.7
Gross realized losses	(7.0)	(2.1)	(0.1)

At December 31, 2007, no industry group comprised more than 10 percent of our investment portfolio. This portfolio is widely diversified among various geographic regions in the United States, and is not dependent on the economic stability of one particular region.

At December 31, 2007, we did not hold any fixed-maturity securities in any single issuer which exceeded 10 percent of shareholders' equity other than securities issued or guaranteed by the U.S. government.

Investment Income

Earnings on investments and net realized gains for the years ended December 31 follow:

	2007	2006	2005
		(In Millions)	
Fixed maturities	$ 58.5	$ 57.3	$ 51.3
Loans receivable	39.6	30.3	24.0
Short-term investments	13.1	22.6	12.3
Net realized gains	15.2	7.1	4.2
Equity securities	3.6	4.0	2.8
Other investment income	0.4	0.1	0.2
Total investment income	130.4	121.4	94.8
Investment expenses	(2.8)	(2.1)	(2.0)
Net investment income	127.6	119.3	92.8
Other income	8.8	11.4	13.2
Investment and other income	$ 136.4	$ 130.7	$ 106.0

4. LOANS RECEIVABLE

Loans receivable at December 31, 2007 and December 31, 2006 are summarized as follows:

	2007	2006
	(In millions)	
Commercial real estate mortgages	$ 641.6	$ 534.8
Commercial loans	–	5.0
	641.6	539.8
Allowance for loan losses	(4.9)	(4.9)
Unearned income on loans	(1.3)	(1.2)
Deferred loan fees	3.0	2.1
	$ 638.4	$ 535.8

The average yield on our loan portfolio was 7.1 percent for the year ended December 31, 2007 and 6.9 percent for the year ended December 31, 2006. Average yields are affected by amortization of discounts on loans, prepayment penalties recorded as income, amortization of loan fees and market interest rates.

The activity in the allowance for loan losses for the years ended December 31, 2007 and December 31, 2006 is as follows:

	2007	2006
	(In millions)	
Beginning of year	$ 4.9	$ 4.3
Add: Provision for loan losses	–	0.6
Balance at end of year	$ 4.9	$ 4.9

There were no investments in loans for which an impairment has been recognized. There were no loans in non-accrual status at December 31, 2007 and December 31, 2006.

The allowance for loan losses is maintained at a level that we consider appropriate to provide for risks in the portfolio.

5. PROPERTY AND EQUIPMENT

Property and equipment consists of the following at December 31:

	2007	2006
	(In millions)	
Furniture and equipment	$ 219.0	$ 260.7
Buildings and leasehold improvements	79.1	62.8
Capitalized software	62.1	58.4
Airplane	4.5	4.4
Land	2.3	2.4
	367.0	388.7
Accumulated depreciation	(233.6)	(224.5)
Net property and equipment	$ 133.4	$ 164.2

6. INTANGIBLES

Goodwill balances by segment are as follows:

	Consolidated	Title Operations	Lender Services	Financial Services	Corporate and Other
			(In millions)		
Balance as of December 31, 2005	$ 584.3	$ 319.0	$ 231.3	$ 6.4	$ 27.6
Acquisitions/purchase accounting adjustments	199.1	129.5	65.3	–	4.3
Balance as of December 31, 2006	783.4	448.5	296.6	6.4	31.9
Acquisitions/purchase accounting adjustments	26.5	37.7	(26.3)	–	15.1
Balance as of December 31, 2007	$ 809.9	$ 486.2	$ 270.3	$ 6.4	$ 47.0

The following table presents details of our intangible assets that are subject to amortization as of December 31, 2007 and December 31, 2006:

	Gross Carrying Amount	Accumulated Amortization	Net
		(In millions)	
2007			
Customer relationships	$ 148.0	$ 69.4	$ 78.6
Non-compete agreements	36.3	26.1	10.2
Other	10.2	4.6	5.6
	$ 194.5	$ 100.1	$ 94.4
2006			
Customer relationships	$ 167.3	$ 54.9	$ 112.4
Non-compete agreements	37.0	20.3	16.7
Other	9.1	3.0	6.1
	$ 213.4	$ 78.2	$ 135.2

The estimated future amortization expense of intangible assets for the next five years is $20.3 million in 2008, $19.0 million in 2009, $15.4 million in 2010, $13.0 million in 2011, and $11.7 million in 2012. See Note 13 for discussion of impairments related to certain intangible assets.

7. DEPOSITS

Passbook and investment certificate accounts at December 31, 2007 and December 31, 2006 are summarized as follows:

	2007	2006
	(Dollars in millions)	
Interest-bearing passbook accounts	$ 192.1	$ 396.0
Certificate accounts:		
Less than one year	282.2	142.4
One to two years	51.1	22.8
Two to three years	28.1	31.9
Three to four years	6.8	20.3
Four to five years	4.2	4.8
	372.4	222.2
	$ 564.5	$ 618.2
Annualized average interest rates:		
Interest-bearing passbook accounts	3.6%	5.1%
Certificate accounts	5.1%	4.8%

Interest bearing passbook accounts were $104.4 million at December 31, 2007 and $107.5 million at December 31, 2006. Non-interest bearing passbook accounts related to escrow balances were $87.7 million at December 31, 2007 and $288.5 million at December 31, 2006.

The aggregate amount of time deposits in denominations of $100,000 or more was $385.4 million at December 31, 2007 and $476.2 million at December 31, 2006.

8. POLICY AND CONTRACT CLAIMS

A summary of our policy and contract claims, broken down into its components of known claims and incurred but not reported claims ("IBNR") follows:

	December 31, 2007		December 31, 2006	
	(Dollars in millions)			
Known claims	$ 165.8	18.9%	$ 146.0	18.5%
IBNR	710.7	81.1	643.1	81.5
Total policy and contract claims	$ 876.5	100.0%	$ 789.1	100.0%

Reserves for known claims include the estimated amount of the claim and the costs required to resolve the claim. A provision for estimated claims that are incurred but not yet reported is established at the time premium revenue is recognized based on reported claims, historical loss experience and other factors, including industry trends.

Activity in the liability for unpaid claims and claim adjustment expenses is summarized as follows:

	2007	2006	2005
		(In millions)	
Balance at January 1	$ 789.1	$ 697.6	$ 643.8
Acquired	–	22.0	–
Provision related to:			
Current year	235.1	224.9	219.1
Prior years	53.4	6.4	(21.9)
Total incurred	288.5	231.3	197.2
Paid related to:			
Current year	36.0	30.0	34.7
Prior years	165.1	131.8	108.7
Total paid	201.1	161.8	143.4
Balance at December 31	$ 876.5	$ 789.1	$ 697.6

Current year incurred losses include escrow and small claims payments. Claims paid related to our title insurance business were $189.5 million in 2007, $149.4 million in 2006, and $132.6 million in 2005.

Provisions for title losses as a percentage of title operating revenues for the Title Operations segment were 8.6 percent for 2007, 6.1 percent for 2006, and 5.2 percent for 2005. The increase in the loss percentage in 2007 compared to 2006 was due to upward development primarily in policy years 2004, 2005 and 2006, and a higher claims rate for the 2007 policy year of 6.8 percent. The increase in the loss percentage in 2006 compared to 2005 reflects upward development primarily in the 2003 and 2004 policy years.

9. INCOME TAXES

We file a consolidated federal income tax return. Significant components of our deferred tax assets and liabilities at December 31, 2007 and 2006 were as follows:

	2007	2006
	(In millions)	
Deferred tax assets:		
Deferred income	$ 64.3	$ 61.1
Policy and contract claims	25.1	8.6
Employee benefit plans	54.0	45.3
Goodwill	–	9.4
Pension liability	–	7.2
Tax and flood claims	4.5	6.6
Federal, state and foreign net operating losses	7.8	1.0
Legal settlement accrual	5.4	3.7
Convertible debt	1.7	3.5
Exit and termination accrual	9.3	0.8
Allowance for bad debts	6.7	5.6
Other	6.3	4.6
Total gross deferred tax assets	185.1	157.4
Less valuation allowance	(11.0)	(1.0)
Total net deferred tax assets	174.1	156.4
Deferred tax liabilities:		
Other intangibles	13.6	30.7
Unrealized gains	2.3	6.3
Fixed assets	8.3	12.8
Title plants	11.7	10.9
Capitalized system development costs	3.3	3.0
Pension liability	2.5	–
Goodwill	1.2	–
Other	11.1	8.6
Total deferred tax liabilities	54.0	72.3
Net deferred tax asset	$ 120.1	$ 84.1

In assessing the realizability of deferred tax assets, we consider whether it is more likely than not that some or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets depends on the generation of future taxable income during the period in which those temporary differences are deductible. At

December 31, 2006, a valuation allowance of $1.0 million was established for certain foreign net operating losses because, in our judgment, it was more likely than not that realization would not occur. During 2007, we provided for an additional $10.0 million primarily related to state deferred tax assets for one of our subsidiaries and for a U. S. federal net operating loss related to a consolidated joint venture, both of which we believe it is more likely than not that realization will not occur.

At December 31, 2007, we have net operating loss carryforwards for certain state and foreign jurisdictions of $7.8 million which are available to offset future income in those jurisdictions. These net operating losses could fully expire after 2027.

Prior to 2007, it was our intent to repatriate all accumulated earnings from our foreign subsidiaries to the U.S. Accordingly, we provided for deferred income taxes on all such undistributed earnings through December 31, 2006. During 2007, we made a decision to use foreign earnings to expand operations outside of the U.S. instead of repatriating those earnings to the U.S. Accordingly, pursuant to APB No. 23, *Accounting for Income Taxes-Special Areas* ("APB 23"), we have not accrued incremental U.S. taxes on foreign earnings recognized in 2007 as these earnings are considered to be indefinitely reinvested outside of the U.S. Deferred U.S. income taxes on unremitted earnings from other foreign entities have not been provided as such earnings are deemed to be permanently reinvested. As of December 31, 2007, U.S. income taxes not provided on unremitted earnings of subsidiaries operating outside the U.S. were immaterial.

The breakout of our income tax expense between current and deferred is as follows:

	2007	2006	2005
		(In millions)	
Current:			
Federal	$ 14.0	$ 13.2	$114.1
State	(0.7)	3.3	9.4
Foreign	(2.3)	2.2	–
Total	11.0	18.7	123.5
Deferred:			
Federal	(32.8)	39.3	(22.4)
State	(3.8)	(3.1)	(5.4)
Foreign	(1.9)	0.3	–
Total	(38.5)	36.5	(27.8)
Net tax (benefit) expense	$ (27.5)	$ 55.2	$ 95.7

The provision for income tax differs from the amount of income tax determined by applying the U.S. statutory income tax rate (35 percent) to pretax income as a result of the following:

	2007	2006	2005
		(In millions)	
Tax expense at federal statutory rate	$ (28.5)	$ 53.9	$ 91.5
Nontaxable interest	(6.3)	(6.2)	(5.5)
Meals and entertainment	5.8	6.4	6.4
State income taxes, net of federal benefit	(4.3)	2.5	2.9
Valuation allowance	10.0	1.0	–
Other, net	(4.2)	(2.4)	0.4
Income tax (benefit) expense	$ (27.5)	$ 55.2	$ 95.7

Taxes refunded were $21.4 million in 2007, and taxes paid were $97.4 million in 2006 and $54.2 million in 2005.

As a result of an audit of the 2003 to 2004 tax years, the Internal Revenue Service ("IRS") has proposed certain adjustments relating to our tax treatment of agency revenue. Currently, revenue from title policies issued through independent agents is recognized when the policies are reported by the agent for book and tax purposes. The IRS believes we are required to estimate the income and commissions associated with the sale of policies by agents during the tax year. The effect of this proposed adjustment would be an increase in the current tax liability and an increase in deferred tax assets of $35 million. However, we are disputing the proposed adjustment as we continue to believe that our tax treatment of these transactions is correct and we believe we will prevail in any dispute with the IRS related to this matter. Accordingly, no interest or penalties have been accrued for this proposed IRS adjustment as of December 31, 2007. We expect to defend the matter vigorously through the IRS appeal process and, if necessary, through litigation. We do not expect that the ultimate resolution of this matter will have a material adverse effect on our financial condition or results of operations.

On January 1, 2007, we adopted the provisions of FASB Interpretation No. 48*, Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48") and FASB Staff Position FIN 48-1, *Definition of Settlement in FASB Interpretation No. 48* ("FSP FIN 48-1"). At January 1, 2007, the balance of the unrecognized tax benefits was $4.0 million which, if recognized, would affect our effective tax rate. A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	(In millions)
Balance January 1, 2007	$ 4.0
Gross decreases in unrecognized tax benefits – related to prior periods	(1.9)
Additions in unrecognized tax benefits – current period	1.0
Balance December 31, 2007	$ 3.1

We file tax returns in the U.S. federal jurisdiction and various state and foreign jurisdictions. For federal and most state and local taxes, the statute of limitations has expired and we are no longer subject to examinations by tax authorities for years prior to 2003. Also related to the audit of the 2003 to 2004 tax years, in third quarter 2007, the IRS conceded in full a proposed adjustment from the audit related to original issue discount for convertible debt. Accordingly, we consider this issue effectively settled under FIN 48, which resulted in a reduction in the unrecognized tax benefits of $1.9 million. However, it is reasonably possible that within the next twelve months the amount of unrecognized tax benefits will increase as a result of other tax positions taken during the current period, the nature of which are consistent with those unrecognized tax benefits at December 31, 2007. The estimated range of the increase is from $0.5 million to $0.8 million.

10. CREDIT ARRANGEMENTS

A summary of our debt and credit arrangements are as follows:

	2007	2006
	(In millions)	
Revolving credit agreement at LIBOR plus margin (5.77% at December 31, 2007)	$ 100.0	$ 100.0
3.125% senior convertible debentures, due November 2033	98.5	115.0
3.25% senior convertible debentures, due May 2034	125.0	125.0
7.45% senior notes, due 2008	–	50.0
7.88% senior notes, due 2011	–	50.0
6.66% senior notes (Series D), due 2016	50.0	50.0
6.70% senior notes (Series E), due 2016	100.0	100.0
Borrowings from Federal Home Loan Bank Board	86.1	64.6
Other notes with maturities through 2011, average rate approximately 7.84%	19.9	30.7
	$ 579.5	$ 685.3

Credit Facility

On July 28, 2006, we entered into a five-year revolving credit agreement with SunTrust Bank, as administrative agent for a syndicate of other banks, issuing bank and swingline lender. The credit agreement established a credit facility with the aggregate principal amount of up to $200.0 million. Interest accrues on the outstanding principal balance of the credit facility, at our option, based on (1) LIBOR (reserve adjusted) for 30, 60, 90 or 180 days with respect to any Eurodollar Borrowing plus a margin determined by our leverage ratio or (2) SunTrust's Base Rate as defined in the credit agreement. The credit agreement contains certain restrictive covenants, including a minimum debt to capital ratio, an interest coverage ratio and maintenance of consolidated net worth requirement.

On November 29, 2007, we amended the credit agreement as a proactive measure given current market conditions. In general, the material terms of the amendment decreased the interest coverage ratio from its current level of 3.0:1.0 to 1.5:1.0 through September 30, 2008, after which time it will return to 3.0:1.0 and modified the consolidated net worth requirement from 85% to 80% of shareholder's equity as of December 31, 2005. We were in compliance with all debt covenants at December 31, 2007.

Senior Notes

On July 28, 2006, we entered into a Note Purchase and Master Shelf Agreement (the "Note Purchase Agreement") with Prudential Investment Management, Inc. ("Prudential") and the other purchasers thereunder. Under the Note Purchase Agreement, we issued $50.0 million of Senior Notes, Series D (the "Series D Notes") to the Series D Note purchasers on August 31, 2006 and we issued $100.0 million of Senior Notes, Series E (the "Series E Notes") to the Series E Note purchasers on September 7, 2006. In addition, the Note Purchase Agreement contained provisions for an uncommitted shelf facility for which we may issue, on or prior to July 28, 2009, up to $75.0 million of Senior Notes (the "Shelf Notes") to Prudential, upon mutually acceptable terms and conditions as may be agreed upon at the time of issuance. The Shelf Notes, if issued, will bear interest at a to-be-determined per annum rate and will have maturities of no more than ten years. At December 31, 2007, there were no borrowings outstanding under the Shelf Notes.

The Note Purchase Agreement, which governs the Series D Notes, Series E Notes and Shelf Notes, contains certain restrictive covenants, including a minimum debt to capitalization ratio and debt service ratio. On November 30, 2007, we amended the Note Purchase Agreement as a proactive measure given current market conditions. The amendment to the Note Purchase Agreement decreased the interest coverage ratio from its current level of 3.0:1.0 to 1.5:1.0 through December 31, 2008, after which time it will return to 3.0:1.0. We were in compliance with all debt covenants at December 31, 2007.

On October 10, 2007, we prepaid in full, all of our outstanding 7.45% Senior Notes, Series B, Due 2008 (the “Series B Notes”), and all of our outstanding 7.88% Senior Notes, Series C, Due 2011 (the “Series C Notes,” and collectively with the Series B Notes, the “Notes”), issued pursuant to the Note Purchase Agreement dated August 31, 2001 (the “Note Agreement”). The Notes were prepaid at our option in accordance with the terms of the Note Agreement at a price of $107.6 million, representing the aggregate principal amount of the Notes plus accrued and unpaid interest and a “make-whole” amount applicable to the Notes. We incurred $6.7 million in fourth quarter 2007 as a result of the make-whole payment which was reflected in our results of operations. The prepayment of the Notes was funded from the $100 million draw under the credit agreement and available cash.

Convertible Debt

In November 2003, we issued $115.0 million of 3.125% Convertible Senior Debentures due 2033 through a private placement. The debentures are convertible into our common shares at $65.21 per share (see additional information in Note 11). We may redeem some or all of the senior convertible debentures at any time on or after November 15, 2010. The holders may also require us to repurchase the debentures for cash at five designated repurchase dates as defined in the indenture. Additionally, we may be required to pay contingent interest during interest periods beginning in 2010, depending on the trading price of the debentures, as defined in the indenture. In October 2007, certain holders exercised their conversion rights for $16.5 million of these debentures resulting in a $0.3 million extinguishment gain.

In May 2004, we issued $125.0 million principal amount of 3.25% Convertible Senior Debentures due 2034 through a private placement. The 2004 debentures are convertible into our common shares at an equivalent price of $52.93 per share. We may redeem some or all of the senior convertible debentures at any time on or after May 2014. The holders may also require us to repurchase the debentures for cash at four designated repurchase dates as defined in the indenture. See additional information in Note 11.

Federal Home Loan Bank

Our banking subsidiary has a line of credit with the Federal Home Loan Bank of San Francisco ("FHLB") in the amount of $158.0 million, with an outstanding balance of $86.1 million at December 31, 2007. All advances under this line of credit were collateralized with loans receivable and FHLB stock of $5.1 million in 2007. These borrowings, which included fixed term and fixed rate advances maturing 2008 through 2012, bear or carry interest rates ranging from 2.7 percent to 5.3 percent.

Contractual Maturities

The aggregate annual maturities for notes payable in each of the five years after December 31, 2007, are as follows:

	(In millions)
2008	$ 43.0
2009	23.4
2010	22.1
2011	111.1
2012	4.5

Interest paid was $58.7 million in 2007, $48.5 million in 2006 and $30.7 million in 2005.

11. SHAREHOLDERS' EQUITY

Stock Options and Award Plans

At December 31, 2007, we had three stock compensation plans which have been approved by the shareholders: the 1991 and 1992 stock plans and the 2000 Stock Incentive Plan, as amended (the "2000 Plan"). No further awards may be granted under the 1991 and 1992 stock plans. All future grants of stock compensation will be granted through the 2000 Plan. Under the 2000 Plan, we may grant/award common stock, restricted stock, stock options, stock appreciation rights and phantom stock to officers, directors, employees, agents, consultants and advisors of us and our subsidiaries, as determined at the discretion of the Executive Compensation Committee of the Board of Directors. Shares of phantom stock are designated as cash units and payable solely in cash. The maximum number of shares of common stock authorized for issuance under the 2000 Plan is 3,600,000 subject to adjustment as described in the 2000 Plan. At December 31, 2007, there were 2,039,686 shares available for future grant under the 2000 Plan.

The total compensation expense for these plans was $12.2 million ($7.9 million, net of tax) in 2007, $16.7 million ($10.7 million, net of tax) in 2006, and $8.2 million ($5.1 million, net of tax) in 2005. As of December 31, 2007, there was $8.9 million of unrecognized compensation cost related to non-vested share-based compensation arrangements under the plan. That cost is expected to be recognized over a weighted-average period of approximately 2 years.

In 2007, 6,960 shares of common stock were granted to non-employee directors at a fair value of $87.99 per share.

Certain awards provide for accelerated vesting in the event of a change of control, retirement, disability or death.

The intrinsic value of awards exercised or converted was $12.1 million in 2007, $9.4 million in 2006, and $11.5 million in 2005. The fair value of shares vested was $6.8 million in 2007, $7.7 million in 2006, and $4.0 million in 2005.

Stock Options

All stock options have been granted with an exercise price equal to the fair market value of a share of common stock at the date of grant. All options granted to directors vest ratably over four years and expire ten years from the date of grant; all other options generally vest ratably over four years and expire seven years from the date of grant. There have been no stock options granted since 2002. All outstanding stock options were fully vested as of December 31, 2005 and there is no unrecognized compensation cost remaining. The following schedule summarizes stock option activity for the year ended December 31, 2007:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Life	Aggregate Intrinsic Value
			(Years)	(In millions)
Options outstanding, December 31, 2006 (221,250 exercisable)	221,250	$29		
Granted	–	–		
Exercised	116,350	30		
Forfeited	–	–		
Options outstanding, December 31, 2007 (104,900 exercisable)	104,900	$29	2	$0.6

Restricted Stock

Restricted stock and related cash units may be granted pursuant to the 2000 Plan and vest over three to four years. The fair value of non-vested shares is determined based on the closing trading price of our shares on the grant date. We recognize compensation expense on a straight-line basis over the requisite service period for the entire award. Recipients of restricted stock are entitled to vote and receive dividends on the shares. The shares are subject to certain transfer restrictions and may be forfeited if a participant leaves our company for reasons other than retirement, disability or death.

	2007		
	Restricted Stock	Weighted Average Grant-Date Fair Value	Cash Units
Nonvested grants at start of year	245,070	$57	155,724
Granted	117,034	73	84,749
Forfeited	(23,711)	65	(17,163)
Vested	(98,530)	52	(56,883)
Nonvested grants at end of year	239,863	$66	166,427

The weighted average grant-date fair value of awards granted was $73 in 2007, $67 in 2006, and $55 in 2005. Cash settlement of vested cash units was $3.8 million in 2007, $3.5 million in 2006, and $1.2 million in 2005.

Employee Stock Purchase Plan

The Employee Stock Purchase Plan ("ESPP"), available to substantially all employees, allows participants to purchase our common stock at a 15 percent discount from the fair market value on the purchase date. Common stock purchases are paid for through periodic payroll deductions and a company match. Compensation expense for the employee match was $0.7 million in 2007, $0.8 million in 2006, and $0.4 million in 2005.

Savings and Stock Ownership Plan

We have registered 3,100,000 shares of common stock for use in connection with the LandAmerica Financial Group, Inc. Savings and Stock Ownership Plan ("the Plan"). Substantially all of our employees are eligible to participate in the Plan.

We match employee contributions in cash. The total number of shares purchased and allocated to employees including both company match and employee contributions and cost follows:

2007		2006		2005	
Shares	Cost	Shares	Cost	Shares	Cost
		(Dollars in millions)			
169,246	$8.2	138,072	$7.2	124,135	$7.1

Amounts charged to income for our matching contributions were $19.8 million in 2007, $21.0 million in 2006 and $18.8 million in 2005.

Deferral Plans

Under our Executive Voluntary Deferral Plan, executives can defer eligible compensation into deferred stock units or a cash account bearing interest at a fixed rate of return. Under the Outside Directors Deferral Plan, directors can defer eligible compensation into deferred stock units bearing interest at a fixed rate of return. Under the terms of the original plans, deferred stock units were settled by a cash payment to the plan participant. Effective April 24, 2002, we amended the deferral plans to provide for the settlement of deferred stock units in our common stock. Effective January 1, 2004, the Executive Voluntary Deferral Plan and the Outside Directors Deferral Plan were amended to provide a maximum of 800,000 and 100,000, respectively, of common stock that can be issued under the plans. A trust has been established to hold the shares of common stock to be used to fund payments to executives and directors. We provide the trustee of the Plans with the funds to purchase shares of common stock on the open market to match the number of deferred stock units credited to participants' accounts under the deferral plans. The aggregate number of shares purchased by the trustee of the plans in 2007 was 42,451 at a cost of $2.7 million. At December 31, 2007, there were 543,043 shares available for future grant under our Executive Voluntary Deferral Plan and Outside Directors Deferral Plan.

Convertible Debt

In November and December 2003, we issued $115.0 million of 3.125% Convertible Senior Debentures due 2033 (the "2003 debentures") through a private placement. The 2003 debentures are convertible into shares of our common stock at the current conversion rate of 15.3358 shares per $1,000 principal amount of the debentures, which is equivalent to a conversion price of $65.21 per share of common stock. The conversion rate is subject to adjustment upon the occurrence of certain specified events. On February 15, 2005, we made an irrevocable election to satisfy in cash 100 percent of the principal amount of the 2003 debentures converted after that date. The remainder, if any, of our conversion obligation may be satisfied in cash or common stock. We may redeem some or all of the 2003 debentures at any time on or after November 2010. The holders may also require us to repurchase the 2003 debentures for cash or common stock at five designated repurchase dates as defined in the indenture. Holders may convert the 2003 debentures into cash and shares, if any, of our common stock prior to stated maturity, under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after December 31, 2003, and before December 31, 2028, if the last reported sale price of our common stock is greater than or equal to 125 percent of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter; (2) at any time on or after

January 1, 2029, if the last reported sale price of our common stock on any date on or after December 31, 2028, is greater than or equal to 125 percent of the conversion price; (3) subject to certain limitations, during the five business day period after any five consecutive trading day period in which the trading price per 2003 debenture for each day of that period was less than 98 percent of the product of the conversion rate and the last reported sale price of our common stock; (4) if we call the 2003 debentures for redemption; (5) upon the occurrence of certain corporate transactions; or (6) if we obtain credit ratings for the 2003 debentures, at any time when the credit ratings assigned to the 2003 debentures are below the specified levels in the indenture. In October 2007, certain holders exercised their conversion rights for $16.5 million of the 2003 debentures resulting in a $0.3 million extinguishment gain.

In May 2004, we issued approximately $125.0 million principal amount of 3.25% Convertible Senior Debentures due 2034 (the "2004 debentures") through a private placement. The 2004 debentures are convertible into shares of our common stock at current conversion rate of 18.8933 shares per $1,000 principal amount of the 2005 debentures, which is equivalent to a conversion price of approximately $52.93 per share of common stock. The conversion rate is subject to adjustment upon the occurrence of certain specified events. Upon conversion, we will deliver cash equal to the lesser of the aggregate principal amount of 2004 debentures to be converted and our total conversion obligation and common stock in respect of the remainder, if any, of our conversion obligation. Holders may convert the 2004 debentures into cash and shares, if any, of our common stock prior to stated maturity, under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after June 30, 2004, and before June 30, 2029, if the last reported sale price of our common stock is greater than or equal to 125 percent of the conversion price for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding calendar quarter; (2) at any time on or after July 1, 2029 if the last reported sale price of our common stock on any date on or after June 30, 2029 is greater than or equal to 125 percent of the conversion price; (3) subject to certain limitations, during the five business day period after any five consecutive trading day period in which the trading price per 2004 debenture for each day of that period was less than 98 percent of the product of the conversion rate and the last reported sale price of our common stock; (4) if we call the 2004 debentures for redemption; (5) upon the occurrence of certain corporate transactions; or (6) if we obtain credit ratings for the 2004 debentures, at any time when the credit ratings assigned to the 2004 debentures are below the specified levels in the indenture. At December 31, 2007, none of the 2004 debentures had been converted or redeemed.

Based on their conversion features, the 2003 and 2004 debentures are not considered conventional convertible securities. We have evaluated each debenture for embedded derivatives pursuant to SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* and EITF 00-19, *Accounting for Derivative Instruments Indexed to and Potentially Settled in a Company's Own Stock*. The characteristics of the embedded conversion features would not require a net cash settlement, and therefore have not been valued as a separate derivative instrument. The 2004 debentures had registration rights requirements through May 2006, for which we maintained compliance through the expiration date.

Concurrently with the sale of the 2004 debentures, we entered into a bond hedge transaction designed to mitigate the potential dilution from the conversion of the 2004 debentures. Under the ten year term of the bond hedge transaction, we may exercise an option to require a counterparty to deliver our shares of common stock at a price approximately equal to the conversion price of the 2004 debentures.

The cost of the bond hedge transaction was partially offset by our sale to a counterparty of warrants to acquire up to 2,301,894 shares of our common stock. The warrants were initially exercisable at a price of approximately $63.98 per share, subject to adjustment. The warrants may be settled through a net share settlement based on the amount by which the then current market price of our common stock exceeds the exercise price.

Stock Repurchase Program

During the first three quarters of 2004, we repurchased 1.25 million shares under a stock repurchase program authorized by the Board of Directors. As a result, in December 2004, the Board of Directors approved a program that authorized us to repurchase up to 1 million additional shares at a cost not to exceed $60.0 million. During fourth quarter 2005, we fully executed the share repurchase program approved in December 2004. In October 2005, the Board of Directors approved a program that authorized us to repurchase an additional 1.25 million shares. As of March 31, 2007, we had fully executed the share repurchase program approved in October 2005.

In February 2007, the Board of Directors approved a repurchase program expiring in October 2008 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had fully executed the share repurchase program approved in February 2007.

In August 2007, the Board of Directors approved a repurchase program expiring in March 2009 that authorized us to repurchase 1.5 million shares. As of December 31, 2007, we had repurchased 390,380 shares for $12.4 million under the current repurchase program and there were approximately 1,109,620 shares remaining at December 31, 2007.

Comprehensive Income

We have elected to display comprehensive income in the statements of shareholders' equity, net of reclassification adjustments. Reclassification adjustments are made to avoid double counting in comprehensive income items that are displayed as part of net income for a period that also had been displayed as part of other comprehensive income in that period or earlier periods.

A summary of unrealized investment gains (losses) and reclassification adjustments, net of tax, of available-for-sale securities for the years ended December 31, 2007, 2006 and 2005 were as follows:

	2007	2006	2005
		(In millions)	
Unrealized holding (losses) gains arising during the period	$ (2.3)	$ 6.3	$ (14.6)
Reclassification adjustment for gains previously included in other comprehensive income (net of tax expense of $4.9 million – 2007; $0.1 million – 2006 and $3.0 million – 2005)	(8.9)	(0.2)	(5.5)
Net unrealized holding (losses) gains arising during the period	$ (11.2)	$ 6.1	$ (20.1)

For a summary of unrealized gains (losses) and reclassification adjustments, net of tax, related to postretirement benefit liabilities for the three years ended December 31, 2007, see Note 12.

Accumulated other comprehensive income (loss) at December 31, 2007, 2006 and 2005 was as follows:

	2007	2006	2005
		(In millions)	
Accumulated other comprehensive income (loss):			
Postretirement benefits liability, net of tax	$ (32.0)	$ (49.5)	$ (53.5)
Unrealized investment gains, net of tax	6.1	17.3	11.2
Foreign currency translation	(0.3)	–	–
	$ (26.2)	$ (32.2)	$ (42.3)

12. PENSIONS AND OTHER POSTRETIREMENT BENEFITS

We have pension and other postretirement benefit plans covering a portion of our employees. On December 31, 2004, we froze the accumulation of benefits available under our principal defined benefit pension plan. Effective December 31, 2004, we ceased future accruals to the retirement plan accounts of all plan participants (other than annual interest credits on account balances), caused the accrued benefits of participants to be fully vested as of December 31, 2004 and limited participation in the plan to those individuals who were participants in the Plan as of December 31, 2004. Participants prior to January 1, 1999, who met the requirements for early retirement on that date, may elect to receive their retirement benefits under the applicable prior plan or formula.

Additionally we sponsor a postretirement benefit plan that provides for postretirement health care benefits to eligible employees hired prior to January 1, 2000 and life insurance benefits to eligible employees. We also sponsor non-qualified, unfunded supplemental benefit plans covering key management personnel.

We adopted the reporting requirements and related footnote disclosure rules of SFAS 158 in 2006. Our measurement date for 2007 was September 30. In accordance with SFAS 158, we will be changing our measurement date to December 31 for 2008.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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The following table summarizes information about the funded status of our pension and other postretirement benefit plans:

	Pension Benefits		Other Benefits	
	2007	2006	2007	2006
	(In millions)			
Change in benefit obligation:				
Benefit obligation at beginning of year	$ 263.2	$ 274.6	$ 61.8	$ 74.2
Service cost	–	–	1.1	1.1
Interest cost	14.0	14.1	3.3	3.6
Plan participants' contributions	–	–	1.9	1.5
Effect of Medicare Act	–	–	–	–
Actuarial loss (gain)	2.6	(4.5)	(4.3)	(6.5)
Plan amendment	–	–	–	(6.5)
Curtailments	–	–	(0.9)	–
Settlements	(26.8)	–	–	–
Benefits paid	(9.5)	(21.0)	(5.4)	(5.6)
Benefit obligation at end of year	$ 243.5	$ 263.2	$ 57.5	$ 61.8
Change in plan assets:				
Fair value of plan assets at beginning of year	$ 247.1	$ 233.2	$ –	$ –
Actual return on plan assets	31.6	19.9	–	–
Company contributions	–	15.0	3.5	4.1
Plan participants' contributions	–	–	1.9	1.5
Settlements	(26.8)	–	–	–
Benefits paid	(9.5)	(21.0)	(5.4)	(5.6)
Fair value of plan assets at end of year	$ 242.4	$ 247.1	$ –	$ –
Funded (underfunded) status of the plan	$ (1.1)	$ (16.1)	$ (57.5)	$ (61.8)
Contribution between measurement date and year-end	–	–	0.2	0.1
Liability recognized in the balance sheet	$ (1.1)	$ (16.1)	$ (57.3)	$ (61.7)
Amounts in accumulated other comprehensive income ("AOCI"), pretax:				
Net actuarial loss	$ 48.1	$ 70.3	$ 2.2	$ 7.5
Prior service cost	–	–	0.6	0.9
Amounts in AOCI	$ 48.1	$ 70.3	$ 2.8	$ 8.4

During 2007, workforce reductions resulted in a curtailment of the postretirement plans. During 2006, a postretirement plan was amended to cap benefits to certain retirees. The accumulated benefit obligation for the cash balance plan is equal to the projected benefit obligation since the plan is frozen.

Net periodic benefit cost and changes in AOCI for the years ended December 31 were as follows:

	Pension Benefits			Other Benefits		
	2007	2006	2005	2007	2006	2005
	(In millions)					
Components of net periodic pension cost:						
Service cost	$ –	$ –	$ –	$ 1.1	$ 1.1	$ 1.0
Interest cost	14.0	14.1	14.4	3.3	3.6	3.9
Expected return on plan assets	(18.0)	(17.7)	(17.1)	–	–	–
Amortization of unrecognized transition (asset) obligation	–	–	–	–	0.8	1.2
Prior service cost recognized	–	–	–	0.3	0.7	0.5
Loss due to settlement or curtailment	5.3	–	4.6	–	–	–
Recognized loss	5.8	7.1	4.6	0.1	0.3	0.4
Net periodic benefit cost	$ 7.1	$ 3.5	$ 6.5	$ 4.8	$ 6.5	$ 7.0
Change in amounts in AOCI:						
Net actuarial loss (gain) arising during the period	$ (11.1)	$ –	$ –	$ (5.2)	$ –	$ –
Amortization of gain (loss) through net periodic pension cost	(11.1)	–	–	(0.1)	–	–
Amortization of prior service cost through net periodic pension cost	–	–	–	(0.3)	–	–
SFAS 158 adoption adjustment	–	–	–	–	7.1	–
Minimum pension liability adjustment	–	(13.7)	7.2	–	1.3	–
Change in amounts in AOCI	$ (22.2)	$ (13.7)	$ 7.2	$ (5.6)	$ 8.4	$ –

For 2008, the amounts in AOCI expected to be recognized as components of net periodic benefit cost are:

	Projected 2008	
	Pension Benefits	Other Benefits
	(In millions)	
Amortization of loss	$ (4.3)	$ –
Amortization of prior service cost	–	(0.3)

Assumptions

Weighted-average assumptions used to determine benefit obligations at the measurement date:

	Pension Benefits		Other Benefits	
	2007	2006	2007	2006
Discount rate	6.00%	5.75%	6.00%	5.75%
Expected return on plan assets	8.00%	8.25%	N/A	N/A
Rate of compensation increase	N/A	N/A	4.50%	4.50%

Weighted-average assumptions used to determine net cost for years ended December 31:

	Pension Benefits		Other Benefits	
	2007	2006	2007	2006
Discount rate	5.75%	5.50%	5.75%	5.50%
Expected return on plan assets	8.25%	8.25%	N/A	N/A
Rate of compensation increase	N/A	N/A	4.50%	4.50%

Assumed health care cost trend rates:

	2007	2006
Health care cost trend rate assumed for next year	8.00%	9.00%
Rate that the cost trend rate gradually declines to	5.00%	5.00%
Year that the rate reaches the rate it is assumed to remain at	2012	2012

Assumed health care cost trend rates has a significant effect on the amounts reported for the health care plans. A one-percentage-point change in assumed health care cost trend rates would have the following effects:

	One-Percentage-Point Increase	One-Percentage-Point Decrease
	(In millions)	
Effect on total of service and interest cost	$ –	$ –
Effect on postretirement benefit obligation	$ 0.6	$ (0.5)

Pension Assets

Our pension plan asset allocation at September 30, 2007 and 2006 and target allocation for 2007 by asset category are as follows:

	Target Allocation	Percentage of Plan Assets	
	2007	2007	2006
Equity securities	55.0%	54.0%	54.9%
Debt securities	35.0	35.1	35.5
Other	10.0	10.9	9.6
Total	100.0%	100.0%	100.0%

We use current and targeted asset mix, in conjunction with historical and expected future long-term investment returns, to develop our expected rate of return on plan assets. Our investment strategy is to provide average market returns through the strategic use of equity and fixed-income and alternative investments to ensure both liquidity and stability of the portfolio. It is anticipated that the current mix of investments will enable the plan to meet our expected rate of return while maintaining principal throughout a variety of market conditions. Plan assets were not invested in LandAmerica securities during 2007 and 2006. No plan assets are expected to be returned to us during 2008.

Employer Contributions

Employer contributions to our pension and other postretirement benefit plans for the years ended December 31, 2007 and 2006, and projected contributions for the year ending December 31, 2008 are as follows:

	Actual		Projected
	2007	2006	2008
		(In millions)	
Pension	$ –	$15.0	$–
Other benefits	3.5	4.1	5.5

Estimated Future Benefit Payments

The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid:

	Pension Benefits	Other Benefits
	(In millions)	
2008	$ 39.3	$ 5.5
2009	19.0	5.4
2010	19.1	5.3
2011	19.4	5.4
2012	19.0	5.5
Years 2013 - 2017	92.0	24.7

The expected benefit payments for our other postretirement benefit plans do not reflect any estimated federal subsidies expected to be received under the Medicare Prescription Drug, Improvement and Modernization Act of 2003. Federal subsidies are estimated at approximately $0.4 million annually from 2008 to 2012 and at approximately $2.2 million for the period 2013 through 2017.

13. IMPAIRMENT AND EXIT AND TERMINATION CHARGES

Impairment Charges

In first quarter 2007, we became aware that one of our tax and flood processing customers, Fremont General Corporation, received a cease and desist order from the Federal Deposit Insurance Corporation relating to lending practices in its mortgage origination business. As a result of the probable loss of business from this customer, we conducted an impairment test of LandAmerica Tax and Flood Services, Inc.'s ("Tax & Flood") customer relationship intangible asset in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, and we determined it was impaired. We recorded a customer relationship intangible impairment charge of $20.8 million which was reflected in our results of operations. Also in 2007, we determined that a non-competition intangible asset in the Title Operations segment was impaired and we recorded an impairment loss of $3.0 million.

In January 2006, we announced our plan to relocate and consolidate our corporate offices and shared resources operations. As a result, we wrote down the corporate office building and related assets to the fair value less cost by $10.3 million, which was reflected in our results of operations for the year ended December 31, 2006. In fourth quarter 2006, we sold the corporate office building and related assets.

In 2005, Tax & Flood ceased providing a portion of future tax services to one of its largest tax customers. As a result of the loss of business, we conducted an impairment test of Tax & Flood's long-lived assets and determined that its customer relationship intangible was impaired by $37.6 million and this impairment was reflected in our results of operations for the year ended December 31, 2005. Also in 2005, we determined that a non-competition intangible asset in the Title Operations segment was impaired and we recorded an impairment loss of $1.5 million.

During 2007 and 2006, we identified certain title plants in the Title Operations segment that will not continue to be used or maintained. Accordingly, we recorded impairment losses of $1.5 million in 2007 and $4.4 million in 2006, which was reflected in "Impairment of intangible and long-lived assets" in the Consolidated Statements of Operations. There were no material impairment charges related to title plants in 2005.

14. COMMITMENTS AND CONTINGENCIES

Lease Commitments

We conduct a major portion of our operations from leased office facilities under operating leases that generally expire over the next 10 years but are renewable. Additionally, we lease data processing and other equipment under operating leases that generally expire over the next five years but for the most part are renewable.

Following is a schedule of future minimum rental payments required under operating leases that have initial or remaining non-cancelable lease terms in excess of one year as of December 31, 2007.

	(In millions)
2008	$ 90.0
2009	67.7
2010	48.4
2011	31.1
2012	18.7
Thereafter	40.5
	$ 296.4

Rent expense was $114.3 million in 2007, $109.7 million in 2006 and $93.2 million in 2005.

Other Commitments and Guarantees

In November 2002, FASB issued Interpretation No. 45, *Guarantors Accounting and Disclosure Requirements Including Guarantees of Indebtedness of Others* ("FIN 45"). We had guarantees of indebtedness of others of approximately $2.1 million at December 31, 2007, and $3.4 million at December 31, 2006.

Concentrations of Credit Risk and Significant Customers

Our banking subsidiary loan portfolio is collateralized primarily by commercial real estate properties throughout Southern California, and to a lesser extent in Arizona and Nevada. As a result, the loan portfolio consists of similar property types in the same region. Although we have a diversified portfolio, a substantial portion of its debtors' ability to honor their contracts may be dependent on the economies of Southern California, Arizona, and Nevada.

The top five customers in our Lender Services segment account for approximately 32.8 percent of the operating revenue.

Although we conduct our business primarily on a national basis through a network of branch and agency offices, approximately 50.2 percent, 48.9 percent and 48.9 percent of consolidated title revenues for the years ended December 31, 2007, 2006 and 2005, respectively, were generated in the states of California, Texas, New York, Florida and Pennsylvania.

Pending Legal Proceedings

General

We are involved in certain litigation arising in the ordinary course of our businesses. Although the ultimate outcome of these matters cannot be ascertained at this time and the results of legal proceedings cannot be predicted with certainty, based on current knowledge we believe that the resolution of these matters will not have a material adverse effect on our financial position or results of operations.

Litigation Not in the Ordinary Course of Business

On January 25, 2002, Miles R. Henderson and Patricia A. Henderson ("Plaintiffs in the Henderson Suit") filed a putative class action suit (the "Henderson Suit") against Lawyers Title Insurance Corporation ("Lawyers Title") in the Court of Common Pleas for Cuyahoga County, Ohio. Lawyers Title removed the case to the District Court for the Northern District of Ohio on March 6, 2002, and Plaintiffs in the Henderson Suit amended the complaint on March 8, 2002. On June 28, 2002, the District Court remanded the case to the Court of Common Pleas for Cuyahoga County, Ohio. A similar putative class action suit was filed against Commonwealth, by Rodney P. Simon and Tracy L. Simon ("Plaintiffs in the Simon Suit") in the Court of Common Pleas for Cuyahoga County, Ohio on March 5, 2003. Plaintiffs' complaints in both suits alleged that the defendants charged original rates for owners' title insurance policies instead of a lower, reissue rate for which the customers were eligible. Both defendants moved to compel arbitration of the Plaintiffs' claims, but lost the motion in both the trial court and on appeal to the Ohio Supreme Court. On remand to the trial court, Plaintiffs in the Henderson Suit are now seeking to have the case certified as a class action on behalf of all sellers and buyers of residential property in Ohio who paid the higher original rate from 1992 to the present. Plaintiffs in the Simon Suit are seeking to have the case certified as a class action on behalf of all sellers of residential property in Ohio, who paid the original rate from 1993 to the present, as requested in the original complaint. Plaintiffs' complaints in both cases demand an unspecified amount of compensatory damages, declaratory and injunctive relief, punitive damages, and attorneys' fees and costs. In December 2007, a voluntary mediation was held in the Henderson Suit and the parties agreed in principle on several key terms of a settlement that is within the reserve established during third quarter 2007. Should the parties be unable to finalize their agreement, a class certification hearing will be scheduled in March 2008. A hearing date on the Motion for Class Certification filed by the Plaintiffs' in the Simon Suit has not been scheduled. Should further litigation prove necessary, defendants believe that they have meritorious defenses.

On September 20, 2004, Kenneth and Deete Higgins ("Plaintiffs in the Higgins Suit") filed a putative class action suit (the "Higgins Suit") against Commonwealth Land Title Insurance Company ("Commonwealth") in the

Circuit Court of Nassau County, Florida. On February 3, 2005, Plaintiffs in the Higgins Suit filed an Amended Class Action Complaint. Plaintiffs in the Higgins Suit allege that Commonwealth charged refinance borrowers higher basic rates for title insurance, rather than the lower reissue rates for which they are alleged to have qualified. The Amended Class Action Complaint also states that Commonwealth failed to disclose the potential availability of the lower rates to customers. Plaintiffs in the Higgins Suit seek to have the case certified as a class action on behalf of all Florida persons or entities who refinanced their mortgages or fee interests on the identical premises from July 1, 1999 to the present where there was no change in the fee ownership and who were charged a premium in excess of the reissue premium. Plaintiffs' complaints in the Higgins Suit demand an unspecified amount of compensatory damages, declaratory relief, attorneys' fees, costs and pre-judgment interest. Initial discovery has been exchanged between the parties. Commonwealth objected to answering interrogatories and producing documents in the possession of the company's agents. Plaintiffs in the Higgins Suit moved to compel this discovery, which motion was granted by the trial court. Commonwealth filed a Petition for Writ of Certiorari to the First District Court of Appeal to overturn the trial court's ruling. Briefing was completed and oral argument heard on July 24, 2007. No motion for class certification has been filed to date, and Commonwealth believes it has meritorious defenses.

On July 24, 2006, A. D. Alberton ("Plaintiff in the Alberton Suit") filed a putative class action suit (the "Alberton Suit") against Commonwealth which is currently pending in the United States District Court for the Eastern District of Pennsylvania. A similar putative class action suit was filed against Lawyers Title by Shariee L. De Cooman ("Plaintiff in the De Cooman Suit") in the Court of Common Pleas of Allegheny County, Pennsylvania on or about August 12, 2005. On November 1, 2005, Plaintiff in the De Cooman Suit filed an Amended Complaint. Plaintiff's complaint in the Alberton Suit alleges that Commonwealth charged rates for title insurance in excess of statutorily mandated rates and/or failed to disclose to consumers that they were entitled to reduced title insurance premiums. The Alberton Suit seeks to certify a class on behalf of all consumers who paid premiums for the purchase of title insurance on Pennsylvania properties from Commonwealth at any time from January 2000 until August 2005 and did not receive a discounted refinance or reissue rate for which they qualified. Plaintiff's complaint in the De Cooman Suit alleges that Lawyers Title charged the basic rate rather than a reissue or discounted rate to certain consumers. The DeCooman Suit seeks to certify a class on behalf of all owners of residential real estate in Pennsylvania who, at any time during the ten years prior to August 12, 2005 paid premiums for the purchase of title insurance from Lawyers Title, qualified for a reissue or other discounted rate, and did not receive such rate. A class certification hearing in the Alberton Suit was held on October 16, 2007. On January 31, 2008, the court issued an order granting in part the motion of Plaintiff in the Alberton Suit for class certification and certifying a class of all persons who from July 25, 2000 until August 1, 2005 paid premiums for the purchase of title insurance from Commonwealth in connection with a refinance of a mortgage or fee interest on Pennsylvania properties that were insured by a prior title insurance policy within ten years of the refinance transaction and were not charged the applicable reissue rate or refinance rate discount for title insurance on file with the Pennsylvania Insurance Commissioner. The parties are engaged in negotiations to settle the Alberton Suit. A class certification hearing in the De Cooman Suit was held on October 9, 2007. Plaintiff's complaint in the Alberton Suit demands an unspecified amount of compensatory damages, declaratory relief, triple damages, restitution, pre-judgment and post-judgment interest and expert fees, attorneys' fees and costs. Plaintiff's complaint in the De Cooman Suit demands an unspecified amount of compensatory damages, punitive damages, triple damages, prejudgment interest, and attorneys' fees, litigation expenses and costs. The defendants believe they have meritorious defenses.

With respect to the class action litigation disclosed above, the cases are subject to many uncertainties and complexities, including but not limited to: the underlying facts of each matter; variations between jurisdictions in which matters are being litigated; differences in applicable laws and judicial interpretations; the length of time before many of these matters might be resolved by settlement or through litigation; the timing and structure of their resolution relative to other similar cases brought against other companies; the fact that many of these matters are putative class actions in which a class is not clearly defined and has not been certified; and the current challenging legal environment faced by large corporations and insurance companies. For the reasons specified above, at this stage of the litigation, the amount or range of loss that could result from an unfavorable outcome cannot be reasonably estimated, except with respect to a reserve of $10 million established during third quarter 2007 in connection with the Henderson and Alberton cases.

We are defendants in a number of other purported class action cases pending in various states that include allegations that certain consumers were overcharged for title insurance and/or related services. The dollar amount of damages sought has generally not been specified in these cases except for jurisdictional limits. We intend to vigorously defend these actions.

Regulatory Proceedings

We have received certain information requests and subpoenas from various regulatory authorities relating to our business practices and those of the title insurance industry.

The Government Accountability Office released its final report on the title insurance industry on April 17, 2007 (the "Report"). The Report makes recommendations regarding federal and state oversight of the title insurance industry, including but not limited to, better consumer information, consideration of the need for modification to the Real Estate Settlement Procedures Act and increased cooperation among regulators.

Various states are studying the title insurance product, market, pricing, business practices, and potential regulatory and legislative changes. Multiple states, including California, Florida, New Mexico, New York, Texas, and Washington, are examining pricing levels and/or title insurance regulations. If it is determined that prices are not justified, rate changes may be implemented, including potential rate reductions.

Some of the pricing examinations, like those conducted in Texas and New Mexico, are conducted annually or biannually and usually result in adjustments to the prices we can charge. Subsequent to the 2004 Texas Title Insurance Biennial Hearings in August 2006, the Texas Commissioner of Insurance ordered a rate reduction of 3.2 percent effective February 1, 2007. The Texas Commissioner of Insurance issued a Consent Order on February 25, 2008 agreeing to settle the ratemaking phase of the 2006 Texas Title Insurance Biennial Hearing with no change to current rates.

Subsequent to a hearing of the New Mexico title rate case for 2006 which concluded on January 18, 2007, the New Mexico Superintendent of Insurance (the "Superintendent") issued an order on July 20, 2007 (the "Final Order") mandating a rate reduction of 6.36 percent and a change in the agent/underwriter split from 80/20 to 84.2/15.8 effective September 1, 2007. The New Mexico Land Title Association (the "NMLTA") filed a Motion for Reconsideration with the Superintendent on August 3, 2007. As a result of the Superintendent taking no action with respect to that Motion, on August 20, 2007, the NMLTA filed a Request for Review of Superintendent's Final Order, a stay and hearing by the New Mexico Public Regulatory Commission (the "Commission"). Various underwriters also filed an appeal to the Commission. On August 28, 2007, the Superintendent issued an Order denying the NMLTA's Motion for Reconsideration and granting the stay request until the Commission completes its review of the case with a requirement that the rate differential be escrowed during the stay and a notice of potential refund be provided to consumers. The Commission heard oral argument on the issues January 23, 2008. If the Commission upholds the Final Order, it can then be appealed to a New Mexico district court, with further appellate review available up to the New Mexico Supreme Court. The NMLTA and certain underwriters filed motions on October 19, 2007 seeking various remedies relating to the 2006 rate case, which resulted in certain Commissioners recusing themselves and if granted could result in the 2006 rate decision being vacated. The Superintendent has not yet issued an order on the completed 2007 rate case. The New Mexico Attorney General has asked the Superintendent to reduce title insurance rates in the 2007 rate case by more than 11 percent.

The California Department of Insurance ("CA DOI") submitted to the Office of Administrative Law ("OAL") proposed regulations governing the rating of title insurance and related services that could impose future rate reductions and filing of mandated statistical plans that impose substantially higher costs on title insurance operations in California. On February 21, 2007, OAL disapproved the regulatory action for failure to comply with certain standards and requirements and on February 28, 2007 issued a written decision detailing the reasons for disapproval. On June 28, 2007, CA DOI submitted revised regulations to OAL that were approved by OAL on July 25, 2007 and subsequently released by the California Secretary of State. The date for compliance with the requirements of the regulations varies by provision during 2009 and 2010. LandAmerica and other title companies doing business in the California market have been engaged in discussions with CA DOI regarding alternative approaches to the regulations but may pursue an appeal if such discussions are unsuccessful. The Commissioner of CA DOI has agreed to propose substantial changes to the data call (i.e. a request to submit information for the insurance experience) and statistical plan portion of the regulations to simplify them and minimize compliance costs, including delaying the effective dates by one year, through a new rulemaking file. The Commissioner has committed further to (i) eliminate the interim rate reduction if the industry helps CA DOI obtain an alternative method to enforce the data call and (ii) eliminate the maximum rate formula if the industry works with CA DOI to enact substantive alternate reforms. An External Title Insurance Working Group is working directly with CA DOI on these matters.

The Florida Office of Insurance Regulation and Department of Financial Services held a public hearing on August 23, 2007, in which numerous title insurance executives were questioned about Florida title insurance issues.

In addition, a number of state inquiries have focused on captive reinsurance. Captive reinsurance involves the provision of reinsurance by a reinsurance company that is owned by another entity, typically a lender, developer or other party that is a provider of real estate-related services. From the inception of our captive reinsurance programs in 1997 through 2004, reinsurance premiums paid by us to captive reinsurers totaled approximately $12.0 million. The revenues from these programs were not material to our results of operations. We voluntarily terminated our captive reinsurance arrangements as of February 2005, notwithstanding our belief that we had operated the programs in accordance with applicable law. We settled these investigations with six states, representing approximately 81.4 percent of our captive reinsurance business, without admitting any liability.

In June 2005, we established reserves of $19.0 million to cover anticipated exposure to regulatory matters nationwide, an amount which includes settlements with the California, Arizona, Nevada, Virginia, Colorado, and North Carolina departments of insurance. Based on these settlements and the status of inquiries, we released $8.5 million of this reserve back into earnings during fiscal years 2005-2007. The remaining reserve at December 31, 2007 was approximately $1.3 million.

We may receive additional subpoenas and/or requests for information in the future from state or federal government agencies. We will evaluate, and we intend to cooperate in connection with, all such subpoenas and requests.

Based on the information known to management at this time, it is not possible to predict the outcome of any of the currently pending governmental inquiries and investigations into the title insurance industry's market, business practices, pricing levels, and other matters, or the market's response thereto. However, any material change in our business practices, pricing levels, or regulatory environment may have an adverse effect on our business, operating results and financial condition.

15. VARIABLE INTEREST ENTITIES

We enter into joint ventures and partnerships related to our title operations and title plants in the ordinary course of our business. These entities are immaterial to our financial position and results of operations individually and in the aggregate. At December 31, 2007, we had no material exposure to loss associated with variable interest entities to which we are a party.

16. STATUTORY FINANCIAL CONDITION OF INSURANCE SUBSIDIARIES AND RESULTS OF OPERATIONS

The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States which differ in some respects from statutory accounting practices prescribed or permitted in the preparation of financial statements for submission to insurance regulatory authorities. Combined statutory equity of our insurance subsidiaries was $428.5 million at December 31, 2007 and $619.4 million at December 31, 2006. The difference between statutory equity and equity determined on the basis of accounting principles generally accepted in the United States is primarily due to differences between (1) the provision for policy and contract claims included in the accompanying financial statements and the statutory premium reserve, which is calculated in accordance with statutory requirements, and (2) statutory regulations that preclude the recognition of certain assets and limit the recognition of goodwill and deferred income tax assets. Statutory net income for our insurance subsidiaries was $37.6 million in 2007, $226.7 million in 2006 and $124.4 million in 2005.

Statutory-basis financial statements are prepared in accordance with accounting practices prescribed or permitted by insurance regulatory authorities. These regulatory authorities recognize only statutory accounting practices prescribed or permitted by their individual state for determining and reporting the financial condition and results of operations of an insurance company and for determining their solvency. The National Association of Insurance Commissioners' ("NAIC"*) Accounting Practices and Procedures* manual ("NAIC SAP") has been adopted as a component of prescribed or permitted practices by each of the states that regulate us. Each of the states have adopted a material prescribed accounting practice that differs from that found in NAIC SAP. Specifically, amounts added to the statutory unearned premium reserve are released more rapidly under NAIC SAP than is allowed by state statute.

A reconciliation of our insurance subsidiaries' net statutory surplus between NAIC SAP and practices prescribed and permitted by these states at December 31 is shown below:

	2007	2006
	(In millions)	
Statutory surplus	$ 428.5	$ 619.4
State prescribed practices:		
Release of statutory premium reserve	22.4	24.4
Bonds	–	1.7
Total adjustments	22.4	26.1
Statutory surplus, NAIC SAP	$ 450.9	$ 645.5

In a number of states, our insurance subsidiaries are subject to regulations which require minimum amounts of statutory equity and which require that the payment of any extraordinary dividends receive prior approval of the Insurance Commissioners of these states. An extraordinary dividend is generally defined by various statutes in the state of domicile of the subsidiary insurer. Under such statutory regulations, net assets of our three principal insurance subsidiaries aggregating $186.1 million of 2007 net assets is available for dividends, loans or advances to us during the year 2008 without prior approval.

At December 31, 2007 our insurance and industrial bank subsidiaries had $44.4 million on deposit with various state and federal regulatory agencies that are shown primarily as investments on the consolidated balance sheet.

17. FACULTATIVE REINSURANCE

We cede and assume title policy risks to and from other insurance companies in order to limit and diversify our risk. We cede insurance on risks in excess of certain underwriting limits, which provides for recovery of a portion of losses. We remain contingently liable to the extent that reinsuring companies cannot meet their obligations under reinsurance agreements. The companies that we cede insurance to have financial ratings from external rating agencies of A or better, which indicate an excellent or superior ability to meet their obligations.

We cede and assume all of our title reinsurance primarily with four other insurance companies. The amount of paid and recovered reinsured losses during the three years ended December 31, 2007 was immaterial to our financial position and results of operations. The total amount of premiums for assumed and ceded risks was less than 1 percent of title premiums in each of the last three years.

18. REGULATORY REQUIREMENTS AND RESTRICTIONS

We operate a California industrial bank through a wholly-owned subsidiary, Orange County Bancorp and its subsidiary, Centennial Bank ("Centennial"), which makes up the Financial Services segment. Centennial is subject to supervision and regulation by Federal and state banking agencies. These authorities regulate Centennial's issuance of deposits, place limits on the size and nature of the loans that can be made, and specify the maintenance of minimum liquidity levels. In addition, Centennial is subject to various regulatory capital requirements administered by the Federal and state banking agencies. Failure to meet minimum capital requirements can initiate certain mandatory and possibly additional discretionary actions by regulators that, if undertaken, could have a material effect on the financial position and results of operations of our Financial Services segment. Under capital adequacy guidelines and the regulatory framework for prompt corrective action, Centennial must meet specific capital guidelines that involve quantitative measures of their assets, liabilities, and certain off-balance-sheet items as calculated under regulatory accounting practices. The capital amounts and classifications are also subject to qualitative judgments by the regulators about components, risk weightings, and other factors.

Quantitative measures established by regulation to ensure capital adequacy require Centennial to maintain minimum amounts and ratios (set forth in the table below) of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets (as defined), and of Tier 1 capital (as defined) to average assets (as defined). Centennial met all capital adequacy requirements to which it is subject as of December 31, 2007 and December 31, 2006.

The most recent notification from the Federal Deposit Insurance Corporation ("FDIC") categorized Centennial as "well capitalized" under the framework for prompt correction action as of December 31, 2007 and December 31, 2006. To be categorized as well capitalized, an institution must maintain minimum total risk-based, Tier 1 risk-based, and Tier 1 leverage ratios as set forth in the table. There are no conditions or events since that notification that have changed Centennial's category.

Centennial's actual capital amounts and ratios as of December 31, 2007 and December 31, 2006 are presented in the table below:

	Actual		Minimum Capital Requirements for Capital Adequacy Purposes		Minimum To Be "Well Capitalized" Under Prompt Corrective Action Provision	
	Amount	Ratio	Amount	Ratio	Amount	Ratio
			(Dollars in thousands)			
2007						
Total capital (to risk weighted assets)	$ 79,568	11.86%	$ 53,660	8.00%	$ 67,076	10.00%
Tier 1 capital (to risk weighted assets)	74,649	11.13	26,830	4.00	40,245	6.00
Tier 1 leverage (to average allowable assets)	74,649	10.71	27,888	4.00	34,860	5.00
2006						
Total capital (to risk weighted assets)	$ 68,557	11.68%	$ 46,939	8.00%	$ 58,696	10.00%
Tier 1 capital (to risk weighted assets)	63,640	10.85	23,470	4.00	35,193	6.00
Tier 1 leverage (to average allowable assets)	63,640	7.90	32,220	4.00	40,278	5.00

19. SEGMENT INFORMATION

We are engaged in the business of providing title insurance as well as a broad array of real estate transaction related services through our subsidiaries. We have three reporting segments that fall within three primary business segments: Title Operations, Lender Services, and Financial Services. The remaining immaterial reportable segments have been combined into a group called Corporate and Other.

Title Operations includes residential and commercial title insurance business, escrow and closing services, commercial real estate services, and other real estate transaction management services.

Lender Services provides services to national and regional mortgage lenders consisting primarily of mortgage origination (e.g. real estate transaction management services, consumer mortgage credit reporting, flood zone determinations, residential appraisal and valuation services, etc.), loan servicing (e.g. real estate tax processing and default management) and loan subservicing.

Financial Services consists of Centennial, a California industrial bank.

Corporate and Other includes a residential home warranty business, a residential property inspection business, a commercial property valuation business and a commercial assessment business, as well as the unallocated portion of the corporate expenses related to our corporate offices in Richmond, Virginia and unallocated interest expense.

We provide title services through direct operations and agents throughout the United States. We also offer title insurance in Mexico, Europe, Canada, the Caribbean, Latin America, and Asia. The international operations were not material for the three years ended December 31, 2007. Tax related services and appraisal services are offered nationwide.

Selected financial information about our operations by segment for each of the three past years is as follows:

	Title Operations	Lender Services	Financial Services	Corporate and Other	Total
			(In millions)		
2007					
Operating revenues	$ 3,145.3	$ 279.4	$ 0.8	$ 143.9	$ 3,569.4
Salaries and employee benefits	936.0	101.6	3.2	106.1	1,146.9
Depreciation	27.3	8.9	0.1	10.9	47.2
Amortization	11.9	5.7	0.2	4.1	21.9
Income (loss) before taxes	27.4	(10.3)	18.3	(117.0)	(81.6)
Assets	2,383.4	380.3	734.6	355.4	3,853.7
Capital expenditures	22.4	1.9	0.2	–	24.5
2006					
Operating revenues	$ 3,510.2	$ 252.7	$ 0.8	$ 121.5	$ 3,885.2
Salaries and employee benefits	990.3	98.4	2.6	91.4	1,182.7
Depreciation	25.2	5.4	0.1	3.9	34.6
Amortization	11.4	10.7	0.2	3.6	25.9
Income (loss) before taxes	226.5	26.4	17.7	(116.6)	154.0
Assets	2,529.6	452.4	758.7	434.1	4,174.8
Capital expenditures	40.7	5.5	0.2	19.8	66.2
2005					
Operating revenues	$ 3,482.1	$ 268.4	$ 1.2	$ 101.9	$ 3,853.6
Salaries and employee benefits	945.8	91.4	2.4	78.7	1,118.3
Depreciation	20.8	4.2	0.1	4.9	30.0
Amortization	11.2	14.1	0.2	3.3	28.8
Income (loss) before taxes	326.9	8.3	13.5	(87.4)	261.3
Assets	2,256.8	412.3	681.9	344.0	3,695.0
Capital expenditures	31.4	3.6	0.2	4.5	39.7

20. QUARTERLY FINANCIAL DATA (UNAUDITED)

Selected quarterly financial information follows:

	March 31[1]	June 30	September 30	December 31
	(In millions, except per share amounts)			
2007				
Operating revenue	$ 911.3	$ 971.5	$ 874.0	$ 812.6
Investment income	37.3	33.5	32.8	32.8
Income (loss) before income taxes	7.3	11.7	(28.4)	(72.2)
Net income	4.7	7.9	(20.8)	(45.9)
Net income (loss) per share	0.27	0.48	(1.28)	(3.01)
Net income (loss) per share – assuming dilution	$ 0.26	$ 0.42	$ (1.28)	$ (3.01)
2006				
Operating revenue	$ 902.3	$ 971.1	$ 954.2	$ 1,057.6
Investment income	30.6	31.0	37.8	31.3
Income before income taxes	18.5	57.4	24.6	53.5
Net income	13.7	35.6	15.2	34.3
Net income per share	0.81	2.13	0.92	2.01
Net income per share – assuming dilution	$ 0.78	$ 2.06	$ 0.89	$ 1.95

[1] In first quarter 2007, we recorded an impairment of a customer relationship intangible asset of $20.8 million, or $12.5 million after taxes. See Note 13 for further discussion.

Schedule I

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

SUMMARY OF INVESTMENTS
DECEMBER 31, 2007

(In millions)

Type of Investment	Amortized Cost	Estimated Fair Value	Amount at Which Shown in the Balance Sheet
Fixed maturities:			
United States Government and government agencies and authorities	$ 44.6	$ 45.9	$ 45.9
States, municipalities and political subdivisions	477.9	489.6	489.6
Foreign governments	5.4	5.5	5.5
Public utilities	22.4	22.3	22.3
All other corporate bonds	263.3	263.7	263.7
Mortgage-backed securities	308.2	311.8	311.8
Preferred stock	5.9	4.8	4.8
Total fixed maturities	1,127.7	1,143.6	1,143.6
Equity securities:			
Common stocks:			
Industrial, miscellaneous and all other	85.6	81.1	81.1
Total equity securities	85.6	81.1	81.1
Federal funds sold	59.6	XXX	59.6
Short-term investments	160.3	XXX	160.3
Total investments	$ 1,433.2	XXX	$ 1,444.6

Schedule II
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LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
PARENT COMPANY BALANCE SHEETS
DECEMBER 31

(In millions, except share amounts)

	2007	2006
ASSETS		
Fixed maturities – at fair value (amortized cost: 2007 – $0; 2006 – $68.1)	$ –	$ 67.6
Short-term investments	9.9	76.6
Cash	17.1	21.3
Investment in affiliates	1,572.3	1,799.0
Notes receivable (less allowance for doubtful accounts: 2007 – $1.1; 2006 – $1.1)	15.2	16.2
Notes receivable from affiliates	13.5	13.5
Accounts receivable from affiliates	66.7	31.0
Income taxes receivable	8.9	51.6
Property and equipment, net	20.9	25.8
Deferred income taxes	35.8	36.3
Other assets	96.0	69.9
Total Assets	$ 1,856.3	$ 2,208.8
LIABILITIES		
Notes payable	$ 473.5	$ 605.0
Accounts payable and accrued liabilities	118.3	148.5
Other liabilities	63.8	59.5
Total Liabilities	655.6	813.0
SHAREHOLDERS' EQUITY		
Common stock, no par value, 45,000,000 shares authorized, shares issued and outstanding: 2007 – 15,351,550; 2006 – 17,604,632	335.4	465.3
Accumulated other comprehensive loss	(26.2)	(32.2)
Retained earnings	891.5	962.7
Total Shareholders' Equity	1,200.7	1,395.8
Total Liabilities and Shareholders' Equity	$ 1,856.3	$ 2,208.8

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
PARENT COMPANY STATEMENTS OF OPERATIONS
YEARS ENDED DECEMBER 31

(In millions)

	2007	2006	2005
REVENUES			
Management fees from affiliates	$ 38.5	$ 32.9	$ 23.8
Other income	55.9	41.1	21.9
	94.4	74.0	45.7
EXPENSES			
Interest expense	27.4	25.4	21.1
Early extinguishment of debt	6.4	–	–
Administrative expenses	35.4	35.3	22.7
	69.2	60.7	43.8
INCOME BEFORE EQUITY IN UNDISTRIBUTED INCOME OF SUBSIDIARIES	25.2	13.3	1.9
INCOME TAX EXPENSE (BENEFIT)	3.4	9.5	(9.8)
EQUITY IN UNDISTRIBUTED (LOSS) INCOME OF CONSOLIDATED SUBSIDIARIES	(75.9)	95.0	153.9
NET (LOSS) INCOME	$ (54.1)	$ 98.8	$ 165.6

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
PARENT COMPANY STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31

(In millions)

	2007	2006	2005
Cash flows from operating activities:			
Net (loss) income	$ (54.1)	$ 98.8	$ 165.6
Adjustments to reconcile the net (loss) income to cash provided by operating results:			
Earnings of affiliates, net of distributions	214.6	58.5	(74.8)
Depreciation and amortization	4.7	2.4	2.4
Early extinguishment of debt	6.4	–	–
Change in assets and liabilities:			
Receivables from affiliates	(34.3)	10.4	(75.1)
Income taxes receivable/payable	42.0	(71.8)	14.3
Accounts payable and accrued expenses	(5.9)	6.9	16.1
Other	(9.8)	3.5	(4.2)
Net cash provided by operating activities	163.6	108.7	44.3
Cash flows from investing activities:			
Cost of fixed maturities acquired	(7.7)	(12.7)	(47.3)
Proceeds from sale of fixed maturities	70.1	10.9	40.5
Change in short-term investments	66.7	(65.3)	(6.6)
Change in cash surrender value of life insurance	(2.7)	(2.6)	–
Purchase of property and equipment, net	0.2	(19.6)	(4.2)
Investment in affiliates	(11.5)	(204.7)	(11.3)
Capital transactions with affiliates	(10.3)	20.4	78.7
Net cash provided by (used in) investing activities	104.8	(273.6)	49.8
Cash flows from financing activities:			
Cost of shares repurchased	(143.6)	(40.1)	(64.0)
Dividends paid	(17.1)	(13.8)	(11.7)
Proceeds from issuance of notes payable	–	253.0	–
Payments on notes payable	(116.5)	(50.0)	(18.0)
Proceeds from the exercise of options and incentive plans	2.8	1.4	7.9
Tax benefit of stock options exercised	1.8	1.2	–
Net cash (used in) provided by financing activities	(272.6)	151.7	(85.8)
Net (decrease) increase in cash	(4.2)	(13.2)	8.3
Cash at beginning of year	21.3	34.5	26.2
Cash at end of year	$ 17.1	$ 21.3	$ 34.5
Supplemental cash flow information:			
Non cash financing activities:			
Common shares issued for Capital Title merger	$ –	$ 49.7	$ –
Note forgiveness	$ (15.0)	$ –	$ –

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

CONDENSED FINANCIAL INFORMATION OF REGISTRANT
NOTES TO PARENT COMPANY FINANCIAL STATEMENTS

NOTE 1 – ACCOUNTING POLICIES

Basis of presentation - The accompanying parent company financial statements should be read in conjunction with our Consolidated Financial Statements.

NOTE 2 – CASH DIVIDENDS RECEIVED

The Company has received cash dividends from affiliates of $149.3 million, $153.7 million, and $79.1 million in 2007, 2006, and 2005, respectively.

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
YEAR ENDED DECEMBER 31, 2007

(In millions)

		Additions			
Description	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts [1]	Deductions	Balance at End of Period
Reserve deducted from accounts receivable:					
Registrant – None					
Consolidated	$ 10.2	1.7	–	(0.8)	$ 11.1
Reserve deducted from notes receivable:					
Registrant	$ 1.1	–	0.2	(0.2)	$ 1.1
Consolidated	$ 1.5	0.3	–	–	$ 1.8
Reserve deducted from loans receivable					
Registrant – None					
Consolidated	$ 4.9	–	–	–	$ 4.9
Reserve for policy and contract claims					
Registrant – None					
Consolidated	$ 789.1	288.5	–	(201.1)	$ 876.5

[1] Represents intercompany activity between registrant and a consolidated subsidiary.

Schedule V
Page 2 of 3

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
YEAR ENDED DECEMBER 31, 2006

(In millions)

		Additions			
Description	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts [1]	Deductions	Balance at End of Period
Reserve deducted from accounts receivable:					
Registrant – None					
Consolidated	$ 7.9	2.0	0.7	(0.4)	$ 10.2
Reserve deducted from notes receivable:					
Registrant	$ 0.7	–	0.4	–	$ 1.1
Consolidated	$ 4.3	(2.6)	(0.2)	–	$ 1.5
Reserve deducted from loans receivable					
Registrant – None					
Consolidated	$ 4.3	0.6	–	–	$ 4.9
Reserve for policy and contract claims					
Registrant – None					
Consolidated	$ 697.6	231.3	22.0	(161.8)	$ 789.1

[1] Primarily relates to new acquisitions, whereby the increase in balance was entirely related to the take-on balance sheet of the consolidated subsidiary.

Schedule V
Page 3 of 3

LANDAMERICA FINANCIAL GROUP, INC. AND SUBSIDIARIES

VALUATION AND QUALIFYING ACCOUNTS
YEAR ENDED DECEMBER 31, 2005

(In millions)

Description	Balance at Beginning of Period	Additions: Charged to Costs and Expenses	Additions: Charged to Other Accounts[1]	Deductions	Balance at End of Period
Reserve deducted from accounts receivable:					
Registrant – None					
Consolidated	$ 8.2	6.6	0.4	(7.3)	$ 7.9
Reserve deducted from notes receivable:					
Registrant	$ 0.7	–	0.1	(0.1)	$ 0.7
Consolidated	$ 4.1	0.4	0.4	(0.6)	$ 4.3
Reserve deducted from loans receivable					
Registrant – None					
Consolidated	$ 4.1	0.8	–	(0.6)	$ 4.3
Reserve for policy and contract claims					
Registrant – None					
Consolidated	$ 643.8	197.2	–	(143.4)	$ 697.6

[1] Primarily relates to new acquisitions, whereby the increase in balance was entirely related to the take-on balance sheet of the consolidated subsidiary.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to provide assurances that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 (the "Exchange Act"), as amended, is recorded, processed, summarized and reported within the time periods required by the Securities and Exchange Commission.

Our management, under the direction of our Chief Executive Officer and our Chief Financial Officer, has evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in the Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 31, 2007. Based upon this evaluation our management, including our Chief Executive Officer and our Chief Financial Officer, has concluded that our disclosure controls and procedures were effective as of December 31, 2007.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in the Exchange Act Rules 13a-15(f) and 15(d)-15-(f). Our internal control over financial reporting is designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of published financial statements in accordance with generally accepted accounting principles. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in "Internal Control - Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Based on our assessment, we believe that our internal control over financial reporting was effective as of December 31, 2007. Management reviewed the results of their assessment with our Audit Committee. The effectiveness of our internal control over financial reporting as of December 31, 2007 has been audited by Ernst & Young LLP, an independent registered public accounting firm, which is included in Part II, Item 8, "Financial Statements and Supplementary Data" of this report.

Changes in Internal Control over Financial Reporting

There have not been any changes in our internal control over financial reporting (as such term is defined in the Exchange Act Rules 13a-15(f) and 15d-15(f)) during the fourth quarter of fiscal 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Except as to certain information regarding executive officers included in Part I under the caption, "Executive Officers of the Registrant" and the matters set forth below, the information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

We have adopted a Code of Ethics for Senior Financial Officers that applies to our principal executive officer, principal financial officer and controller and contains provisions relating to honest and ethical conduct (including the handling of conflicts of interest between personal and professional relationships), the preparation of full, fair, accurate and timely disclosure in reports and documents filed with the Securities and Exchange Commission and in other public communications made by us, compliance with governmental laws, rules and regulations and other matters. A copy of the Code of Ethics for Senior Financial Officers is available through the "Corporate Governance" section of our internet website at www.landam.com. Any amendment to or waiver from a provision of the Code of Ethics will be promptly disclosed on our website.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated herein by reference to our definitive proxy statement for the 2008 Annual Meeting of Shareholders to be filed within 120 days after the end of the last fiscal year.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) (1) and (2) *Financial Statements and Financial Statement Schedules*. The Financial Statements and Financial Statement Schedules filed as part of this report are listed in the accompanying index at page 57 in Part II, Item 8 of this report.

(a) (3) *Exhibits*. See Exhibit Index, which is incorporated in this item by reference.

(b) *Exhibits*. See Item 15 (a)(3) above.

(c) *Financial Statement Schedules*. See Item 15 (a)(2) above.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

LANDAMERICA FINANCIAL GROUP, INC.

By: /s/ Theodore L. Chandler, Jr.
Theodore L. Chandler, Jr.
Chairman and Chief Executive Officer

February 25, 2008

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Theodore L. Chandler, Jr. Theodore L. Chandler, Jr.	Chairman, Chief Executive Officer and Director (Principal Executive Officer)	February 25, 2008
/s/ G. William Evans G. William Evans	Chief Financial Officer (Principal Financial Officer)	February 25, 2008
/s/ Christine R. Vlahcevic Christine R. Vlahcevic	Senior Vice President-Corporate Controller (Principal Accounting Officer)	February 25, 2008
/s/ Janet A. Alpert Janet A. Alpert	Director	February 25, 2008
/s/ Gale K. Caruso Gale K. Caruso	Director	February 25, 2008
/s/ Michael Dinkins Michael Dinkins	Director	February 25, 2008
/s/ Charles H. Foster, Jr. Charles H. Foster, Jr.	Director	February 25, 2008
/s/ John P. McCann John P. McCann	Director	February 25, 2008
/s/ Dianne M. Neal Dianne M. Neal	Director	February 25, 2008
/s/ Robert F. Norfleet, Jr. Robert F. Norfleet, Jr.	Director	February 25, 2008

Signature	Title	Date
/s/ Robert T. Skunda Robert T. Skunda	Director	February 25, 2008
/s/ Julious P. Smith, Jr. Julious P. Smith, Jr.	Director	February 25, 2008
/s/ Thomas G. Snead, Jr. Thomas G. Snead, Jr.	Director	February 25,008
/s/ Eugene P. Trani Eugene P. Trani	Director	February 25, 2008
/s/ Marshall B. Wishnack Marshall B. Wishnack	Director	February 25, 2008

ITEM 15(a)(3)
INDEX TO EXHIBITS

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
3.1	Amended and Restated Articles of Incorporation of the Registrant, incorporated by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, dated May 24, 2006, File No. 1-13990.
3.2	Bylaws of LandAmerica Financial Group, Inc. (amended and restated October 25, 2006), incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K, dated October 25, 2006, File No. 1-13990.
3.3	Articles of Amendment to the Articles of Incorporation of the Registrant, incorporated by reference to Exhibit 3.1 of the Registrant's Quarterly Report on Form 10-Q, filed October 31, 2007, File No. 1-13990.
4.1	Form of Common Stock Certificate, incorporated by reference to Exhibit 4.5 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, File No. 1-13990.
4.2	Indenture, dated November 26, 2003, between the Registrant and JP Morgan Chase Bank, as trustee, including Form of 3.125% Convertible Senior Notes due 2033, incorporated by reference to Exhibit 4.7 of the Registrant's Registration Statement on Form S-3, File No. 333-113004, filed February 23, 2004.
4.3	Registration Rights Agreement, dated November 26, 2003, between the Registrant and the initial purchasers of the Registrant's 3.125% Convertible Senior Notes due 2033, incorporated by reference to Exhibit 4.8 of the Registrant's Registration Statement on Form S-3, File No. 333-113004, filed February 23, 2004.
4.4	Indenture, dated May 11, 2004, between the Registrant and JP Morgan Chase Bank, as Trustee, including Form of 3.25% Senior Convertible Debentures due 2034, incorporated by reference to Exhibit 4.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.
4.5	Registration Rights Agreement, dated May 11, 2004, between the Registrant and the initial purchasers of the Registrant's 3.25% Senior Convertible Debentures due 2034, incorporated by reference to Exhibit 4.2 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.
4.6	Note Purchase and Master Shelf Agreement, dated as of July 28, 2006, by and among the Registrant and the purchasers named therein, with accompanying forms of 6.66% Senior Note, Series D, due 2016, 6.70% Senior Note, Series E, due 2016 and Shelf Note. The foregoing exhibits need not be filed herewith pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant, by signing this Report on Form 10-K, agrees to furnish the Securities and Exchange Commission, upon its request, a copy of any instrument which defines the rights of holders of long-term debt of the Registrant and its consolidated subsidiaries, and for any unconsolidated subsidiaries for which financial statements are required to be filed that authorizes a total amount of securities not in excess of 10% of the total assets of the Registrant and its subsidiaries on a consolidated basis.

Exhibit Number
And Applicable
Section of Item 601
Of Regulation S-K

4.7 First Amendment to the Note Purchase and Master Shelf Agreement dated as of November 30, 2007, by and among the Registrant and the purchasers named therein, with accompanying forms of 6.66% Senior Note, Series D, due 2016, 6.70% Senior Note, Series E, due 2016 and Shelf Note. The foregoing exhibits need not be filed herewith pursuant to Item 601(b)(4)(iii) of Regulation S-K. The Registrant, by signing this Report on Form 10-K, agrees to furnish the Securities and Exchange Commission, upon its request, a copy of any instrument which defines the rights of holders of long-term debt of the Registrant and its consolidated subsidiaries, and for any unconsolidated subsidiaries for which financial statements are required to be filed that authorizes a total amount of securities not in excess of 10% of the total assets of the Registrant and its subsidiaries on a consolidated basis.

10.1 Lawyers Title Insurance Corporation Deferred Income Plan, incorporated by reference to Exhibit 10C of the Registrant's Form 10 Registration Statement, as amended, File No. 0-19408.†

10.2 Lawyers Title Corporation 1992 Stock Option Plan for Non-Employee Directors, as amended May 21, 1996, incorporated by reference to Exhibit 10.5 of the Registrant's Form 10-Q for the quarter ended June 30, 1996, File No. 1-13990.†

10.3 Form of Lawyers Title Corporation Non--Employee Director Non-Qualified Stock Option Agreement, incorporated by reference to Exhibit 10.18 of the Registrant's Form 10-K for the year ended December 31, 1994, File No. 0-19408.†

10.4 Form of Lawyers Title Insurance Corporation Split-Dollar Life Insurance Agreement and Collateral Assignment, incorporated by reference to Exhibit 10.25 of the Registrant's Form 10-K for the year ended December 31, 1994, File No. 0-19408.†

10.5 Agreement Containing Consent Order, dated February 6, 1998, by and between the Registrant and the Federal Trade Commission, incorporated by reference to Exhibit 10.29 of the Registrant's Form 10-K for the year ended December 31, 1997, File No. 1-13990.

10.6 Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated February 16, 1999, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.29 of the Registrant's Form 10-K for the year ended December 31, 1998, File No. 1-13990.†

10.7 LandAmerica Financial Group, Inc. 1991 Stock Incentive Plan, as amended May 16, 1995, May 21, 1996, November 1, 1996, June 16, 1998, May 18, 1999 and February 23, 2000, incorporated by reference to Exhibit 10.30 of the Registrant's Form 10-K for the year ended December 31, 1999, File No. 1-13990.†

10.8 Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated February 23, 2000, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.35 of the Registrant's Form 10-K for the year ended December 31, 1999, File No. 1-13990.†

Exhibit Number
And Applicable
Section of Item 601
Of Regulation S-K

10.9 Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated May 17, 2000, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2000, File No. 1-13990.†

10.10 Form of LandAmerica Financial Group, Inc. Amendment to Non-Qualified Stock Option Agreements, dated June 20, 2000, with Schedule of Optionees and Agreements Being Amended, incorporated by reference to Exhibit 10.3 of the Registrant's Form 10-Q for the quarter ended June 30, 2000, File No. 1-13990.†

10.11 Form of LandAmerica Financial Group, Inc. Non-Employee Director Non-Qualified Stock Option Agreement, incorporated by reference to Exhibit 10.4 of the Registrant's Form 10-Q for the quarter ended June 30, 2000, File No. 1-13990.†

10.12 Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated February 20, 2001, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.43 of the Registrant's Form 10-K for the year ended December 31, 2000, File No. 1-13990.†

10.13 Form of LandAmerica Financial Group, Inc. Non-Employee Director Non-Qualified Stock Option Agreement, dated May 23, 2001, with Schedule of Optionees, incorporated by reference to Exhibit 10.26 of the Registrant's Form 10-K for the year ended December 31, 2003, File No. 1.13990.†

10.14 Form of LandAmerica Financial Group, Inc. Employee Non-Qualified Stock Option Agreement, dated December 20, 2001, with Schedule of Optionees and Options Awarded, incorporated by reference to Exhibit 10.44 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†

10.15 Form of Split-Dollar Life Insurance Agreement, between the Registrant and the named executive officers listed on the attached Schedule, incorporated by reference to Exhibit 10.45 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†

10.16 Form of Modification to Agreement between the Registrant and the named executive officers listed on the attached Schedule, incorporated by reference to Exhibit 10.46 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†

10.17 Form of Modification to Agreement, dated as of January 23, 2002, between the Registrant and the named executive officers listed on the attached Schedule, incorporated by reference to Exhibit 10.47 of the Registrant's Form 10-K for the year ended December 31, 2001, File No. 1-13990.†

10.18 Form of LandAmerica Financial Group, Inc. Non-Employee Director Non-Qualified Stock Option Agreement, dated May 22, 2002, with Schedule of Optionees, incorporated by reference to Exhibit 10.27 of the Registrant's Form 10-K for the year ended December 31, 2003, File No. 1.13990.†

Exhibit Number
And Applicable
Section of Item 601
Of Regulation S-K

10.19 Letter Agreement, dated May 5, 2004 between the Registrant and JP Morgan Chase Bank constituting a high strike call confirmation, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.

10.20 Letter Agreement, dated May 5, 2004 between the Registrant and JP Morgan Chase Bank constituting a low strike call confirmation, incorporated by reference to Exhibit 10.2 of the Registrant's Form 10-Q for the quarter ended June 30, 2004, File No. 1-13990.

10.21 LandAmerica Financial Group, Inc. Outside Directors Deferral Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.3 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.†

10.22 LandAmerica Financial Group, Inc. Executive Voluntary Deferral Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.

10.23 LandAmerica Financial Group, Inc. Benefit Restoration Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.4 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.†

10.24 Restricted Stock Agreement with Theodore L. Chandler, Jr., dated January 1, 2005, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, dated January 6, 2005, File No. 1-13990.†

10.25 Cash Unit Agreement with Theodore L. Chandler, Jr., dated January 1, 2005, incorporated by reference to Exhibit 10.2 of the Registrant's Current Report on Form 8-K, dated January 6, 2005, File No. 1-13990.†

10.26 LandAmerica Financial Group, Inc. 2000 Stock Incentive Plan, as amended and restated effective January 1, 2005, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K dated February 21, 2006, File No. 1-13990. †

10.27 Form of LandAmerica Financial Group, Inc. 2005 Restricted Stock Agreement, dated February 28, 2005, with Schedule of Grantees and number of shares granted, incorporated by reference to Exhibit 10.45 of the Registrant's Form 10-K for the year ended December 31, 2004, File No. 1-13990.†

10.28 Form of LandAmerica Financial Group, Inc. 2005 Cash Unit Agreement, dated February 28, 2005, with Schedule of Grantees and number of units granted, incorporated by reference to Exhibit 10.46 of the Registrant's Form 10-K for the year ended December 31, 2004, File No. 1-13990.†

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
10.29	LandAmerica Financial Group, Inc. Executive Officer Incentive Plan, incorporated by reference to Appendix B of the Registrant's Definitive Proxy Statement filed on April 7, 2005, File No. 1-13990.†
10.30	Form of LandAmerica Financial Group, Inc. Non-Employee Director Restricted Stock Agreement, dated May 18, 2005, with Schedule of Grantees, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2005, File No. 1-13990.†
10.31	Form of Amendment to LandAmerica Financial Group, Inc. Non-Employee Director Restricted Stock Agreement, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, dated October 26, 2005, File No. 1-13990.†
10.32	Form of Amendments to LandAmerica Financial Group, Inc. Cash Unit Agreements and Restricted Stock Agreements, incorporated by reference to Exhibit 10.9 of the Registrant's Current Report on Form 8-K, dated February 21, 2006, File No. 1-13990.†
10.33	Form of LandAmerica Financial Group, Inc. 2006 Restricted Stock Agreement, dated February 28, 2006, with Schedule of Grantees and number of shares granted, incorporated by reference to Exhibit 10.53 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, File No. 1-13990.†
10.34	Form of LandAmerica Financial Group, Inc. 2006 Cash Unit Agreement, dated February 28, 2006, with Schedule of Grantees and number of units granted incorporated by reference to Exhibit 10.54 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2005, File No. 1-13990.†
10.35	Amendment dated July 24, 2006 to the LandAmerica Financial Group, Inc. Executive Voluntary Deferral Plan, as amended and restated, incorporated by reference to Exhibit 10.2 of the Registrant's Form 10-Q for the quarter ended June 30, 2006, File No. 1-13990.
10.36	Revolving Credit Agreement, dated July 28, 2006, between the Registrant and SunTrust Bank, as Administrative Agent for a syndicate of financial institutions named therein, incorporated by reference to Exhibit 10.1 of the Registrant's Form 10-Q for the quarter ended June 30, 2006, File No. 1-13990.
10.37	Agreement and Plan of Merger by and among LandAmerica Financial Group, Inc. and CTG Acquisition Corp. and Capital Title Group, Inc. dated March 28, 2007, incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K dated March 28, 2006, File No. 1-13990.
10.38	First Amendment to Revolving Credit Agreement dated November 30, 2007 between the Registrant and SunTrust Bank, as Administrative Agent for a syndicate of financial institutions named therein, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed November 30, 2007, File No. 1-13990.
10.39	Form of LandAmerica Financial Group, Inc. Change of Control Employment Agreement dated January 1, 2008, with Schedule of Executive Officers and Multiplier, incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K, dated January 4, 2008, File No. 1-13990.†

Exhibit Number And Applicable Section of Item 601 Of Regulation S-K	
10.40	Supplemental Change of Control Employment Agreement dated January 1, 2008 incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K dated January 4, 2008, File No. 1-13990. †
21	Subsidiaries of the Registrant.*
23	Consent of Ernst & Young LLP.*
31.1	Rule 13a-14(a) Certification of Chief Executive Officer.*
31.2	Rule 13a-14(a) Certification of Chief Financial Officer.*
32.1	Statement of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350.*
32.2	Statement of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350.*

†Denotes Compensatory Plans
*Filed Herewith

Exhibit 2

ENTERED
CLERK, U.S. DISTRICT COURT
JUN 20 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
JUN 20 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Priority Send
Enter JS6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

IMPAC WAREHOUSE LENDING GROUP, Plaintiff, v. CREDIT SUISSE FIRST BOSTON CORPORATION, et al., Defendants.	SA CV 04-1234 AHS (CWx) ORDER GRANTING DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT AND DISMISSING THE ACTION

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

I.

INTRODUCTION

After four years of doing business with nonparty General Mortgage Corporation of America ("GMA"), plaintiff Impac Warehouse Lending Group found itself with $5.3 million worth of forged loan documents submitted by GMA. The named defendants are third-party mortgage companies who paid GMA for the funds used to sell mortgages to home buyers. GMA is not a party. Plaintiff is unable to plead claims that reach these defendants, and, accordingly, its Second Amended Complaint, and the action, must be dismissed.

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II.

PROCEDURAL HISTORY

On September 21, 2004, plaintiff Impac Warehouse Lending Group ("plaintiff") filed the complaint in this action in Orange County Superior Court. On March 21, 2005, plaintiff filed the First Amended Complaint ("FAC"). The Court granted defendants' motion to dismiss the FAC on June 16, 2005. On July 11, 2005, plaintiff filed the Second Amended Complaint ("SAC"). On August 18, 2005, defendants Credit Suisse First Boston LLC[1] ("CSFB") and DLJ Mortgage Capital, Inc. ("DLJ") filed a motion to dismiss the SAC.[2] Plaintiff filed opposition on September 22, 2005. Defendants filed a reply thereto on October 13, 2005. The Court took the matter under submission on November 2, 2005.

III.

SUMMARY OF SECOND AMENDED COMPLAINT

Plaintiff is a warehouse lender providing credit lines to mortgage brokers. (SAC ¶ 8.) Plaintiff alleges seven claims against CSFB and DLJ arising from an alleged fraud perpetrated by GMA against plaintiff in contravention of a Master Repurchase Agreement ("Master Agreement") entered into in June 2000 between GMA and plaintiff. (SAC ¶ 9.) Defendants are not signatories to the Master Agreement.

Under the terms of the Master Agreement, GMA would originate mortgage loans, which were closed with funds advanced by

[1] Credit Suisse First Boston LLC is the successor by merger to, and was erroneously sued as, Credit Suisse First Boston Corporation.

[2] The Court grants defendants' request for judicial notice filed therewith.

plaintiff. (SAC ¶ 10.) When the loan closed, GMA would "sell" the loan to plaintiff. (Id.) GMA would then repurchase the loan by paying plaintiff the amount of the advance, along with interest and certain fees when a third-party investor agreed to purchase the loan from GMA. (Id.) Defendants were third-party investors who purchased loans from GMA.[3] Plaintiff was supposed to receive the original note and the mortgage instrument from each transaction, and, when an agreement was made to sell the mortgage to a third-party investor, plaintiff would send the original loan documents to the identified third party under cover of a bailee letter identifying plaintiff as having an interest in the loan. (Id.) Once the third party wired the investment proceeds, plaintiff's interest in the loans would be released, and GMA and plaintiff would allocate their respective shares in the proceeds. (Id.)

From June 2000 to January 2004, plaintiff and GMA operated under the Master Agreement as intended. (SAC ¶ 11.) In July 2004, however, plaintiff learned that GMA had delivered forged loan documents to plaintiff and later sold the original loan documents directly to the secondary investor markets without disclosing plaintiff's interest therein. (SAC ¶¶ 15, 16.) To maintain the scheme, GMA made periodic interest payments to plaintiff using the very funds plaintiff had advanced. (SAC ¶ 16.)

Plaintiff alleges that, as of July 26, 2004, at least

[3] Plaintiff alleges that the defendants, CSFB and DLJ, are "agents, servants, employees, partners, principals, representatives, and/or alter egos of each other," with the defendants' unity of interest reflected in CSFB documents that are sent to mortgage lenders doing business with CSFB. (SAC ¶ 6, Ex. 1.)

thirty-seven loan transactions involving advances from plaintiff to GMA remained outstanding with a principal balance of $5.3 million ("Fraudulent Loans"). (SAC ¶ 18.) Prior to July 28, 2004, DLJ purchased at least sixteen of the Fraudulent Loans from GMA ("First Loan Set"). (SAC ¶ 21.) On July 26, 2004, plaintiff became aware that GMA had committed to sell the remaining Fraudulent Loans to defendants ("Second Loan Set"). (SAC ¶ 26.) DLJ purchased these loans sometime on or after July 28, 2004. (SAC ¶ 29.)

Plaintiff alleges that defendants aided GMA in perpetrating the fraudulent conduct by ignoring their own internal policies and providing a ready, willing, and eager market for the mortgage instruments. These policies would have required a review of the loans to determine whether they complied with certain underwriting guidelines and program matrices, through which defendants would have discovered that GMA did not have the financial ability to fund the loans unless drawing on a warehouse credit line provided by plaintiff. (SAC ¶ 20.) Thus, plaintiff alleges that defendants knew at the time they purchased the loans that GMA was operating a fraudulent scheme. (SAC ¶¶ 20, 22-24, 30.) Plaintiff further alleges that plaintiff informed defendants on July 28, 2004 that GMA had been operating a fraudulent scheme and that the sale of loans to DLJ was part of the scheme. (SAC ¶ 27.) Even after receiving notice that at least eight of the loans in the process of being sold to defendants were in fact funded and owned by plaintiff and not GMA, DLJ purchased more of the Fraudulent Loans from GMA and claimed to have purchased them free and clear of plaintiff's interest. (SAC ¶ 29.)

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IV.

SUMMARY OF PARTIES' CONTENTIONS

A. Defendants' Motion to Dismiss

Defendants contend that plaintiff's SAC fails to correct the deficiencies identified by the Court when it dismissed plaintiff's FAC. More specifically, the SAC contravenes the standards of Fed. R. Civ. P. 9(b) that require fraud to be pled with particularity. Plaintiff fails to provide specific facts concerning the circumstances giving rise to defendants' alleged aiding and abetting of the fraud committed by GMA or conspiracy to commit fraud with GMA. Further, plaintiff fails to identify what substantial assistance each defendant individually provided that would make each defendant liable for aiding and abetting fraud. In fact, CSFB is barely mentioned in the SAC. Plaintiff also alleges core facts on information and belief without adducing specific facts supporting a strong inference of fraud, an improper technique given that such facts are not matters peculiarly within defendants' knowledge.

Moreover, defendants maintain that the SAC still does not properly state claims for any of plaintiff's seven causes of action. As to the claims for aiding and abetting fraud, plaintiff provides a few additional details about some loan transactions, but does not identify who participated in the underlying fraud, at what times, and the means employed. Plaintiff also does not provide facts to support its conclusory allegations that defendants knew of GMA's fraud; plaintiff has offered four bailee letters it sent to DLJ regarding loans that are not at issue here, which letters could not give rise to an inference that defendants knew GMA was sending fraudulent documents to plaintiff. Plaintiff's allegations on information and belief that defendants were not following their own internal procedures and policies are similarly unsupported with facts. The allegations of the SAC also do not support the substantial assistance requirement for aiding and abetting fraud, and as the Court noted in its Order dismissing the FAC on June 16, 2005 ("Dismissal Order"), plaintiff's allegations indicate that defendants were, at best, passive bystanders to the fraud.

As to the claims for conspiracy to commit fraud, besides failing to plead the underlying tort of fraud, defendants contend that plaintiff has not pled the elements of a conspiracy. Plaintiff still has not pled facts supporting a knowing agreement to commit a tort, nor has it alleged that defendants engaged in any unlawful act in furtherance of the agreement. The lawful business relationship between GMA and defendants alleged in the SAC is wholly insufficient to show that defendants acted in furtherance of an agreement to commit fraud.

Defendants assert that plaintiff's claims for aiding and abetting conversion fail because plaintiff concedes that it has no right, title, or interest in the mortgage loans purchased by DLJ. In addition, plaintiff fails to plead facts showing that defendants had knowledge of any conversions, much less provided substantial assistance to GMA in the conversion.

As to the negligence claims, defendants argue that plaintiff does not allege facts showing that defendants owed plaintiff a duty of care. The alleged course of conduct between the parties established by plaintiff's bailee letters does not give rise to a duty. Additionally, plaintiff has not pled proximate causation because its injury was caused by GMA's sending forged documents to plaintiff, not by defendants' purchase of original, authentic mortgages from GMA.

Defendants contend that plaintiff's claim for constructive trust fails because plaintiff has not alleged that it has a superior right to the mortgages or that defendants acquired them wrongfully. Defendants purchased the property for value in good faith. Because plaintiff has not shown an actual controversy exists concerning the rightful owner of the mortgages, its claim for declaratory relief also fails.

Finally, defendants maintain that plaintiff's request for special damages in its prayer for relief must be dismissed because it has not stated specifically what items of special damages it is seeking pursuant to Fed. R. Civ. P. 9(g).

B. Plaintiff's Opposition

Plaintiff contends that its fraud claims are pled with the specificity required by Rule 9(b), as the SAC provides specific facts about how GMA's scheme operated, when GMA operated the scheme, and the role that defendants played in the scheme. Further, plaintiff's allegations made on information and belief are sufficient to satisfy Rule 9(b). For matters within a defendant's knowledge, such as in cases of corporate fraud, plaintiffs may not have personal knowledge of all the underlying facts and may simply state the facts on which their beliefs are founded. Plaintiff's allegations also sufficiently enlighten each defendant as to its part in the fraud, stating that CSFB had an agreement to purchase the Fraudulent Loans from GMA, and DLJ actually purchased the Fraudulent Loans.

Plaintiff asserts that it has properly pled liability for aiding and abetting fraud. The primary wrong underlying the aiding and abetting claims is the fraudulent scheme by GMA detailed in the SAC. Defendants' actual knowledge may be averred generally according to Rule 9(b), and plaintiff has met this requirement. Plaintiff's allegations support the reasonable inference that defendants sought to accommodate GMA's fraud by altering their normal way of doing business. Especially as to the Second Loan Set, plaintiff's allegations are more than sufficient; plaintiff has alleged that it directly notified representatives of defendants of the fraudulent scheme, and defendants still purchased the loans thereafter. Plaintiff has alleged substantial assistance in detail by explaining how defendants purchased Fraudulent Loans from GMA and wired the funds to a GMA bank account.

Plaintiff contends that it has properly pled claims for conspiracy to commit fraud. It has alleged facts from which an agreement to commit fraud can be inferred, stating that defendants ignored their own policies and procedures and continued to purchase loans from GMA even though they knew that plaintiff actually owned the loans. These same acts were taken in the furtherance of the agreement to commit fraud.

As to the claims for aiding and abetting conversion, conspiracy to convert property, and negligence, plaintiff maintains that these claims are not subject to the heightened pleading standards of Rule 9(b). Fraud is not an essential element of these claims, and, thus, allegations related to these claims need only satisfy the ordinary notice pleading standards of Rule 8(a).

Plaintiff contends that the claim for aiding and abetting conversion is alleged properly. The independent underlying wrong is GMA's conversion of funds wire-transferred by plaintiff to close loans that GMA later sold to defendants, and as noted above, defendants willfully disregarded the fact that plaintiff actually owned the loans and substantially assisted GMA by purchasing the loans.

Plaintiff argues that the claim for conspiracy to convert property similarly is alleged properly because it has set forth facts sufficient to support an inference of an agreement to convert property. The fact that defendants knew GMA was converting funds from plaintiff and purchased the loans anyway was a wrongful act in furtherance of the conspiracy.

As to the negligence claim, plaintiff asserts that it has alleged properly a duty of care based on industry standards and the business relationship between the parties. Plaintiff further alleges that defendants purchased loans from GMA and wired the purchase monies to a GMA bank account, acts that were a necessary and indispensable part of GMA's scheme and proximately caused the damages to plaintiff.

Plaintiff notes that its constructive trust claim is premised on the same facts as its conversion claim, and, therefore, it is properly pled for the same reasons. Further, plaintiff argues that its declaratory relief claim adequately pleads a controversy because it states that a dispute exists between the parties over who is the rightful owner of the Fraudulent Loans defendants purchased from GMA.

Finally, plaintiff contends that if the Court is inclined to grant any part of defendants' motion, leave to amend the SAC should be given.

C. Defendants' Reply

Defendants contend that the problems inherent in the SAC are fundamental and fatal. The only support for the bald assertion that defendants knew about GMA's fraudulent scheme is a series of speculative allegations that are made solely on information and belief. DLJ engaged in a perfectly normal, lawful purchase of loans governed by the Seller's Agreement in place between GMA and DLJ. Plaintiff now seeks to make wrongful DLJ's fulfillment of preexisting contractual obligations.

Defendants contend that plaintiff fails to plead knowledge properly as a matter of law. Plaintiff's allegations remain wholly conclusory, which the Court found was insufficient in its Dismissal Order. The only specific allegation concerns plaintiff allegedly notifying defendants of GMA's fraud on July 28, 2004. The SAC, however, does not allege who notified which defendant, what information about the fraud was conveyed, or any other particulars. Plaintiff still fails to provide specific facts about what internal policies and procedures defendants violated, how and when they were violated, and why such deviation would permit an inference that defendants knew of GMA's fraud.

Defendants also maintain that plaintiff has not, as a matter of law, properly alleged substantial assistance by the defendants in committing any tort. Plaintiff continues to ignore that the alleged wrongdoing involved the delivery of fraudulent mortgage documents to plaintiff *by GMA*. At no point does the SAC allege that either defendant had anything to do with delivering fraudulent documents to plaintiff. Indeed, GMA's scheme (delivering forged mortgage documents and retaining funds advanced by plaintiff) could have continued without GMA selling the original loans to anyone. Defendants' purchase of the loans was not a substantial factor in causing the harm suffered by plaintiff.

On the conspiracy claims, defendants assert that plaintiff does not allege an agreement or common plan to participate in an unlawful act. Plaintiff merely asks the Court to make the unreasonable inference that because DLJ purchased loans from GMA, defendants must have been participants in a scheme to defraud plaintiff. The only reasonable inference here, however, is that DLJ sought to fulfill its contractual obligations to GMA when it purchased the loans.

As to the negligence claim, defendants assert that plaintiff has not cited authority to support a duty of care based on industry standards and the business relationship between the parties. The bailee letters attached to the SAC, relating to loans not at issue in this case, do not create a course of conduct that would govern other loans or give rise to a duty of care. Plaintiff also fails to allege proximate cause properly. Simply because plaintiff uses the words "proximate cause" in the SAC does not mean that it has been properly alleged. There is an absence of facts to support this legal conclusion.

Defendants contend that plaintiff's conversion claim cannot overcome the Court's ruling in its Dismissal Order that neither the loans nor the funds advanced by plaintiff are the proper subject of an action for conversion. Even if GMA did convert the funds advanced by plaintiff, the SAC still does not plead sufficiently that defendants had knowledge of the conversion.

Likewise, defendants argue that the Court has already found that plaintiff cannot sustain its constructive trust claim or declaratory relief claim because plaintiff has no right, title, or interest in the mortgage loans. The only documents in plaintiff's possession are forgeries that convey nothing.

Finally, defendants urge that no further amendment be permitted. Any amendment will be an exercise in futility because the problems inherent in plaintiff's claims are insurmountable.

V.

DISCUSSION

A. Legal Standard

1. Motion to Dismiss

On a motion to dismiss, the Court must accept all well-pleaded allegations in the complaint as true. Cahill v. Liberty Mutual Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). All factual allegations pleaded in the complaint and all reasonable inferences that can be drawn therefrom must be construed in the light most favorable to the nonmoving party. Id. Conclusory allegations of law and unwarranted inferences, however, will not defeat a motion to dismiss for failure to state a claim. Rosenbaum v. Syntex Corp. (In re Syntex Corp. Sec. Litig.), 95 F.3d 922, 926 (9th Cir. 1996).

In ruling on a motion to dismiss, the Court may consider documents the authenticity of which is not contested and upon which the plaintiff's complaint necessarily relies. Parrino v. FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998). The Court is not bound to accept as true allegations that are contradicted by such documents. Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998). A court may also consider "certain materials – documents attached to the complaint . . . or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment." United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003).

2. Leave to Amend

Plaintiff has again requested leave to amend any claims that are dismissed pursuant to defendants' motion. Under Fed. R. Civ. P. 15(a), leave to amend should be freely granted "when justice so requires." On a motion to dismiss, the Court must grant leave to amend unless it "determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); Steckman, 143 F.3d at 1298 (noting that leave to amend should be granted unless it would be an "exercise in futility"). As before, the Court has applied the foregoing standard in determining whether plaintiff's claims should be dismissed with or without prejudice, but, given plaintiff's numerous attempts to state its claims, the Court now agrees with defendants that attempts to amend would be futile.

3. Rule 9(b) Heightened Pleading Requirements for Claims Grounded in Fraud

Where a claim is grounded in fraud, all averments are subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b). Vess v. CIBA-GEIGY Corp., USA, 317 F.3d 1097, 1105 (9th Cir. 2003). Because plaintiff's first four claims are all based on the alleged fraud perpetrated by GMA's forgery of loan documents, plaintiff's claims for (1) aiding and abetting fraud and (2) conspiracy to commit fraud are subject to the heightened pleading requirements of Rule 9(b).

The existence of multiple defendants makes application of the particularity requirements essential. Even under the relaxed pleading standing of Rule 8(a), a plaintiff must particularize its allegations against each defendant so as to put each defendant on notice of the allegations against it. See McHenry v. Renne, 84 F.3d 1172, 1176 (9th Cir. 1996). Rule 9(b) further requires that the complaint allege facts specifying each defendant's contribution to the fraud. See Lancaster Comm. Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 405 (9th Cir. 1991). Although scienter need not be alleged with great specificity under Rule 9(b), plaintiffs must still plead facts giving rise to a "strong inference" of fraudulent intent. Wexner v. First Manhattan Co., 902 F.2d 169, 172 (2d Cir. 1990).

While pleading is permitted on information and belief, a complaint must adduce specific facts supporting a strong inference of fraud, or it will not satisfy even a relaxed pleading standard. Id. This exception for allegations on information and belief should not be mistaken for a license to base claims of fraud on conclusory allegations and speculation. Id. Further, a complaint for fraud based on information and belief is permitted only as to matters within the corporate defendant's own knowledge. See Moore v. Kayport Package Express, Inc., 885 F.2d 531, 540 (9th Cir. 1989). In this latter case, a plaintiff may satisfy the pleading requirements if the allegations are accompanied by a statement of the facts on which the belief is founded. Id. But, statements to the effect that the information and belief is based on "investigation made by plaintiff by and through their attorneys" are not sufficient because they do not provide adequate detail either to apprise the different defendants of the basis of their potential liability or to show that the complaint is grounded in fact. In re Worlds of Wonder Sec. Litig., 694 F. Supp. 1427, 1433 (N.D. Cal. 1988).

B. Defendants' Motion to Dismiss the SAC Should be Granted

While plaintiff has added some new allegations to the SAC, fundamental defects remain. The Court grants defendants' motion to dismiss because of these defects, detailed below.

1. Claims One and Three for Aiding and Abetting Fraud

A claim for aiding and abetting requires (1) the existence of an independent primary wrong, (2) actual knowledge by the alleged aider and abettor of the wrong and a role in furthering it, and (3) substantial assistance in the wrong. Harmsen v. Smith, 693 F.2d 932, 943 (9th Cir. 1982); Neilson v. Union Bank of California, N.A., 290 F. Supp. 2d. 1101, 1118 (C.D. Cal. 2003). Here, plaintiff explains how it claims to have been defrauded by GMA and corrects defects identified in the Dismissal Order by alleging the amount of each Fraudulent Loan and the date it closed. Plaintiff still fails, however, to plead facts showing that defendants had actual knowledge of GMA's fraudulent scheme or that they rendered substantial assistance.

a. Actual Knowledge of GMA's Fraud

Under California law, an aider and abettor to a fraud must have actual and not merely constructive knowledge of the fraud at the time the alleged assistance is rendered. Gerard v. Ross, 204 Cal. App. 3d 968, 983 (Ct. App. 1988). Under Rule 9(b), "[m]alice, intent, knowledge, and other condition of mind of a person may be averred generally," Fed. R. Civ. P. 9(b), but as noted above, plaintiffs must still plead facts giving rise to a "strong inference" of fraudulent intent. Wexner, 902 F.2d at 172.

Here, as to the First Loan Set, the loans purchased prior to July 28, 2004, plaintiff has added facts on information and belief to support defendants' knowledge. But, the allegations remain speculative and conclusory and do not support a "strong" inference of knowledge. Plaintiff alleges that it

> is informed and believes and thereon alleges that at all times relevant, Defendants were investors on the secondary market. . . . It is the custom and practice in the mortgage industry that investors purchasing loans on the secondary market make certain that the mortgage banker from whom they are purchasing loans meet [sic] certain financial conditions before any loan can be or is purchased from that mortgage banker. Impac is informed and believes and thereon alleges that this custom and practice was recognized and adopted as the policy of the Defendants in their internal written policies and procedures. Impac is further informed and believes and thereon alleges that prior to purchasing loans from General Mortgage on the secondary market, Defendants actually investigated the financial condition of General Mortgage, and thereby learned and thus knew that General Mortgage did not have the financial ability to fund loans absent drawing

> on a warehouse line and that by drawing on such a warehouse line the warehouse lender owned an interest in every loan General Mortgage offered for sale.

(SAC ¶ 12.) These facts, alleged on information and belief, are speculative; plaintiff does not present facts underlying its beliefs that defendants followed such policies or that such policies resulted in defendants discovering that plaintiff owned an interest in the purchased loans. Moreover, the facts underlying plaintiff's belief that defendants violated internal policies and procedures are DLJ's purchase of the loans from GMA and its subsequent wire transfer of monies to a GMA bank account. (SAC ¶¶ 21, 25.) These underlying facts do not point to a reasonable inference that defendants knew of GMA's fraud. Instead, the reasonable inference arising from these facts is that defendants were fulfilling their obligations under a valid business contract to purchase loans from GMA. Plaintiff also relies on the fact that it sent defendants bailee letters in the past when defendants purchased other loans not at issue here. (SAC Ex. 2.) These bailee letters are insufficient to support a strong inference that defendants knew of GMA's fraud. As defendants rightly note in their papers, there was no reason for them to believe that plaintiff was GMA's warehouse lender for all loans or that GMA required a warehouse lender on all loans. Even if there was reason for defendants to believe such, defendants' purchase of the loans from GMA without having received bailee letters does not give rise to a strong inference of knowledge of fraud.

As to the Second Loan Set, those purchased after July 28, 2004, plaintiff pleads defendants' knowledge with greater detail. (SAC ¶¶ 27, 28.) Ultimately, however, plaintiff does not state a claim for aiding and abetting fraud because it does not adequately allege substantial assistance with respect to either the First or Second Loan Set.

b. Substantial Assistance

Substantial assistance requires "a significant and active, as well as a knowing participation in the wrong." Alfus v. Pyramid Tech. Corp., 745 F. Supp. 1511, 1520 (N.D. Cal. 1990). The requirement has been interpreted to mean that (1) the substantial assistance is a substantial factor in causing the plaintiff's harm, and (2) the failure to act generally does not constitute substantial assistance in the absence of a duty to act unless scienter of the "'high conscious intent variety'" can be proven. See In re American Continental Corp., 794 F. Supp. 1424, 1435 (D. Ariz. 1992) (citations omitted). A defendant provides substantial assistance when it "'affirmatively assists, helps conceal, or by virtue of failing to act when required to do so enables the fraud to proceed.'" Cromer Finance Ltd. v. Berger, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001) (citations omitted).

Here, plaintiff does not allege facts showing that defendants affirmatively participated in GMA's fraudulent scheme or that any of defendants' acts were a substantial factor in causing the harm to plaintiff. As noted in the Dismissal Order, defendants' actions in providing a "ready, willing, and eager market" for the First and Second Loan Sets can, at best, be characterized as a passive endorsement of GMA's fraud. (SAC ¶¶ 35, 44.) Furthermore, defendants did not owe plaintiff a duty that required them to act and prevent GMA's fraud by paying their purchase monies to plaintiff instead of GMA. In fact, DLJ was under a contractual obligation to purchase the loans from GMA and pay GMA monies, not plaintiff. (See Req. for Jud. Not. Ex. E.) Additionally, DLJ's purchase of the loans was not a substantial factor in causing plaintiff's harm. The harm to plaintiff consisted of GMA's alleged retention of money advanced by plaintiff while GMA turned over to plaintiff forged loan documents. GMA could have kept plaintiff's money and forged loan documents with or without defendants' participation in GMA's scheme.

In sum, plaintiff fails to sufficiently plead knowledge for the First Loan Set and substantial assistance for both Loan Sets, and as such, the claims for aiding and abetting must be dismissed.

2. Claims Two and Four for Conspiracy to Commit Fraud

Conspiracy to commit fraud requires that plaintiffs plead the elements of conspiracy along with the requisite underlying claim of fraud. See Kidron v. Movie Acquisition Corp., 40 Cal. App. 4th 1571, 1581 (Ct. App. 1996).

"'To state a claim for conspiracy, plaintiffs must plead (1) an agreement to participate in an unlawful overt act (2) performed in furtherance of the agreement.'" In re 3Com Sec. Litig., 761 F. Supp. 1411, 1418 (N.D. Cal. 1990) (quoting Roberts v. Heim, 670 F. Supp. 1466, 1484 (N.D. Cal. 1987)). Plaintiff must allege "with sufficient factual particularity that a defendant reached some explicit or tacit understanding or agreement." Alfus 745 F. Supp. at 1521. Thus, plaintiff must allege that defendants entered into an agreement with actual knowledge that a tort is being planned and with the intent to further the commission of that tort.

In this case, plaintiff's conspiracy to commit fraud claims fail because plaintiff does not allege with particularity an explicit or tacit agreement between defendants and GMA. Plaintiff alleges that defendants "knowingly and willfully agreed and conspired" with GMA to commit fraud. (SAC ¶¶ 39, 49.) Such conclusory allegations unsupported by any particular facts showing an agreement are insufficient to defeat a motion to dismiss. Accordingly, plaintiff's claims for conspiracy to commit fraud are dismissed.

3. Claims Five and Seven for Aiding and Abetting Conversion

To state a claim for aiding and abetting conversion, plaintiff must allege (1) the existence of wrongful conduct by the primary wrongdoer, (2) defendant's knowledge of the wrongful conduct, and (3) defendant's substantial assistance in achieving the wrongdoing. See Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F. Supp. 2d 1146, 1183 (C.D. Cal. 2002). Aiding and abetting conversion is a derivative claim such that plaintiff must also plead the primary tort of conversion. Conversion requires (1) that the plaintiff have title to the converted property or a right to possession of that property, (2) an act of conversion by the defendant, and (3) damages caused by the conversion. Burlesci v. Petersen, 68 Cal. App. 4th 1062, 1065 (Ct. App. 1998).

Plaintiff pleads the underlying conversion of the funds advanced to GMA, identifying the specific sums involved, alleging a right to the funds, alleging wrongful conversion by GMA, and alleging damages as a result. (SAC ¶¶ 55, 56, 59, 65, 66, 69.)

Nonetheless, plaintiff does not state a claim for aiding and abetting conversion because it cannot allege that defendants rendered substantial assistance in converting the funds. As noted above, GMA was the party that retained plaintiff's advanced funds; the "ready, willing, and eager market" for the First and Second Loan Sets that defendants allegedly provided can, at best, be characterized as a passive endorsement of GMA's conversion. GMA could have retained the advanced funds and sent plaintiff forged documents with or without DLJ's purchase, or any party's purchase, of the loans. That is, defendants' actions were not a substantial factor in the loss to plaintiff. GMA did not require defendants' assistance at all to perpetrate the fraud on plaintiff. Accordingly, plaintiff's claims for aiding and abetting conversion are dismissed.

4. Claims Six and Eight for Conspiracy to Convert Property

Conspiracy to commit conversion requires that plaintiffs plead the elements of conspiracy along with the requisite underlying claim of conversion. "'To state a claim for conspiracy, plaintiffs must plead (1) an agreement to participate in an unlawful overt act (2) performed in furtherance of the agreement.'" In re 3Com Sec. Litig., 761 F. Supp. at 1418 (quoting Roberts v. Heim, 670 F. Supp. 1466, 1484 (N.D. Cal. 1987)). Although plaintiff sets forth conversion of funds by GMA, it fails to allege a conspiracy.

Plaintiff's conspiracy to convert property claims fail because plaintiff does not provide more than a conclusory allegation that defendants and GMA had an agreement. Plaintiff alleges that defendants "knowingly and willfully agreed and conspired" with GMA to convert the funds advanced by plaintiff. (SAC ¶¶ 61, 71.) Such conclusory allegations unsupported by any facts showing an agreement are insufficient to defeat a motion to dismiss. Plaintiff points to facts, such as DLJ's agreement to purchase the First and Second Loan Sets from GMA and the wiring of purchase monies to a GMA account, but to conclude that there was an agreement to commit a tort from these facts is an unjustified inference. These facts show simply that the parties engaged in a typical transaction in the mortgage industry. Therefore, the claims for conspiracy to convert property are dismissed.

5. Claims Nine and Ten for Negligence

The elements of negligence consist of (1) a duty of care, (2) a breach of that duty, (3) causation, and (4) damages. See Nymark v. Heart Fed. Sav. & Loan Ass'n, 231 Cal. App. 3d 1089, 1097 (Ct. App. 1991) (holding that a defendant lender owes a duty of care to a borrower only where the lender actively participates in the financed enterprise beyond the domain of the usual money lender).

a. Duty of Care

In the absence of a legally cognizable duty of care, there is no liability for negligence. Nymark, 231 Cal. App. 3d at 1095. Generally, there is no duty of care to third party strangers. See Software Design & Application, Ltd. v. Hoefer & Arnett, Inc., 49 Cal. App. 4th 472, 482 (Ct. App. 1996) (explaining that a bank did not owe a duty to third parties who were not party to the contractual relationship). "Recognition of a duty to manage business affairs so as to prevent purely economic loss to third parties in their financial transactions is the exception, not the rule, in negligence law." Quelimane Co. v. Stewart Title Guar. Co., 19 Cal. 4th 26, 58 (1998). As a business entity generally does not have a duty to prevent financial losses to others with whom it deals directly, "*[a] fortiori*, it has no greater duty to prevent financial losses to third parties who may be affected by operations." Id. at 59.

In Quelimane, the Court applied the following factors in determining whether a defendant has a duty to avoid business decisions that may affect the financial interests of third parties or to use due care in deciding whether to enter into contractual relations with another: (1) the extent to which the transaction was intended to affect the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff will suffer injury; (4) the closeness of connection between the defendant's conduct and the injury suffered; (5) the moral blame attached to the defendant's conduct; and (6) the policy of preventing future harm. Id. at 58. Further, "'[a]s a matter of economic and social policy, third parties should be encouraged to rely on their own prudence, diligence, and contracting power, as well as other informational tools.'" Id. (quoting Bily v. Arthur Young & Co., 3 Cal. 4th 370, 403 (1992)).

Here, plaintiff asserts that defendants owed it a duty of care based on industry standards and the business relationship existing between the parties, but case law does not support this assertion. As previously found in the Dismissal Order, the Quelimane factors do not weigh in favor of finding a duty of care.

The transaction was a standard business affair, plaintiff was not a party to the contractual relationship between GMA and defendants, defendants' conduct has not been shown to have a close connection to the injury suffered, and defendants, who advanced apparently legitimate funds for legitimate notes, do not appear to be morally blameworthy. Plaintiff should be encouraged to rely on its own prudence and diligence. The four bailee letters for unrelated loans attached as Exhibit 2 to the SAC do not create a course of conduct between the parties such that defendants would have to verify that GMA owned every loan defendants purchased from GMA. Thus, the SAC fails to allege a duty of care.

b. Proximate Causation

Proximate cause means that there is a reasonable connection between the act or omission of a defendant and the injury that a plaintiff has suffered. Frantz v. San Luis Med. Clinic, 81 Cal. App. 3d 34, 39 (Ct. App. 1978). In this case, plaintiff's conclusory allegations that defendants' conduct was the proximate cause of plaintiff's injury are unsupported by the facts. See SAC ¶¶ 77, 82. The fact that defendants may have provided a "ready, willing, and eager market" (SAC ¶¶ 35, 44) for the First and Second Loan Sets does not mean that DLJ's purchase of the loans was the proximate cause of plaintiff's injury. GMA retained the funds advanced by plaintiff and delivered the forged loan documents to plaintiff, a fraud that GMA could have perpetrated even if defendants did not purchase the loans. DLJ's purchase of the loans cannot be found to be either a substantial factor in causing plaintiff's injury or a necessary factor in causing the injury.

As such, plaintiff's negligence claims fail because it has not adequately alleged a duty of care or proximate causation. These claims should be dismissed.

6. Claim Eleven for Imposition of Constructive Trust

In California, a constructive trust may be imposed when a plaintiff demonstrates "'(1) the existence of a *res* (property or some interest in property); (2) the *right* of a complaining party to that res; and (3) some *wrongful* acquisition or detention of the res by another party who is not entitled to it.'" Burlesci, 68 Cal. App. 4th at 1070 (quoting Communist Party v. 522 Valencia, Inc., 35 Cal. App. 4th 980, 990 (Ct. App. 1995)) (emphasis in original).

Here, plaintiff's claim for constructive trust fails because plaintiff does not sufficiently allege wrongful conduct by defendants. As noted above, defendants' actions in providing a "ready, willing, and eager market" for the First and Second Loan Sets can, at best, be characterized as a passive endorsement of GMA's fraud. (SAC ¶¶ 35, 44.) Plaintiff does not allege facts giving rise to a warranted inference that defendants cooperated in GMA's fraud. Accordingly, this claim should be dismissed.

7. Claim Twelve for Declaratory Relief

Plaintiff's claim for declaratory relief is premised on the allegations contained in the first eleven causes of action and the specific claim that plaintiff is the "rightful owner of the Fraudulent Loans and is entitled to all profits and proceeds realized by defendants on the wrongfully acquired loans." (SAC ¶ 87.) The Court has already ruled that plaintiff cannot assert a valid claim of title to the loans through forged documents as a matter of law, and, thus, plaintiff cannot establish an entitlement to the mortgage loans. (Dismissal Order at 17-18.) Accordingly, plaintiff's claim for declaratory relief is dismissed.

VI.

CONCLUSION

For the foregoing reasons, the Court dismisses plaintiff's Second Amended Complaint. There is nothing suggested in plaintiff's opposition to this motion that it has more to add or that new facts have come to light. Thus it appears that further attempts to amend would be futile. Accordingly, the action is dismissed with prejudice.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order on counsel for all parties in this action.

DATED: June 20, 2006.

Alicemarie H. Stotler

ALICEMARIE H. STOTLER
CHIEF U.S. DISTRICT JUDGE

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)

United States Court of Appeals,
Ninth Circuit.
IMPAC WAREHOUSE LENDING GROUP, a California corporation, Plaintiff-Appellant,
v.
CREDIT SUISSE FIRST BOSTON LLC, f/k/a Credit Suisse First Boston Corporation; et al., Defendants-Appellees.
No. 06-56024.

Argued and Submitted Feb. 8, 2008.
Filed March 17, 2008.

Background: Warehouse lender sued buyers of mortgage loans that were sold on secondary market by mortgage broker as part of fraudulent scheme, alleging, inter alia, aiding and abetting fraud and conversion, conspiracy to commit fraud and conversion, negligence, and constructive trust. The United States District Court for the Central District of California, Alicemarie H. Stotler, J., dismissed complaint and denied warehouse lender's motion for leave to amend. Warehouse lender appealed.

Holdings: The Court of Appeals held that:
(1) buyers were not liable for aiding and abetting fraud and conversion;
(2) warehouse lender did not state claim for conspiracy to commit fraud and conversion;
(3) warehouse lender failed to state negligence claim;
(4) warehouse lender failed to state claim for constructive trust; and
(5) denial of motion to amend complaint was not abuse of discretion.

Affirmed.

West Headnotes

[1] Fraud 184 🔑30

184 Fraud
184I Deception Constituting Fraud, and Liability Therefor
184k30 k. Persons Liable. Most Cited Cases

Trover and Conversion 389 🔑25

389 Trover and Conversion
389II Actions
389II(A) Right of Action and Defenses
389k25 k. Persons Liable. Most Cited Cases
Buyers of mortgage loans that were sold on secondary market by mortgage broker as part of scheme to defraud warehouse lender that funded loans did not substantially assist in underlying wrongs of fraud and conversion, as required for buyers to be liable for aiding and abetting fraud and conversion under California law, given that buyers did not contribute to injury of warehouse lender, which instead resulted from mortgage broker's retention of original loan documents for itself and transfer of fraudulent loan documents to warehouse lender, thereby enabling it to obtain direct payment from buyers and then to fail to fulfill its obligation to repay warehouse lender for its original funding of loans.

[2] Conspiracy 91 🔑18

91 Conspiracy
91I Civil Liability
91I(B) Actions
91k18 k. Pleading. Most Cited Cases
Under both general notice and fraud pleading rules, warehouse lender failed to adequately allege existence of agreement to defraud warehouse lender or convert its funds between mortgage broker and

buyers of mortgage loans that mortgage broker sold on secondary market as part of fraudulent scheme, and therefore warehouse lender did not state claim against buyers for conspiracy to commit fraud and conversion, given that complaint asserted that buyers knowingly and willfully agreed and conspired to engage in fraudulent conduct, but provided no facts supporting existence of agreement outside buyers' acquisition of loans from mortgage broker pursuant to contract that was signed nearly two years before alleged conversion of funds occurred. Fed.Rules Civ.Proc.Rules 8(a), 9(b), 28 U.S.C.A.

[3] Negligence 272 🔑210

272 Negligence
272II Necessity and Existence of Duty
272k210 k. In General. Most Cited Cases

Warehouse lender failed to state negligence claim against buyers of mortgage loans that mortgage broker sold on secondary market as part of fraudulent scheme, given absence of allegation that buyers owed duty to warehouse lender, which had funded loans.

[4] Trusts 390 🔑95

390 Trusts
390I Creation, Existence, and Validity
390I(C) Constructive Trusts
390k95 k. Fraud or Other Wrong in Acquisition of Property in General. Most Cited Cases

Warehouse lender failed to state claim for constructive trust against buyers of mortgage loans that were funded by warehouse lender and then were sold by mortgage broker on secondary market as part of fraudulent scheme, inasmuch as warehouse lender alleged no wrongful act on buyers' part.

[5] Federal Civil Procedure 170A 🔑851

170A Federal Civil Procedure
170AVII Pleadings and Motions
170AVII(E) Amendments
170Ak851 k. Form and Sufficiency of Amendment. Most Cited Cases

Future amendments of warehouse lender's complaint against buyers of mortgage loans that mortgage broker sold on secondary market as part of scheme to defraud warehouse lender would have been futile, especially given that warehouse lender's three attempts were unable to cure inherent flaws in complaint, and therefore denial of warehouse lender's motion to amend complaint was not abuse of discretion.

***571** Ronald Rus, Esq., M. Peter Crinella, Esq., Rus Miliband & Smith, Irvine, CA, for Plaintiff-Appellant.

Jeffrey Q. Smith, Esq., King & Spalding, New York, NY, Jeffrey A. Richmond, Esq., Heller Ehrman LLP, Jeanette M. Viggiano, Esq., Los Angeles, CA, for Defendants-Appellees.

Appeal from the United States District Court for the Central District of California, Alicemarie H. Stotler , District Judge, Presiding. D.C. No. CV-04-01234-AHS.

Before: HALL, GRABER, and BERZON, Circuit Judges.

MEMORANDUM [FN*]

[FN*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

****1** Impac appeals the district court's dismissal of its complaint against Credit Suisse First Boston, LLC, and DLJ Mortgage Capital, Inc. It also appeals the district court's denial of its request for leave to amend. We affirm.

Impac, a warehouse lender, and General Mortgage Corporation, a mortgage broker not a party to this case, entered into a contract in June 2000 in which Impac agreed to fund certain of General Mortgage's loans with the expectation that it would receive the loan documentation in a reverse repurchase agreement transaction and recoup its money when General Mortgage sold the loans on the secondary market. Both parties appeared to comply with the terms of the contract for approximately three and a half years. However, on or about July 2004, Impac learned that General Mortgage was engaging in a fraudulent scheme whereby it delivered to Impac fraudulent documents for the loans funded, and then sold the loans on the secondary market using the original loan documents. ***572** Credit Suisse and DLJ, who were not parties to the Impac/General Mortgage contract, purchased twenty-four of these loans on the secondary market pursuant to a contract with General Mortgage dated November 2002.

Impac sued General Mortgage and initiated this action against Credit Suisse and DLJ after General Mortgage filed for bankruptcy. In its complaint, Impac alleges various claims against the defendants, including aiding and abetting fraud and conversion, conspiracy to commit fraud and conversion, negligence, and constructive trust.

[1] As the district court held, Impac is unable to plead claims that reach these defendants, and therefore the complaint was properly dismissed. The aiding and abetting claims fail because, even if Impac could plead that defendants had actual knowledge of General Mortgage's fraud, the complaint does not assert that defendants substantially assisted the underlying wrongs of fraud or conversion, a required element of an aiding and abetting claim. *Neilson v. Union Bank of California,* 290 F.Supp.2d 1101, 1118 (C.D.Cal.2003). Substantial assistance requires that the defendants' actions be a “substantial factor” in causing the plaintiff's injury. *Id.* at 1128. Defendants' purchase of the loans on the secondary market did not contribute to Impac's injury. Any harm to Impac stemmed from General Mortgage's retention of the original loan documents for itself and transfer of fraudulent loan documents to Impac, thereby enabling it to obtain direct payment from purchasers of the loan and then to fail to fulfill its obligation to repay Impac for its original funding of the loans.

[2] Impac's conspiracy to commit fraud and conversion claims were properly dismissed because the pleadings fail to adequately allege an agreement between defendants and General Mortgage to defraud Impac or convert its funds. *In re 3Com Sec. Litig.,* 761 F.Supp. 1411, 1418 (N.D.Cal.1990). The complaint states that defendants “knowingly, and willfully agreed and conspired” to engage in fraudulent conduct, but provides no facts supporting the existence of an agreement outside of defendants' purchase of loans from General Mortgage pursuant to a contract signed nearly two years before the alleged conversion of funds occurred. Such conclusory allegations are insufficient even under the notice pleading of Rule 8(a), *Bell Atlantic Corp. v. Twombly,* 550U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007) (“[A] plaintiff's obligation to provide the ‘grounds' of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”), much less the heightened standard of Rule 9(b) which applies to the conspiracy to commit fraud claim, *In re 3Com Sec. Litig.,* 761 F.Supp. at 1418.

****2** [3][4] Impac's negligence claim was also properly dismissed because Impac could not allege that defendants owed it any duty. *Quelimane Co. v. Stewart Title Guar. Co.,* 19 Cal.4th 26, 58, 77 Cal.Rptr.2d 709, 960 P.2d 513 (1998) (“[W]e decline to recognize a duty to avoid business decisions that may affect the financial interests of third parties, or to use due care in deciding whether to enter into contractual relations with another.”). Similarly, the constructive trust claim cannot stand because Impac alleged no wrongful act on the part of defendants. *Burlesci v. Petersen,* 68 Cal.App.4th 1062, 1070, 80 Cal.Rptr.2d 704 (Ct.App.1985).

[5] Last, we find that it was within the district court's discretion to deny leave to amend. *Allen v. City of Beverly Hills,* 911 F.2d 367, 373 (9th Cir.1990). Future amendments would have been futile, especially given that Impac's three attempts

***573** were unable to cure the inherent flaws in the complaint. *See id.* (“ ‘The district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint.’ ”) (quotation source omitted).

For the foregoing reasons, we AFFIRM the district court.

C.A.9 (Cal.),2008.
Impac Warehouse Lending Group v. Credit Suisse First Bostn LLC
270 Fed.Appx. 570, 2008 WL 731050 (C.A.9 (Cal.))

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Only the Westlaw citation is currently available.

United States District Court, E.D. Virginia,
Norfolk Division.
Harold M. LEVINSON, et al., Plaintiffs,
v.
MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, et al., Defendants.
Civil Action No. 4:06cv086.

Nov. 9, 2006.

Matthew Douglas Meadows, Michael Bruce Ware, Jones Blechman Woltz & Kelly PC, Newport News, VA, for Plaintiffs.

Edwin Ford Stephens, Nichole Buck Vanderslice, Christian & Barton LLP, Richmond, VA, Eric Francis Gladbach, John Peter Hooper, Edwards Angell Palmer & Dodge LLP, New York, NY, David D. Hudgins, Debra Schneider Stafford, Debra Schneider Stafford, Alexandria, VA, for Defendants.

MEMORANDUM OPINION AND ORDER

ROBERT G. DOUMAR, District Judge.

***1** Presently before the Court is a Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) filed by Defendants Massachusetts Mutual Life Insurance Company (“Mass Mutual”) and Connecticut Mutual Life Insurance Company (“Connecticut Mutual”). The motion seeks to dispose of nine separate counts alleged by Plaintiffs Harold Levinson, Blanche Levinson, and Tony Levinson (“Plaintiffs”), against Mass Mutual, Connecticut Mutual, and John S. Pugh (“Defendants”), and requests both legal and equitable relief for alleged misrepresentations regarding the insurance policy Plaintiffs purchased from Defendants in 1988.

Plaintiffs filed suit on July 17, 2006, complaining that Defendants knowingly misrepresented the premium payments Plaintiffs would be required to pay during the life of the policy. After Plaintiffs paid what they believed to be a one-time lump sum premium payment in 1988, Defendants demanded that Plaintiffs make additional premium payments, nearly fifteen years later, in 2003. While Plaintiffs contest these additional demands for payment, Defendants maintain that Plaintiffs misunderstood their communications with the insurance agent, Mr. Pugh, and now misunderstand the terms of the policy at issue. On September 15, 2006, Defendants Mass Mutual and Connecticut Mutual filed the instant Motion to Dismiss, to which Plaintiffs responded on September 29, 2006. Defendants Mass Mutual and Connecticut Mutual filed a replication on October 10, 2006. Additionally, on September 25, 2006, Defendant John S. Pugh filed a Motion to Quash Service of Process, which the Court granted on October 24, 2006.

For the reasons that follow, the Court **GRANTS** Defendants' motion to dismiss two claims for failure to state a claim upon which relief may be granted: Plaintiffs' RICO claim (Count One), and breach of fiduciary duty claim (Count Five). The Court **GRANTS** Defendants' motion to dismiss six claims for Plaintiffs' failure to meet the pleading requirements of Rule 9(b): common law fraud (Count Three), fraudulent inducement (Count Four), negligence (Count Six), negligent misrepresentation (Count Seven), unjust enrichment and imposition of a constructive trust (Count Eight), and reformation (Count Nine). Said latter dismissals are subject to Plaintiffs' right to amend the complaint as below set forth. The Court **DENIES** Defendants' motion to dismiss one claim: breach of express or implied contract (Count Two). Although the Court is skeptical of Plaintiffs' independent tort claims (and the remedies that rely thereon), it is unwilling to dismiss those claims on a Rule 12(b)(6) motion without granting Plaintiffs an opportunity to amend the complaint as provided by Rule 15(a). If Plaintiffs desire to amend their complaint, they must file the amended pleadings within eleven (11) days from the date of this order, and Defendants shall file a response pleading within eleven (11) days after service of such pleadings, if any.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Allegations

***2** In September 1988, Harold Levinson entered into discussions with Mr. Pugh, an agent of Defendant Connecticut Mutual located in Virginia Beach, Virginia,[FN1] regarding the purchase of life insurance.[FN2] By letter dated September 26, 1988, Mr. Pugh discussed with Mr. Levinson several "single-premium policy" products and provided him with an illustration of a permanent life insurance policy that contained two unique payment schemes now the subject of dispute: (1) the Vanishing Premium Scheme, and (2) the Performance Scheme.

The Vanishing Premium and Performance Schemes represented a "likelihood that dividends and/or interest would 'perform' or accrue on [the policy to which the payment schemes applied] in specified amounts at specified future policy years, based upon then current dividend scales and/or interest rates." Compl. ¶ 16. The Vanishing Premium Scheme additionally possessed a feature in which the "accrued dividends and/or interest of the policy would be sufficient to pay the entire premium without additional monies from the policyholder such that ... out-of-pocket premiums would end or 'vanish' after a specified amount of out-of-pocket premiums had been paid." Compl. ¶ 17. In other words, these payment schemes purported to enable a policyholder to make a one-time, lump-sum premium payment that would thereafter yield interest and dividend payments sufficient to finance the life of the policy.

Based upon Mr. Pugh's alleged representations regarding the payment schemes, Harold and Blanche Levinson purchased from Connecticut Mutual an insurance policy containing three discrete components: (1) Graded Premium Survivorship Whole Life Policy; (2) Survivorship Additional Benefits Rider; and (3) One-Year Term Insurance Rider (collectively, the "Policy"). Defendants issued this Policy to Plaintiffs on December 7, 1988, naming Tony Levinson as the insured.

As consideration for the Policy, Plaintiffs paid a total of $62,020.28. Of this amount, a single payment of $57,043.32 was applied to "Single Pay" the Survivorship Additional Benefits Rider, which constitutes the component of the Policy now in dispute. The precise date on which Plaintiffs paid this lump sum payment is unknown. On November 30, 1989, Carol Sprague, an employee at Connecticut Mutual, sent Tony Levinson a letter informing him that, "This money [$57,043.32], along with any dividends that may be credited to the policy, can be used to pay the policy premiums in future years." Letter from Carol A. Sprague, Customer Service

[FN1] FN1. Plaintiffs initially entered into discussions with Defendant Connecticut Mutual and its agent, Mr. Pugh, in 1988. However, between the time the parties entered into these discussions, and the filing of this suit on July 17, 2006, Connecticut Mutual merged with Mass Mutual. The parties have not identified the precise date of such merger, though Plaintiffs allege that Mass Mutual "is the successor in interest to" Connecticut Mutual, as well as the "surviving company pursuant to the merger between itself and Connecticut Mutual Life Insurance Company." Com pl. ¶ 4-5.

[FN2] FN2. This summary is based on the factual allegations contained in Plaintiffs' complaint which, only for purposes of resolving the Motion to Dismiss, are accepted as true. *See infra* Part II.A.

Consultant, Connecticut Mutual, to Tony E. Levinson, Insured (Nov. 30, 1989). In this same correspondence, Ms. Sprague stated that "dividends are not guaranteed by the company and if dividends and cash surrendered from the Survivorship Additional Benefits Rider are not sufficient to pay the premium due, then a cash payment will be required." *Id.* On December 20, 1989, Ms. Sprague sent Tony Levinson another letter intended to "clear up any misunderstanding that you [Tony Levinson] may have concerning the lump sum figure that I [Carol Sprague] gave to you in the letter addressed to you of [sic] November 30, 1989." Letter from Carol A. Sprague, Customer Service Consultant, Connecticut Mutual, to Tony E. Levinson, Insured (Dec. 20, 1989). That letter again stated that the "$57,043.32 single payment into the Survivorship Additional Benefits Rider ... along with any dividends that may be credited to the policy, will be used to pay the policy premiums in future years as they become due." *Id.*

***3** In 2003, approximately fifteen years after Plaintiffs purchased the Policy, Mass Mutual-the surviving company of a merger between Mass Mutual and Connecticut Mutual-demanded that Plaintiffs pay additional premiums on the Policy. Plaintiffs objected to this, citing their correspondence and discussions with Mr. Pugh between 1988 and 1989 during which Mr. Pugh had allegedly indicated that the initial premium payment would sufficiently fund the Policy for life. By letter dated January 2004,[FN3] Mass Mutual responded to Plaintiffs' objections, informed them that they had misunderstood Mr. Pugh and the terms of the Policy, and again demanded payment.

Plaintiffs continue to contest Mass Mutual's demands, and allege that Defendants knowingly and intentionally engaged in deceptive and misleading policy illustrations that falsely represented the likelihood that the Vanishing Premium and Performance Schemes would perform as intended. Specifically, Plaintiffs claim that Defendants offered illustrations of the Policy's likely performance based on "artificially inflated dividend scales and interest crediting rates; unjustifiable expense and mortality assumptions; and interest rate and investment earnings projections that had no reasonable basis in fact and were not supported by [Defendants'] actual then-current experience." Compl. ¶ 18. Plaintiffs seek legal and equitable relief on the following nine counts:

(1) Violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), codified at 18 U.S.C. § 1961 (2006), *et seq.;*

(2) Breach of express and implied contract;

(3) Common law fraud;

(4) Fraudulent inducement;

(5) Breach of fiduciary duty;

(6) Negligence;

(7) Negligent misrepresentation;

(8) Unjust enrichment and imposition of a constructive trust; and

(9) Reformation.

B. Procedural Posture

Plaintiffs filed the complaint against Defendants on July 17, 2006. Defendants Mass Mutual and Connecticut Mutual filed the instant Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) on September 15, 2006. Plaintiffs responded on September 29, 2006, and Defendants replied on October 10, 2006.

II. LEGAL STANDARD

A. Rule 12(b)(6) Failure to State a Claim

Federal Rule of Civil Procedure 12(b)(6) permits

[FN3] FN3. The parties have not provided the Court with a specific date as to this letter.

any defendant to a complaint, counterclaim, or cross-claim to move for dismissal of a claim for "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). To prevail on this motion, the movant must show "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957); *accord Edwards v. City of Goldsboro,* 178 F.3d 231, 242 (4th Cir.1999) (holding that granting a 12(b)(6) motion is appropriate where "it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief"). Because a 12(b)(6) motion is intended to resolve the merits of a claim or applicability of defenses, it should be granted only "in very limited circumstances." *Rogers v. Jefferson-Pilot Ins. Co.,* 883 F.2d 324, 325 (4th Cir.1969). The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence to support his or her claims. *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 1686 (1974).

***4** In deciding this motion, the court must accept a plaintiff's well-pled factual allegations in the complaint as true, and construe the pleadings, facts, and all reasonable inferences in the light most favorable to the plaintiff. *Allbright v. Oliver,* 510 U.S. 266, 268, 114 S.Ct. 807, 810 (1994); *Ibarra v. United States,* 120 F.3d 472, 474 (4th Cir.1997). However, the court need not assume the truth of legal conclusions couched as factual allegations. *Papasan v. Allain,* 478 U.S. 265, 286 106 S.Ct. 2932, 2944 (1986). Courts will not dismiss a plaintiff's claim on a Rule 12(b)(6) motion merely because the complaint requests inappropriate relief or mischaracterizes the relevant legal theories. *See Bowers v. Hardwick,* 478 U.S. 186, 201, 106 S.Ct. 2841, 2849 (1986) (Blackmun, J., dissenting) ("[A] complaint should not be dismissed merely because a plaintiff's allegations do not support the particular legal theory he advances, for the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory.") (citations omitted).

Plaintiffs contend that the Court is not entitled to look beyond the pleadings in order to rule on Defendants' motion to dismiss. Supplementing Defendants' motion is an appendix containing twenty exhibits, which Plaintiffs claim "were neither referred to nor incorporated in the Complaint." Pl.'s Brief Opp. Defs.' Mot. Dismiss 2. Although Plaintiffs' objection is well-taken, it is not applicable to Defendants' appendix in its entirety. A court may look to evidence beyond the pleadings when the plaintiff fails to introduce a pertinent document as part of the complaint. In such a case, the defendant "may attach the document to a motion to dismiss the complaint and the court may consider the same without converting the motion to one for summary judgment." *Davis v. George Mason Univ.,* 395 F.Supp.2d 331, 335 (E.D.Va.2005) (quoting *Gasner v. County Dindwiddie,* 162 F.R.D. 280, 282 (E.D.Va.1995)). Thus, "[a]ny documents referenced in the complaint can properly be attached to" a defendant's motion to dismiss, *id.,* and a court may consider such documents in determining the motion to dismiss if the documents were "integral to and explicitly relied on in the complaint and [if] the plaintiffs do not challenge its authenticity." *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.,* 367 F.3d 212, 234 (4th Cir.2004) (citing *Phillips v. LCI Int'l,* 190 F.3d 609, 618 (4th Cir.1999)).

A number of the documents submitted by Defendants are "integral to and explicitly relied on in the complaint." These include the Policy (Exhibit 1), the Policy illustrations (Exhibit 2), the Conditional Advance Premium Receipt (Exhibit 9), and the supporting case law advanced by Defendants (Exhibits 10-20). All remaining exhibits offered by Defendants, predominantly letters of correspondence between the parties, are excluded for purposes of resolving the instant motion.

B. Rule 9(b) Pleadings with Particularity

***5** Federal Rule of Civil Procedure 8(a) requires only general "notice" pleading: "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends ..., (2) a short and plaint statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment....” Fed.R.Civ.P. 8(a). One notable exception to this general rule is found in Federal Rule of Civil Procedure 9(b), which requires that “the circumstances constituting fraud or mistake shall be stated with particularity.” Fed.R.Civ.P. 9(b).

To satisfy this heightened pleading requirement, a plaintiff must allege the identity of the person who made the fraudulent misrepresentation, as well as the time, place, and content of the misrepresentation. *Harrison v. Westinghouse Savannah River Co.,* 176 F.3d 776, 784 (4th Cir.1999). Conditions of a person's mind, such as malice, intent, and knowledge, may be averred generally. *Id.*

Federal Rule of Civil Procedure 15(a) provides that leave to amend a pleading “shall be freely given when justice so requires.” Fed.R.Civ.P. 15(a). Thus, if a party fails to plead fraud with sufficient particularity, the court may allow the party to amend the complaint and meet the pleading requirements imposed by Rule 9(b). *See, e.g., Edwards,* 178 F.3d at 242. Leave to amend should be denied only “when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile.” *Id.* (quoting *Johnson v. Oroweat Foods Co.,* 785 F.2d 503, 509 (4th Cir.1986)).

C. Choice of Law

Neither party disputes the application of Virginia law in this case. In this jurisdiction, “[d]isputes over life insurance contracts are determined by the law of the state where the insured was domiciled at the time she applied for the policy.” *Dennis v. Aetna Life Ins. & Annuity* Co., 873 F.Supp. 1000, 10003 (E.D.Va.1995); *see also Buchanan v. Doe,* 431 S.E.2d 289, 291 (Va .1993) (noting that the law of the place of the alleged wrong determines the substantive law along with the place of delivery of the policy). Plaintiffs admit citizenship in the Commonwealth of Virginia, as well as residency in the City of Poquoson. Furthermore, Plaintiffs have alleged that all discussions and events relating to the Policy, including their application for the Policy, occurred while they were domiciled in Virginia. Thus, for purposes of resolving the instant motion, the Court will apply Virginia law.

III. ANALYSIS

A. Statute of Limitations

Defendants first seek to dismiss all of Plaintiffs' counts on the basis that the relevant statutes of limitations have expired. The Policy was issued on December 18, 1988. Plaintiffs filed suit on the Policy over seventeen years later, on July 17, 2006. Defendants argue this passage of time precludes Plaintiffs from asserting the counts alleged in the complaint.

“The raising of the statute of limitations as a bar to plaintiffs' cause of action constitutes an affirmative defense and may be raised by motion pursuant to Fed.R.Civ.P. 12(b)(6), if the time bar is apparent on the face of the complaint.” *Dean v. Pilgrim's Pride Corp.,* 395 F.3d 471, 474 (4th Cir.2005). Although Defendants have the right to raise the statute of limitations affirmative defense at the present time, this question cannot be resolved appropriately on the instant Rule 12(b)(6) motion. This question is therefore reserved for resolution at a later time, after the parties have had an opportunity to develop the facts of this case, by affidavit or otherwise. As such, the Court **DENIES** Defendants' Rule 12(b)(6) motion to dismiss Plaintiffs' claims on this basis, and **RESERVES** ruling on this matter if and until Defendants raise it at a later time.

B. RICO Claim (Count One)

***6** Plaintiffs first allege that Defendants violated the Racketeer Influenced and Corrupt Organizations Act, codified at 18 U.S.C. § 1962(c), which provides the following:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

To state a claim under § 1962(c), Plaintiffs must allege "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. Plaintiff [s] must additionally show that (5) [they were] injured in [their] business or property (6) by reason of the RICO violation." *D'Addario v. Geller,* 264 F.Supp.2d 367, 388 (E.D.Va.2003) (citations omitted).

Defendants challenge Plaintiffs' RICO claim on two grounds: (1) failure to plead with particularity at least two acts of racketeering to establish a pattern of racketeering required by the statute; and (2) failure to properly identify an "enterprise" as defined in RICO. As defined by 18 U.S.C. § 1961(5), "pattern of racketeering activity" requires the commission of two predicate acts, including, as Plaintiffs allege, wire fraud (codified at 18 U.S.C. § 1343) and mail fraud (codified at 18 U.S.C. § 1341). As defined by 18 U.S.C. § 1961(4), an "enterprise" includes any "individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."

The Court agrees with Defendants as to this count. Plaintiffs have failed to allege facts sufficient to establish both a "pattern of racketeering activity" and an "enterprise," as required by RICO. It is therefore appropriate to dismiss Count One.

(1) *Pleading Predicate Acts with Particularity*

To the extent that Plaintiffs base the predicate acts of the alleged racketeering in fraud, they "must plead the alleged acts of fraud with particularity pursuant to Federal Rule of Civil Procedure 9(b)." *Hessek v. N. Am. Mortgage Ins. Serv.,* No. 2:02-CV-985, 2003 WL 23961817, at *1 (E.D.Va. Oct. 17, 2003). Plaintiffs allege both mail and wire fraud, both of which are contemplated as "racketeering activities" in 18 U.S.C. § 1961(1). To state a claim for wire or mail fraud, a plaintiff must allege (1) a scheme to defraud, (2) the defendant's participation in the scheme, (3) the defendant's specific intent to defraud, and (4) use of the United States wires or mails to further the scheme. *Eplus Technology, Inc. v. Aboud,* 313 F.3d 961, 966 (4th Cir.1995). In Virginia, a plaintiff may make a showing of fraud by alleging (1) a false representation, (2) of a material fact, (3) made knowingly or intentionally, (4) made with the intent to mislead, (5) on which plaintiff relied, (6) and which resulted in damage to the plaintiff. *Van Deusen v. Snead,* 247 Va. 324, 328, 441 S.E.2d 207, 209 (1994).

***7** As an initial matter, courts should be "cautious" about basing a RICO claim on predicate acts of mail and wire fraud because it is the unusual fraud that fails to enlist the mails and wires at least twice in its perpetration. *Al- Abood v. El-Shamari,* 217 F.3d 225, 238 (4th Cir.2000). "This caution is designed to preserve a distinction between ordinary or garden-variety fraud claims better prosecuted under state law and cases involving a more serious scope of activity." *Id.* RICO liability should follow only for "ongoing unlawful activities whose scope and persistence pose a special threat to social well-being." *Id.* (quoting *Menasco, Inc. v. Wasserman,* 886 F.2d 681, 684 (4th Cir.1989)).

Plaintiffs have not pled the alleged predicate acts of the racketeering activity with the particularity required by Rule 9(b). Rather, Plaintiffs have broadly alleged that Defendants engaged in a "fraudulent scheme ... consist[ing] of numerous telephone calls made by MassMutual's and Conn Mutual's agents and other representatives," and "engaged in further fraudulent and deceitful sales practices through its agent John S. Pugh...." Compl. ¶ 37(a). Plaintiffs have offered no facts as to the time, place, or specific conduct of any misleading communications.

Moreover, Plaintiffs have not identified any individuals who allegedly made the fraudulent misrepresentations, other than Defendant John Pugh. Such general allegations of mail and wire fraud fail to meet the particularity requirements of Rule 9(b).

(2) *Enterprise*

To establish liability under 18 U.S.C. § 1962(c), a plaintiff "must allege and prove the existence of two distinct legal entities: (1) a 'person'; and (2) an 'enterprise' that is not simply the same 'person' referred to by a different name." *Cedric Kushner Promotions, Ltd. v. King,* 533 U.S. 158, 161, 121 S.Ct. 2087, 2090 (2001). This "distinctness" requirement is well known, as only a person employed by or associated with an enterprise, and not the enterprise itself, may violate section 1962(c). RICO liability depends upon a showing that a defendant acted or participated in the enterprise's affairs, and not just his or her own affairs.[FN4] *Reves v. Ernst & Young,* 507 U.S. 170, 185, 1133 S.Ct. 1163, 1173 (1993).

[FN4] FN4. In this jurisdiction, the distinctness principle applies exclusively to 18 U.S.C. § 1962(c), but not to the other prohibited acts contemplated by RICO, codified at § 1962(a) and § 1962(b). *New Beckley Mining Corp. v. Int'l Union, United Auto Workers,* 18 F.3d 1161, 1163 (4th Cir.1994); *Busby v. Crown Supply,* 896 F.2d 833, 841 (4th Cir.1990).

Plaintiffs attempt to satisfy the distinctness principle by alleging that "[t]he affiliated organizations, through which MassMutual and Conn Mutual marketed and distributed their life insurance products and annuities, constitute an enterprise as that term is defined in 18 U.S.C. § 1961," Compl. ¶ 35, while "MassMutual and Conn Mutual are persons as defined in 18 U.S.C. § 1961." Compl. ¶ 35. Notwithstanding their attempt to distinguish "persons" from the "enterprise," Plaintiffs have erred in naming the same entity as both: the enterprise and the persons constituting it are one in the same. The allegation that Defendants' "affiliated organizations" constituted the enterprise creates a distinction without a difference between the alleged enterprise and the persons allegedly acting through it. The complaint offers no facts regarding the formation, nature, or operation of the enterprise. Additionally, Plaintiffs have failed to allege facts that associate Mass Mutual and Connecticut Mutual as an enterprise at the time of the alleged RICO violations, and have offered no facts to show that Defendants were acting outside the scope of their typical business affairs when the alleged predicate acts occurred.

***8** In light of the foregoing deficiencies in Plaintiffs' RICO claim, the Court **GRANTS** Defendants' motion to dismiss with respect to Count One. To the extent that Plaintiffs have failed to state a RICO claim on two independent grounds, the Court finds that granting Plaintiffs leave to amend the complaint in order to plead the predicate acts of wire and mail fraud with greater particularity, as permitted by Rule 15(a), would constitute a futile endeavor. As such, the Count One is hereby **DISMISSED.**

C. Breach of Fiduciary Duty (Count Five)

Defendants move to dismiss Plaintiffs' breach of fiduciary duty claim on the grounds that no such duty exists. Plaintiffs alleged Defendants owed them the "duty of good faith and fair dealing, the duty of full and fair disclosure, and the duty of care." Compl. ¶ 80. Additionally, Plaintiffs assert that Defendants "had a duty to provide complete and truthful information to Plaintiffs when selling" the Policy. Compl. ¶ 81.

The Court agrees with Defendants that, in Virginia, no fiduciary relationship exists between an insurance company and the insured. The Virginia Supreme Court has so held, stating that "the relationship of confidence and trust which exists between insurer and insured is not a fiduciary relationship." *State Farm Mutual Ins. Co. v. Floyd,* 235 Va. 136, 143, 366 S.E.2d 93, 97 (1988). Although the interests of both parties may be "parallel and to some extent overlapping," their interests may diverge in some circumstances. *Id.* When that occurs, "[t]he insurer has the right to protect its own interest along with that of the insured. It is that factor which prevents the development of a fiduciary relationship between insurer and insured." *Id.*

Because Plaintiffs have failed to state a claim upon which relief can be granted with respect to their breach of fiduciary duty claim, the Court hereby **GRANTS** Defendants' motion to dismiss Count Five.

D. Common Law Fraud, Fraudulent Inducement, and Negligent Misrepresentation (Counts Three, Four, and Seven)

In addition to alleging the predicate acts of mail fraud and wire fraud on which they base their RICO claim, Plaintiffs allege three other claims rooted in fraud: common law fraud, fraudulent misrepresentation, and negligent misrepresentation. To survive the instant motion to dismiss, each of these claims must meet the heightened pleading requirement imposed by Federal Rule of Civil Procedure 9(b).[FN5]

The Court disagrees with Plaintiffs' assertion that the complaint adequately identifies the time, place, content, and identity of the fraudulent author. With respect to Plaintiffs' common law fraud claim (Count Three), the complaint predominantly consists of vague and conclusory allegations that Defendants "employed a scheme to defraud" and "made numerous false and misleading statements and representations or failed to state facts necessary to make their statements true or not misleading." Compl. ¶ 59. Rule 9(b) requires more. Plaintiffs must identify the precise content of such false and misleading statements, as well as when, where, and by whom such statements were made.

***9** Plaintiffs' fraudulent inducement claim (Count Four) and negligent misrepresentation claim (Count Seven) fall short for like reasons. The allegation that Defendants "fraudulently induced Plaintiffs to purchase policies by making numerous misrepres-

[FN5] FN5. Although the United States Court of Appeals for the Fourth Circuit has not ruled definitively on whether the heightened pleading standard of Rule 9(b) applies to a negligent misrepresentation claim, several district courts within the Fourth Circuit have applied Rule 9(b) to such claims. *See Bear Hollow, L .L.C. v. Moberk, L.L.C.,* No. 5:05-CV-210, 2006 WL 1642126, at *4 (M .D.N.C. June 5, 2006) (requiring negligent misrepresentation claim to meet heightened pleading requirements of Rule 9(b)); *Madison River Mgmt. Co. v. Bus. Mgmt. Software Corp.,* 351 F.Supp.2d 436, 447 (M.D.N.C.2005) (holding that even though Rule 9(b) does not expressly refer to the tort of negligent misrepresentation, the rule applies to such claims); *Swedish Civil Aviation Admin. v. Project Mgmt. Enter., Inc.,* 190 F.Supp.2d 785, 798-99 (D.Md.2002) (evaluating whether fraud and negligent misrepresentation claims met the specificity requirements of Rule 9(b)); *Giannaris v. Cheng,* 219 F.Supp.2d 687, 694 (D.Md.2002) (quoting Rule 9(b) and stating that "[a] llegations of fraud or misrepresentation must be pleaded 'with particularity' "); *Adams v. NVR Homes, Inc.,* 193 F.R.D. 243, 250 ("The requirements of Rule 9(b) apply to all cases where the gravamen of the claim is fraud even though the theory supporting the claim is not technically termed fraud."); *Breeden v. Richmond Cmty. Coll.,* 171 F.R.D. 189, 199-202 (M.D.N.C.1997) (finding that Rule 9(b) is not limited to "willful misrepresentations," applying Rule 9(b) to a negligent misrepresentation claim, and noting that this interpretation is in accord "with the basis behind the rule and its original rationale").

entations and nondisclosures" lacks the particularity demanded by Rule 9(b) required to put Defendants on notice of their allegedly unlawful conduct. Compl. ¶ 67. Although Plaintiffs allege that Defendants "intentionally omitted and concealed material facts and misrepresented the essential nature and material risks of the product," Rule 9(b) demands greater specificity as to the time, place, and content of such omitted facts. Likewise, the negligent misrepresentation claim lacks the necessary particularity regarding when, where, and by whom the misrepresentations were made to Plaintiffs. For these reasons, the Court **GRANTS** Defendants' motion to dismiss Counts Three, Four, and Seven. Pursuant to Rule 15(a), Plaintiffs may amend the complaint within **eleven days** of the date of this order to cure any such pleading deficiencies.

E. Unjust Enrichment and Imposition of a Constructive Trust (Count Eight)

Plaintiffs' unjust enrichment claim alleges that Defendants obtained payments from Plaintiffs in the form of policy premiums, policy service charges, and other fees based upon "misleading and fraudulent uniform sales presentations, marketing materials, and policy illustration." Compl. ¶ 105. As a remedy, Plaintiffs pray for the creation of a constructive trust in equity for the premiums that Defendants have allegedly unjustly received.

Defendants seek to dismiss this equitable count on the grounds that Plaintiffs have an adequate remedy at law. As a general rule, "when a party has an adequate remedy at law, he has none in equity." *Neff v. Baker,* 82 Va. 401, 405, 4 S.E. 620, 621 (1887) (quotations omitted). In Virginia, "[i]t is settled beyond questions that equity does not have jurisdiction of cases in which the plaintiff has a full, complete, and adequate remedy at law, unless some peculiar feature of the case comes within the province of a court of equity." 1 Michie's Jurisprudence of Virginia and West Virginia, Equity, § 10 (2004). However, it is also settled that where there is no certain and adequate legal remedy, a court may order any equitable relief as justice requires. *Id.*

The Court finds it inappropriate to dismiss Plaintiffs' claim of unjust enrichment and prayer for equitable relief on the grounds offered by Defendants. The case is inadequately developed for the Court to determine whether and to what extent the legal remedy sought by Plaintiffs will sufficiently compensate them for Defendants' allegedly unlawful conduct. Consequently, the Court will not dismiss this claim on the basis that Plaintiffs have an adequate emedy at law.

Nevertheless, Plaintiffs' prayer for a constructive trust must be dismissed by necessity for failure to plead the alleged fraud with requisite particularity. To the extent that Plaintiffs base their claim for a constructive trust on Defendants' "deception, fraud, misrepresentation, false pretense, false promise or the knowing concealment, suppression or omission of material facts," Compl. ¶ 109, they must plead the facts supporting the allegations of fraud with specificity. *In re Nova Real Estate Inv. Trust,* 23 B.R. 62, 67 (Bankr.E.D.Va.1982). As the Court has already explained, Plaintiffs' allegations of fraud and misrepresentation fail to satisfy the heightened pleading requirements imposed by Rule 9(b). Accordingly, Plaintiffs' prayer for relief on such claims must also fail. The Court therefore **GRANTS** Defendants' motion to dismiss Count Eight with the right of Plaintiffs to file an amended complaint setting forth the predicate facts. Therefore, the Court **RESERVES** the right to reconsider this count to the extent Plaintiffs cure the pleading deficiencies with respect to their fraud-based claims.

F. Reformation (Count Nine)

***10** In addition to damages and the imposition of a constructive trust, Plaintiffs pray for equitable reformation of the insurance contract. Supporting this claim, Plaintiffs allege that the Policy is a product of fraudulent unilateral mistake or mutual mistake. Compl. ¶ 115-16. Defendants seek dismissal of this claim by rejecting that the Policy was produced by fraudulent unilateral or mutual mistake. Moreover, Defendants move to dismiss this claim because Plaintiffs have an adequate remedy at law, which this Court has already rejected as an improper means of resolving the instant dispute at this time.

In Virginia, the equitable remedy of reformation provides relief against a mistake of fact in a written instrument in two circumstances: (1) a mutual mistake in which both parties enter into a written agreement in the bilaterally mistaken belief that it reflects their antecedent agreement, and (2) a unilateral mistake, in which a single party is mistaken as to the content of the written agreement, but where the mistake resulted from a misrepresentation or fraud perpetrated by the other party. *Blessing v. Beatty,* 44 Va. (1 Rob.) 287, 298 (1842). Where a party relies upon fraud or mutual mistake as the grounds for equitable reformation, it must set forth in the pleadings the manner in which the fraud was perpetrated or mistake was made, as well as the ends to be accomplished by the agreement. *Beach v. Bellwood,* 104 Va. 170, 183, 51 S.E. 184, 189 (1905).

After reviewing the facts and allegations of the complaint in the light most favorable to Plaintiffs, the Court finds no basis in the plea for reformation based on the mutual mistake of the parties. Although Plaintiffs allege that the “differences between the respective expectations and understanding of the parties ... are the result of a mutual mistake of fact,” they have not offered any facts to support this allegation. To the contrary, the pleadings and Policy itself demonstrate Defendants' consistent understanding of the insurance agreement. Any “mistake” warranting reformation must have been unilateral and fraudulently induced by Defendants.

As with Plaintiffs' other claims based in fraud, the prayer for reformation fails for insufficient particularity as to the time, place, and content of such fraud or misrepresentations that resulted in Plaintiffs' alleged unilateral mistake. Where Plaintiffs' claims of common law fraud, fraudulent inducement, and negligent misrepresentation claims fail for lack of Rule 9(b) particularity, so too must fail any equitable remedies relying on such claims. As such, the Court **GRANTS** Defendants' motion to dismiss Count Nine. However, the Court **RESERVES** the right to reconsider this count to the extent Plaintiffs cure the pleading deficiencies with respect to their fraud-based claims.

G. Breach of Express and Implied Contract (Count Two)

Central to this lawsuit is the allegation that Defendants breached an express contract in which they promised that Plaintiffs' prepayment of premiums at the time of purchase would fund the cost of the Policy for the life of the insured without reducing the death benefit or depleting the cash value of the policies. Compl. ¶ 44. In addition to this express agreement, Plaintiffs also allege Defendants breached an implied covenant of good faith and fair dealing that arose “in connection to the policies” by impairing or frustrating the rights of Plaintiffs to receive the benefits promised. Compl. ¶ 52.

***11** Defendants move to dismiss this count on three grounds. First, the unambiguous terms of the Policy mandate dismissal of the complaint. Second, Defendants contend that, since the Policy is unambiguous on its face, Plaintiffs are not entitled to vary or interpret its terms with extrinsic parol evidence. Finally, Defendants rely upon the legal principle that the law will not impose an implied contract where the contracting parties possess an express and enforceable contract ordering their respective rights.

(1) *Unambiguous Terms of the Policy*

The first issue before the Court is whether it is appropriate to dismiss a plaintiff's breach of contract claim on a Rule 12(b)(6) motion because the contract in dispute is clear and unambiguous on its face. If it is appropriate, the subsequent issue is whether the Policy is sufficiently unambiguous on its fact to warrant dismissal of Plaintiffs' breach of contract claim.

Defendants contend that “[n]umerous courts have dismissed claims that are contradicted by the express and unambiguous terms of a contract.” Defs.' Mot. Dismiss 12. To support this proposition, however, Defendants point to two cases outside this jurisdiction in which the court dismissed a plaintiff's breach of contract claim on a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, *not* on a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), which is the motion now before this Court. In view of these legal precedents, dismissing Plaintiffs' breach of contract claim on the grounds that the Policy is facially unambiguous would be inappropriate unless the Court first converts the instant motion to a motion for summary judgment, as permitted by Rule 12(b).

On at least one occasion, however, the Fourth Circuit has addressed a district court's decision granting a defendant's Rule 12(b)(6) motion to dismiss a plaintiff's breach of contract claim because the written agreement was unambiguous. In *Stewart v. Pension Trust of Bethlehem Steel Corp.*, the Fourth Circuit held that the district court was not required to convert the plaintiff's Rule 12(b)(6) motion to dismiss into one for summary judgment because the district court had not considered any evidence beyond the written agreement. 12 F. App'x 174, 176 (4th Cir.2001). The court then reviewed the district court's decision to grant the defendant's motion to dismiss *de novo*, ultimately finding that, although the contract was in fact unambiguous, the district court had failed to give due consideration to the plaintiff's factual allegations, which should have been regarded as true in deciding the Rule 12(b)(6) motion. Thus, in view of *Stewart*, this Court may dismiss Plaintiffs' breach of contract claim on the basis of Rule 12(b)(6) if it finds the Policy is unambiguous with respect to all of Plaintiffs' breach of contract allegations; however, this decision will prevail only if due consideration is given to Plaintiffs' factual allegations contained in the complaint.

***12** Defendants assert that “Plaintiffs' Policy fully disclosed that they had a continuing contractual obligation to pay premiums annually,” and that, “in at least three different places, the Policy declares that premiums are paid annually.” Defs.' Mot. Dismiss 13. But the Policy is not so clear. One portion of the written agreement, identified as “Policy Specifications,” features a schedule of premium payments due on the Survivorship Additional Benefits Riders indicating an annual premium of “$57,043.32” in Year 1, but an annual premium of “$0.00” until “Age 65.” Moreover, as Plaintiffs point out, the Policy is allegedly ambiguous as to the source of future premium payments. In light of these considerations, the Court **DENIES** Defendants' motion to dismiss Count Two at this time.

(2) *Parol Evidence*

Defendants object to Plaintiffs' use of parol evidence to “vary or interpret the terms of the Policy,” which is “clear and unambiguous on its face.” Defs.' Mot. Dismiss 13. In Virginia, parol evidence of prior or contemporaneous oral negotiations or stipulations is inadmissible to vary, contradict, or explain the terms of a complete, unambiguous, and integrated written contract. *Va. Elec. & Power Co. v. N. Va. Reg'l Park Auth.*, 270 Va. 309, 316, 618 S.E.2d 323, 326-27 (2005). This rule is designed to promote certainty and stability in contracts, and is based on the notion that when parties reduce their mutually-agreed upon terms to writing, the writing, if clear and unambiguous, furnishes superior evidence of the scope and meaning of the agreement in dispute. *Doganieri v. United States*, 520 F.Supp. 1093, 1097 (N.D.W.Va.1981) (citations omitted).

Although the parol evidence rule “has nowhere been more strictly adhered to in its integrity than in Virginia,” *Erlich v. Hendrick Construction Co.*, 217 Va. 108, 112, 225 S.E.2d 665, 668 (1976), there are a number of circumstances in which the rule does not apply. “While it is elementary that parol evidence is not admissible to explain or undertake to qualify a written agreement when it constitutes a complete statement of the bargain, it is equally as elementary that the rule does not apply where the writing on its face is ambiguous, vague or indefinite, or does not embody the entire agreement. In such a case, parol evidence is always admissible, not to contradict or vary the terms, but to establish the real contract between the parties.” *Shockey v. Westcott* 189 Va. 381, 389, 53 S.E.2d 17, 20 (1949) . The inapplicability of the parol evidence rule is particularly true in the present circumstances: “[I]nsurance contracts, like other contracts, generally are to be construed according to their terms and without reference to parol evidence. However, resort to parol evidence is proper where a latent ambiguity exists in a particular insurance contract.” *S. Ins. Co. of Va. v. Williams,* 263 Va. 565, 570, 561 S.E.2d 730, 733 (2002).

The Court rejects Defendants' contention that the Policy is sufficiently clear to deny Plaintiffs the opportunity to submit extrinsic parol evidence. As noted, the Policy equivocates as to the schedule of premiums owed during the life of the policy. Although some provisions favor Defendants' interpretation of the Policy, others favor Plaintiffs' interpretation. As such the Court **DENIES** Defendants' request to strike Plaintiffs' extrinsic parol evidence at this time.

(3) *Implied Contract*

***13** Defendants finally seek dismissal of Plaintiffs' breach of contract claim by asserting the express contract with Plaintiffs should preclude the finding of any contravening implied contract. In Virginia, “[i]t is only in the absence of an express or of an enforceable contract between parties, that the law (whether in law or in equity) will, from circumstances, imply a contract between them.” *Ellis & Myers Lumber Co. v. Hubbard,* 123 Va. 481, 502, 96 S.E. 754, 760 (1918) (citing *Grice v. Todd,* 120 Va. 481, 91 S .E. 609 (1917)).

Defendants' reliance on this legal principle is inapposite. Plaintiffs have not alleged the existence of an implied *contract* that should prevail over the parties' express contract; rather, Plaintiffs allege that Defendants breached the implied *covenant* of good faith and fair dealing. It is well-known that, “[u]nder Virginia law, every contract contains an implied covenant of good faith and fair dealing in the performance of the agreement.” *Penn. Life Ins. Co. v. Bumbrey,* 665 F.Supp. 1190, 1195 (1997). The Court therefore **DENIES** Defendants' motion to dismiss Plaintiffs' allegation that Defendants breached an implied covenant of good faith and fair dealing.

H. Negligence (Count Six)

Defendants seek dismissal of Plaintiffs' negligence claim on two grounds. First, the economic loss doctrine precludes recovery in tort for damages based solely on economic loss. Fundamental to this argument is Defendants' assertion that Plaintiffs cannot prevail on any tort claim because only a contractual relationship existed between the parties. Second, Defendants seek dismissal based on Plaintiffs' contributory negligence.

(1) *Economic Loss Doctrine*

Virginia recognizes the economic loss doctrine, *see Gerald M. Moore & Son, Inc. v. Drewry,* 251 Va. 277, 279, 467 S.E.2d 811, 813 (1996), which stands for the proposition that if a plaintiff's injury is only to property that is the subject of a contract, any loss in value is a matter of “disappointed economic expectation,” for which relief lies exclusively in contract, not tort. *Factory Mutual Ins. Co. v. DLR Contracting, Inc.,* No 3:04-CV-834, 2005 WL 2704502, at *6 (E.D.Va. Oct. 20, 2005). This doctrine emerged from the proposition that “losses suffered as a result of the breach of a duty assumed only be agreement, rather than a duty imposed by law, remain the sole province of the law of contracts. *Filak v. George,* 267 Va. 612, 618, 594 S.E.2d 610, 613 (2004). The Fourth Circuit has described this doctrine in more explicit terms:

Under Virginia law, a tort claim normally cannot be maintained in conjunction with a breach of contract claim. An exception arises where a party establishes an independent, willful tort that is factually bound to the contractual breach but whose legal elements are distinct from it. It is not sufficient for plaintiff to show that defendant willfully desired to breach the contract for its own benefit. Instead, Plaintiff must show that defendant maliciously desired to injure plaintiff.

***14** *Erdmann v. Preferred Research, Inc.,* 852 F.2d 788, 791 (4th Cir.1988) (citations and quotations omitted). Thus, the economic loss rule does not obtain "where the breach amounts to an independent, willful tort." *Kamlar Corp. v. Haley,* 224 Va. 699, 705, 299 S.E.2d 514, 517 (1983).

The issue, therefore, is whether Plaintiffs have sufficiently alleged an injury and tort independent of the breach of contract claim. Plaintiffs have alleged common law fraud, fraudulent inducement, and negligent misrepresentation, all of which suggest a duty "not existing between the parties solely by virtue of contract ." *Foreign Mission Bd. of the Southern Baptist Convention v. Wade,* 242 Va. 234, 241, 409 S.E.2d 144 (1991). As noted previously in the Eastern District of Virginia, "fraud is an independent, willful tort under Virginia law," *Hewlette v. Hovis,* 318 F.Supp.2d 332, 337 (E.D.Va.2004), and sufficient to overcome the limitations on recovery imposed by the economic loss doctrine. Nevertheless, this Court has dismissed the independent fraud-based claims for Plaintiffs' failure to meet the pleading requirements created by Rule 9(b). Accordingly, the Court **GRANTS** Defendants' motion to dismiss Count Six on the grounds of the economic loss doctrine. However, to the extent Plaintiffs appropriately amend the complaint to cure the pleading deficiencies within eleven days of the date of this order, the Court **RESERVES** the right to consider Plaintiffs' negligence claim.

(2) *Contributory Negligence*

Defendants finally argue that, even if Plaintiffs could state a claim in tort, the negligence count is barred by Plaintiffs' contributory negligence as a matter of law. Supporting this proposition, Defendants rely on the legal principle that, "one who signs an application for life insurance without reading the application or having someone read it to him is chargeable with notice of the application's content and is bound therein." *General Ins. Co. of Roanoke, Inc. v. Page,* 250 Va. 409, 412, 464 S.E.2d 343, 345 (1995).

In viewing the facts alleged in the complaint in the light most favorable to Plaintiffs, the Court cannot conclude at this time that Plaintiffs acted with such negligence in their negotiations and dealings with Defendants to bar the negligence claim. To dismiss such a claim on these grounds, without additional opportunity to develop the facts, would be inappropriate at such a preliminary stage in the dispute. As such, the Court **DENIES** Defendants' motion to dismiss Count Six at this time on the basis of contributory negligence.

I. Punitive Damages

Defendants move to dismiss Plaintiffs' prayer for punitive damages on the grounds that the instant action is a "run-of-the-mill breach of contract action for which punitive damages do not lie." Defs.' Mot. Dismiss 29. In Virginia, the "law requires proof of an independent, willful tort, beyond the mere breach of a duty imposed by contract, as a predicate for an award of punitive damages, regardless of the motives underlying the breach." *Bettius & Sanderson, P.C. v. Nat'l Union Fire Ins. Co.,* 839 F.2d 1009, 1015 (4th Cir.1988) (citations omitted). This is especially true in the instant context: "Virginia law does not allow punitive damages when an insurer, *in bad faith,* delays or fails to satisfy a claim against the insured." *Id.* (emphasis added). Thus, even if the Court found that Defendants acted with "malice, wantonness, or oppression," it cannot award punitive damages if, as Defendants assert, the instant suit is a “pure contract action.” *Id.*

***15** The issue before the Court in resolving this matter is whether the instant action is one of pure contract. The foregoing analysis and conclusions of this Court have disposed of two claims for failure to state a claim upon which relief can be granted: Plaintiffs' RICO claim (Count One), and breach of a fiduciary duty (Count Five). The Court has dismissed five claims, subject to Plaintiffs' right to amend, for failure to plead the claims with requisite particularity required by Rule 9(b): common law fraud (Count Three), fraudulent inducement (Count Four), negligent misrepresentation (Count Seven), negligence (Count Six), unjust enrichment and imposition of a constructive trust (Count Eight), and reformation (Count Nine). The Court has not dismissed one remaining claim: breach of express or implied contract (Count Two). To the extent the Court has narrowed Plaintiffs' suit to a pure breach of contract action, Defendants' contention that punitive damages are not available as a matter of law must prevail. The Court therefore **GRANTS** Defendants' motion to dismiss Plaintiffs' demand for punitive damages. However, the Court **RESERVES** the right to address this matter again in the future to the extent Plaintiffs sufficiently amend the pleadings.

Plaintiffs may file such amended pleadings within eleven (11) days of the date of this order, and if so, Defendants shall file a responsive pleading within eleven (11) days after service of Plaintiffs' amended pleading, pursuant to Rule 15(a).

The Clerk of the Court is **DIRECTED** to forward copies of this Memorandum Opinion and Order to counsel of record for all parties.

IT IS SO ORDERED.

E.D.Va.,2006.
Levinson v. Massachusetts Mutual Life Insurance Co
Not Reported in F.Supp.2d, 2006 WL 3337419 (E.D.Va.)

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Circuit Court of Virginia, City of Richmond.
Charles K. Johnson
v.
George E. Kaugars
CASE NO. LM-152-3.

October 31, 1988.

***1** Based on plaintiff's allegations, this case arises from a hearing by the State Board of Dentistry initiated when the defendant furnished investigators of the Board with false information which related to alleged billing improprieties of plaintiff dentist, Dr. Johnson. The defendant, Kaugars, is alleged to have testified at the hearing and to have provided to the Board certain documents and information concerning patient services that were allegedly paid for by Medicaid but never actually rendered.
T. J. Markow, Judge.

After the Board hearing ended with no unfavorable result to Dr. Johnson, he initiated this two-count suit against Kaugars alleging that defendant's role in the investigation constituted malicious prosecution (Count I) and a conspiracy to injure plaintiff in his trade or business in violation of Va. Code Ann. ' 18.2-499 and ' 18.2-500 (Count II).

The demurrer claims that Count I is defective in that plaintiff fails to allege that the defendant instituted a prosecution of plaintiff, arrested him, seized his property or caused him any “special injury”.

Count II which is brought under Virginia's Conspiracy to Injure Another In Trade, Business, or Profession statute, Va. Code Ann. ' 18.2-499 and ' 18.2-500 , is claimed to be defective in that it fails to allege an agreement between co-conspirators.

For the following reasons, the court concludes that the demurrer is well taken on both counts and should be sustained.

Actions for malicious prosecution are generally not favored in law. Recovery is allowed only when the restrictions on such actions have been fully overcome. Wiggs v. Farmer, 205 Va. 149, 135 S.E.2d 829 (1964). The stringent requirements imposed upon actions for malicious prosecution are designed to encourage persons to bring criminal actions in appropriate cases without fear of reprisal by civil actions, criminal prosecutions being essential to the maintenance of society. Ayyildiz v. Kidd, 220 Va. 1080, 266 S.E.2d 108 (1980). The same principle applies to administrative or disciplinary hearings before state investigatory boards which are entrusted to protect the public interest and to preserve the integrity of particular professions. Carver v. Lykes, 262 N.C. 345, 137 S.E.2d 139 (1964).

Regardless of the nature of the underlying proceeding, be it criminal, civil or a hybrid, a plaintiff in a malicious prosecution is required to allege and prove: (1) the prosecution was set on foot by the defendant and was terminated in a manner not unfavorable to the plaintiff; (2) it was instituted or procured by the cooperation of the defendant; (3) it was without probable cause; and (4) it was malicious. Ayyildiz, 220 Va. 1082.

Here the demurrer contends that from the motion for judgment Dr. Kaugar's role in the Board of Dentistry proceedings was that of a witness and that statements made by a witness to prosecutors and law enforcement officials will not be grounds for an action for malicious prosecution even though the prosecution was commenced as a result of the statement. The overt conduct complained of was Dr. Kaugars' release of certain incriminating materials to an investigator from the Board of Dentistry.

***2** During oral argument, plaintiff's counsel made clear that Kaugars' alleged “active cooperation in the institution of charges and investigation of charges” consisted of permitting false information to be communicated to the Board. In other words, plaintiff contends that Dr. Kaugars' suppression of truthful statements regarding alleged billing improprieties constituted sufficient "institution, instigation or subsequent adoption of steps already taken and instigated by others" so as to satisfy the rule of Clinchfield Coal Corp. v. Redd, 123 Va. 420, 96 S.E. 836 (1918). The court agrees. In Clarke v. Montgomery Ward & Company, 298 F.2d 346 (4th Cir. 1962) the Fourth Circuit applying Virginia law, ruled that "a person who places before a prosecuting officer information upon which criminal proceedings are begun, and who later acquired additional information casting doubt upon the accused's guilt, should be under an obligation to disclose his discovery to the prosecutor." Clarke at 348. Assuming that Kaugars' role in the investigation was as a silent and knowing purveyor of false information, such conduct would be sufficient "ratification" so as to survive defendant's demurrer on this point.

Notwithstanding plaintiff's ability to satisfy the requirement of "instigation, initiation or ratification," plaintiff has failed to allege arrest, seizure of property or "special injury". Both parties agree that Ayyildiz vs. Kidd, stands for the proposition that in malicious prosecution actions stemming from a civil proceeding, a plaintiff must allege and prove arrest of his person, seizure of his property or special injury incurred. The motion for judgment fails to allege arrest of Johnson's person, seizure of his property or any special injury incurred by Johnson. It merely speaks of "actual monetary damages, personal distress and damage to his personal and professional reputation."

Plaintiff relies, in this matter, on the hybrid, guasi-criminal nature of a state investigatory board hearing and the language of National Surety Co. v. Page, 58 F. 2d 145 (4th Cir. 1932), which cites business losses as sufficient "special injury" in an action for malicious prosecution. The court does not consider administrative hearings as criminal proceedings, but rather civil in nature and, therefore, the plaintiff must allege and prove the "special injury" required in Ayyildiz vs. Kidd, 220 Va. 1082 (1980).

As defendant's memorandum in support of demurrer persuasively argues, Ayyildiz makes clear such a claim of damages does not constitute special injury. The plaintiff in Ayyildiz was a physician who had been sued for malpractice. After the malpractice action had been terminated in his favor, the physician sued the attorney who had filed the malpractice action. The plaintiff physician claimed that his damages were essentially the same as claimed by plaintiff here - damages to reputation and loss of earnings and profits. The Supreme Court of Virginia affirmed the trial court's sustaining of the demurrer because the alleged damages did not constitute special injury. The Supreme Court of Virginia stated:

> ***3** The plaintiff here has suffered no injury that would not stem normally from a medical malpractice suit. A defendant in such a suit usually pays his costs and attorney's fees. The damage to the professional reputation of a physician who prevails in malpractice litigation is debatable; but in any event such damages as may result are common to all malpractice actions. Moreover, plaintiff's allegations of injury to his professional reputation and good name are conclusory with no facts being alleged to support a special injury. The other "special injury" alleged, concerning loss of present and future income, we have observed would fall upon the defending physician in any medical malpractice action.

220 Va. 1084-85.

So too, the damages alleged by Johnson are of a class which would normally be expected to flow from disciplinary proceedings. Johnson has failed to aver special injury. Accordingly, his motion for judgment fails to state a claim against Kaugars for malicious prosecution as asserted in Count I of the motion for judgment.

This court declines to find, as plaintiff urges, that the Supreme Court of Virginia erred when it "ignored" the language of National Surety which listed "injury to business" as sufficient "special injury." A better explanation is that our Supreme Court has concluded that the English rule, concededly a minority rule, is the better rule of law as applied to civil proceedings such as the hearing involved in the instant case.

Count II of the motion for judgment alleges a conspiracy by Kaugars and others to injure Johnson in his reputation, trade, business and profession as contemplated in ' 18.2-500 of Code of Virginia. To recover for statutory conspiracy, a plaintiff must prove: (1) a combination of two or more persons for the purpose of willfully and maliciously injuring plaintiff in his business; and (2) resulting damage to plaintiff. Allen Realty Corp. v. Holbert, 227 Va. 441 (1984).

Mere conclusory language devoid of factual allegations is insufficient to state a cause of action for civil conspiracy. Bowman v. State Bank of Keysville, 229 Va. 534, 541, 331 S.E. 797 (1985). In pleading conspiracy the plaintiff must inform the opposing party of the nature of the conspiracy charged. Picking v. State Finance Corp., 332 F.Supp. 1399, 1403 (D.Md. 1971) citing 2A J. Moore, Federal Practice, P. 8.17(5). Due to the nature of conspiracy, all details may not be known at the time of pleading. Still, it is not enough merely to state that a conspiracy took place. There should be some details of time and place and the alleged effect of the conspiracy. In Connor v. Real Title Corp., 165 F.2d 291, 294 (4th Cir. 1947), conclusory allegations of "a vicious conspiracy and collaboration" between three named defendants to prevent the plaintiff from collecting rentals from properties were insufficient.

***4** Although it is alleged that Kaugars and others made, allowed and participated in the transmittal of information and documents to the State Board of Dentistry, the motion for judgment fails to allege any agreement between Kaugars and others to take such action for the purpose of injuring the plaintiff in his reputation, trade, business and profession. Indeed, the plaintiff concedes that there is no allegation that the co-conspirators formally or actually met or verbally agreed to engage in such conduct. From the pleadings, the court cannot even infer an agreement.

No conspiracy can exist without an agreement. F. P. Heacock v. Commonwealth, 228 Va. 397, 407, 323 S.E.2d 90 (1984). It is the concerted activity by parties who combine their resources and efforts which creates the special harm that the law of conspiracy seeks to suppress.

The court is mindful of the fact that conspiracies may be proved circumstantially and that parallel conduct by co-conspirators may furnish evidence by which a trier of fact may reasonably infer the existence of an agreement. However, plaintiff confuses the issue of proving a case, which may be done circumstantially, with the necessity of pleading a case, which must allege facts that, when considered by a court of law, establish that there existed between the parties an agreement, a meeting of minds, for that is what this statute providing for both punitive relief and treble damages seeks to prohibit.

It is not enough for plaintiff merely to track the language of the conspiracy statute without alleging the fact that the alleged co-conspirators did, in fact, agree to do something the statute forbids. No such agreement is pled or alleged by Johnson. The claim of Johnson for damages based upon ' 18.2-500 is, therefore, fatally defective.

In light of the foregoing, defendant's demurrer will be sustained. A copy of the order entered this date is enclosed.

Va.Cir.Ct. 1988.
Johnson v. Kaugars
Not Reported in S.E.2d, 14 Va. Cir. 172, 1988 WL 619378 (Va.Cir.Ct.)

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Only the Westlaw citation is currently available.

United States District Court,
E.D. California.
Elena YULAEVA, Plaintiff,
v.
GREENPOINT MORTGAGE FUNDING, INC.; Mortgage Electronic Registration Systems, Inc.; EMC Mortgage Corporation; and Does 1 through 10, inclusive, Defendants.
No. CIV. S-09-1504 LKK/KJM.

Sept. 3, 2009.

West KeySummary
Mortgages 266 ⚷216

266 Mortgages
266IV Rights and Liabilities of Parties
266k215 Actions for Damages
266k216 k. Between Parties to Mortgage or Their Privies. Most Cited Cases

A mortgagor adequately stated a claim against a mortgagee for breach of the implied covenant of good faith and fair dealing. The mortgagor alleged that the mortgagee deprived her of an opportunity to review loan modification terms and intentionally forced her into default.

Oxana Victorovna Kozlov, Law Offices of Oxana Kozlov, Sunnyvale, CA, for Plaintiff.

S. Christopher Yoo, Adorno Yoss Alvarado and Smith, Santa Ana, CA, for Defendants.

ORDER

LAWRENCE K. KARLTON, Senior District Judge.

***1** The core of this action is a loan plaintiff Elena Yulaeva received from defendant Greenpoint Mortgage Funding, Inc. ("Greenpoint") in order to finance the purchase of her home. Plaintiff filed a complaint against Greenpoint, Mortgage Electronic Registration Systems, Inc. ("MERS"), and EMC Mortgage Corporation ("EMC") enumerating twelve state and federal causes of action arising out of the loan transaction and subsequent foreclosure on her home. Pending before the court is a motion by defendants MERS and EMC to dismiss all claims against them. Defendant Greenpoint has not stated an appearance and is not party to the present motion. For the reasons stated below, defendants' motion to dismiss is granted in part and denied in part.[FN1]

FN1. The only motion on the docket is a motion to dismiss. However, plaintiff's complaint, filed in state court on April 20, 2009 requested a preliminary injunction and temporary restraining order under Cal.Code Civ. Pro. § 527. Nothing indicates whether any proceedings on this matter were conducted prior to removal on June 1, 2009. Plaintiff's opposition to the pending motion to dismiss again requests a preliminary injunction and various other relief. Because of the unsettled status of the pleadings and a failure of all parties to brief the issue, the request for injunction is not further considered.

I. BACKGROUND[FN2]

FN2. The allegations described herein are taken from the complaint and are taken as true for the purpose of the pending motions only.

This case shares features common to the many other home loan cases currently working their way through the federal district courts. In October 2005, plaintiff acquired an adjustable rate mortgage from defendant Greenpoint. Compl. ¶ 13, Defs.' RFJN Ex. 2 (Adjustable Rate Rider, p. 2-3). Plaintiff borrowed $420,000 from defendant Greenpoint to purchase a home, the loan being secured by plaintiff's property through a deed of trust. Compl. ¶ 3, Defs.' RFJN Ex. 2 (Deed of Trust, p. 1). The loan provided for an initial period of low fixed payments, after which payments would increase. The fixed rate period ended at some unspecified point, and plaintiff has been unable to make the higher subsequent payments. Since then, one or more defendants have initiated foreclosure proceedings on her home. Having provided this general background, the court turns to plaintiff's detailed allegations.

A. Identity and Roles of The Parties

1. The Deed of Trust, and The Parties' Roles Therein

California law recognizes two formally distinct ways in which a loan may be secured by real property, either by a mortgage or a deed of trust. A mortgage involves two parties, the borrower/mortgagor provides a lien on the real property to the lender/mortgagee. A deed of trust ordinarily involves three parties, the borrower/trustor conveys the right to sell the property to a trustee, for the benefit of the lender/beneficiary. The "practical effect" of this transfer of the right of sale is the creation of a lien on the subject property. *Monterey S.P. P'ship v. W.L. Bangham,* 49 Cal.3d 454, 460, 261 Cal.Rptr. 587, 777 P.2d 623 (1989). Notwithstanding the fact that the right of sale is formally lodged with the trustee, both the beneficiary and the trustee may commence the nonjudicial foreclosure process. *Id.* (citing Cal.Code Civ. Proc. § 725a), *Kachlon v. Markowitz,* 168 Cal.App.4th 316, 340, 85 Cal.Rptr.3d 532 (2008) (citing Cal. Civ.Code § 2924). "Indeed, the beneficiary may act as trustee and enforce the trustee's authority under a deed of trust, including the power of sale." *Kalchon,* 168 Cal.App.4th at 340, 85 Cal.Rptr.3d 532. Thus, although mortgages and deeds of trust are formally distinct, under California law, " 'there is little practical difference' " between the two. 4 Witkin Summary of California Law Ch. VIII, § 5 (quoting *Domarad v. Fisher & Burke,* 270 Cal.App.2d 543, 553, 76 Cal.Rptr. 529 (1969)); *see also Monterey S.P. P'ship,* 49 Cal.3d at 460, 261 Cal.Rptr. 587, 777 P.2d 623.

***2** Here, plaintiffs' loan is secured by a deed of trust. This deed deviates from the norm by including a fourth party. Defs.' RFJN Ex. 2. As is typical, the trustor is the borrower (the plaintiff here), and the trustee is a third party not otherwise involved in the loan. *Id.* (Deed of Trust, p. 1). However, whereas the beneficiary of the trust is normally the lender (Greenpoint), the deed of trust here provides that "MERS is the beneficiary." *Id.* The deed of trust further explains that MERS "is acting solely as a nominee for Lender [Greenpoint] and Lender's successors and assigns." *Id* . The deed provides that "MERS (as nominee for Lender and Lender's successors and assigns) has the right ... to foreclose and sell the property." *Id.* (Deed of Trust, p. 3).

Plaintiff's complaint alleges that "MERS is the beneficiary for the promissory note and mortgage at issue," i.e., the deed of trust. Compl. ¶ 7. However, plaintiff's other allegations, as well as plaintiff's arguments raised in opposition to the present motion, dispute whether MERS is the "true current beneficiary" of the deed of trust. *See, e.g.,* Opp'n at 10:4. Yet another party appears related to this transaction. After the loan was made and the deed of trust was recorded, defendant EMC became the servicer of the loan. Compl. ¶¶ 4-5.[FN3]

[FN3] The multiplication of parties and elaboration of what is essentially a simple transaction appears to raise questions about whether the transaction is as straightforward as it ordinarily is.

2. Subsequent Roles of The Parties

Plaintiff contends that after the initial transaction the identities of some of the parties changed. First, plaintiff alleges that the beneficiary under both the promissory note and the deed of trust has changed, although plaintiff offers alternative allegations as to who the present beneficiaries are. At several points, plaintiff alleges that "promissory note and mortgage" have been assigned to EMC. Compl. ¶ 5, *see also* Compl. ¶ 19. Plaintiff bases this allegation on the Notice of Default, which identifies MERS "as Nominee for EMC" under the deed of trust. Compl. Ex. A. Plaintiff alternatively alleges that none of the three named defendants is "the holder[ ] of the [promissory] note identified in" the deed of trust, and that she was unable to acquire proof of the current owner of the promissory note. Compl. ¶¶ 20-21. In her opposition memorandum, plaintiff elaborates by alleging that Greenpoint "securitized" the promissory note, thereby assigning it to multiple unknown parties.[FN4] Opp'n at 2:9.

[FN4] "Securitize, vb. To convert (assets) into negotiable securities for resale in the financial market, allowing the issuing financial institution to remove assets from its books and thereby improve its capital ratio and liquidity while making new loans with the security proceeds." Black's Law Dictionary, 8th Ed.2004

Defendants dispute the allegation that the loan has been assigned to EMC, stating that "EMC has no recorded interest under the Loan" or the deeds of trust, citing the deed granting the property to plaintiff, the two deeds of trust, and the Notice of Default. The Notice of Default indicates that EMC is the actual (contra nominal) beneficiary under the deed of trust. Interpreting this document in favor of plaintiff, this document indicates that EMC has taken assignment of the loan. None of the remaining exhibits provide evidence regarding the alleged subsequent assignment, and no exhibit directly addresses who is the current holder of the promissory note-i.e., the creditor.

***3** The court notes that exhibits provided by the parties raise further confusion with respect to any assignment of the promissory note or deed of trust. Notably, EMC prepared the declaration of compliance with Cal. Civ.Code § 2923.5(b), and attached this declaration to the Notice of Default. This declaration states that the beneficiary under the deed of trust is Wells Fargo Bank, N.A. No party has addressed Wells Fargo's role, if any, in this dispute.

A second change since the loan was initiated is that the trustee has changed. The original deed of trust named Marin Conveyancing Corp. as the trustee. The notice of default recorded on February 11, 2009, identified Aztec Foreclosure Corp. as the trustee. Three months later, on May 18, 2009, a document substituting Aztec for Marin as trustee was recorded. Pl.'s RFJN Ex. 1.[FN5]

[FN5] This seemingly preposterous set of "facts" and parties once again suggests that the court must act cautiously and with deliberation unless and until the real facts and parties emerge.

B. Plaintiff's Further Allegations

Plaintiff alleges that defendants failed to make certain required disclosures at the time the loan was entered, that defendants engaged in various other misconduct at that time, and that defendants have subsequently engaged in other misconduct, primarily in connection with their attempted foreclosure of the property. In her opposition to the motion to dismiss, plaintiff clarified that many of these allegations pertain solely to Greenpoint.[FN6] Opp'n at 1:19-2:6.

[FN6] While the exhibits appear clear on this point, given the remarkable complexity of this case plaintiff's confidence is, itself, questionable. Perhaps, given all the parties that have apparently come and gone in this transaction, it may be that Greenpoint itself was fronting for some other party.

1. Failure to Make Required Disclosures

Plaintiff's first cluster of allegations concerns omissions at the time the loan was entered. Plaintiff alleges that Greenpoint “failed to disclose to Plaintiff that her income would be insufficient to repay the loan, and further failed to provide Plaintiff with information with respect to reasonable alternatives and/or more conventional loan terms.” Compl. ¶ 37. Plaintiff further alleges that Greenpoint failed to make certain timely “disclosures with respect to calculation of interest.” *Id.* at ¶ 36, 261 Cal.Rptr. 587, 777 P.2d 623. Plaintiff argues that these omissions support claims against all defendants for fraud or misrepresentation and a claim against Greenpoint and EMC under TILA. *Id.* at ¶¶ 36-38, 48, 261 Cal.Rptr. 587, 777 P.2d 623.

2. Other Misconduct at Origination

Plaintiff also alleges a variety of other misconduct at origination. Greenpoint allegedly made affirmative misrepresentations regarding a fixed interest rate period, whether plaintiff “would be able to refinance her loan before higher payments kick in,” and regarding “mortgage terms that [defendants] had no intention of providing.” *Id.* at ¶ 43, 261 Cal.Rptr. 587, 777 P.2d 623. In addition, “the purchase price of the property and the loan amount were based on [an] inflated appraisal, ... and not based on a good faith assessment and confirmation of plaintiff's ability to pay.” *Id.* at ¶ 37, 261 Cal.Rptr. 587, 777 P.2d 623. Instead, Greenpoint allegedly “inflat[ed] plaintiff's income to qualify her for a loan that she could not in reality afford,” *Id.* at ¶ 43, 261 Cal.Rptr. 587, 777 P.2d 623, and otherwise “originate[d] the loan by lowering [its] own loan and statutor[ily] required underwriting standards.” *Id.* at ¶ 38, 261 Cal.Rptr. 587, 777 P.2d 623. More generally, defendants allegedly used their superior knowledge and bargaining power to conceal and misrepresent certain material facts, “depriving plaintiff of an opportunity to properly review, analyze, and negotiate loan terms.” *Id.* at ¶ 77, 261 Cal.Rptr. 587, 777 P.2d 623. Plaintiff contends that these allegations support claims for fraud, for a violation of TILA, and for a breach of the implied covenant of good faith and fair dealing.

***4** Separate from the above, defendants allegedly accepted fees or kickbacks in exchange for referrals from other defendants, violating RESPA. *Id.* at ¶ 41, 261 Cal.Rptr. 587, 777 P.2d 623.

3. Defendants' Alleged Subsequent Acts

Plaintiff alleges that defendants have caused “significant damage to Plaintiff's credit history[ ] by reporting past due payments even though Plaintiff has been working in good faith to reasonably modify loan payment terms in accordance with the received instructions.” *Id.* at ¶ 65, 261 Cal.Rptr. 587, 777 P.2d 623. Plaintiff also alleges that defendants “intentionally forc[ed] Plaintiff into default and eventually into foreclosure proceedings.” *Id.* at ¶ 77, 261 Cal.Rptr. 587, 777 P.2d 623. This allegation apparently refers to defendants' refusal to renegotiate the loan.

Plaintiff alleges that defendants then initiated foreclosure without first attempting to contact plaintiff to discuss renegotiation of the terms of the loan, violating Cal. Civ.Code § 2923.5. Compl. ¶ 69.

Plaintiff's opposition memo alleges that she made a “Qualified Written Request,” which defendants were required to respond to under RESPA, and that defendants violated this obligation. Opp'n at 2:19-22. This allegation does not appear in the complaint, and is not further discussed here.

C. The Instant Suit

On April 20, 2009, plaintiff filed a complaint in Sacramento County Superior Court. On June 1, 2009, defendants removed the action to federal court under 28 U.S.C. §§ 1441 *et seq.* On June 8, 2009, defendants MERS and EMC together filed the instant motion to dismiss.

II. STANDARD FOR A FED. R. CIV. P. 12(B)(6) MOTION TO DISMISS

In order to survive a motion to dismiss for failure to state a claim, plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 569, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). While a complaint need not plead "detailed factual allegations," the factual allegations it does include "must be enough to raise a right to relief above the speculative level." *Id.* at 555.

The Supreme Court recently held that Federal Rule of Civil Procedure 8(a)(2) requires a "showing" that the plaintiff is entitled to relief, "rather than a blanket assertion" of entitlement to relief. *Id.* at 555 n. 3. Though such assertions may provide a defendant with the requisite "fair notice" of the nature of a plaintiff's claim, the Court opined that only factual allegations can clarify the "grounds" on which that claim rests. *Id.* "The pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action." *Id.* at 555, quoting 5 Wright & Miller, Federal Practice and Procedure, § 1216, pp. 235-36 (3d ed.2004).[FN7]

> [FN7]. The holding in *Twombly* explicitly abrogates the well established holding in *Conley v. Gibson* that, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Twombly,* 550 U.S. at 560. Indeed, however, given the apparent rigamarole the defendants have engaged in, it is not clear to this court how plaintiff could know who the responsible parties are, or which of them engaged in unlawful conduct, if anyone did.

On a motion to dismiss, the allegations of the complaint must be accepted as true. *See Cruz v. Beto,* 405 U.S. 319, 322, 92 S.Ct. 1079, 31 L.Ed.2d 263 (1972). The court is bound to give the plaintiff the benefit of every reasonable inference to be drawn from the "well-pleaded" allegations of the complaint. *See Retail Clerks Int'l Ass'n v. Schermerhorn,* 373 U.S. 746, 753 n. 6, 83 S.Ct. 1461, 10 L.Ed.2d 678 (1963). In general, the complaint is construed favorably to the pleader. *See Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), *overruled on other grounds by Harlow v. Fitzgerald,* 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Nevertheless, the court does not accept as true unreasonable inferences or conclusory legal allegations cast in the form of factual allegations. *W. Mining Council v. Watt,* 643 F.2d 618, 624 (9th Cir.1981).

III. ANALYSIS

***5** Plaintiff enumerates twelve claims. These claims seek three separate remedies: (1) they seek rescission of the loan under California law (plaintiff concedes that rescission is not available under TILA); (2) they challenge defendants' authority to foreclose on the property (quiet title, declaratory judgment, unfair debt collection and Cal. Civ.Code § 2923.5 (b) claims); and (3) they seek civil damages (unfair debt collection and all remaining claims).

The court's analysis begins with plaintiff's claim for civil conspiracy. Under California law, civil conspiracy, unlike criminal conspiracy, "is not an independent tort." *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.,* 7 Cal.4th 503, 510-511, 28 Cal.Rptr.2d 475, 869 P.2d 454 (2004); *see also Doctors' Co. v. Superior Court,* 49 Cal.3d 39, 44, 260 Cal.Rptr. 183, 775 P.2d 508 (1989). "Though [civil] conspiracy may render additional parties liable for the wrong, the conspiracy itself is not actionable without a wrong." *Okun v. Superior Court,* 29 Cal.3d 442, 454, 175 Cal.Rptr. 157, 629 P.2d 1369 (1981); *see also Sebastian Intern., Inc. V. Russolillo,* 162 F.Supp.2d 1198, 1207 (2001). Accordingly, in *Okun,* the California Supreme Court dismissed a claim for civil conspiracy to commit various torts when the plaintiff had failed to state a claim for the underlying tort. *Okun,* 29 Cal.3d at 454, 175 Cal.Rptr. 157, 629 P.2d 1369. Thus, the court dismisses plaintiff's separately enumerated claim for civil conspiracy. This is not to conclude that plaintiff may not recover on a civil conspiracy theory. Instead, plaintiff's civil conspiracy allegations are discussed, as is relevant, in the context of plaintiffs' other tort claims.

In the following sections, the court analyzes defendants' arguments for dismissal of the remaining claims. The court first addresses plaintiff's three claims for misrepresentation. The court then turns to plaintiff's non-fraud claims for injunctive relief, and finally addresses her non-fraud claims for damages.

A. Misrepresentation and Fraud Claims

Plaintiff's fourth, fifth, and sixth claims are for fraud, negligent misrepresentation, and "rescission based on fraud" under California Civil Code section 1689, respectively. Insofar as these claims allege affirmative misrepresentations, MERS and EMC argue that plaintiff has failed to plead these claims with the particularity required by Fed.R.Civ.P. 9(b). Insofar as plaintiff's claims are based on omission or concealment rather than affirmative misrepresentation, MERS and EMC argue that neither of them had a duty to disclose information to plaintiff. As I explain, the claims will be dismissed with leave to amend.

1. Affirmative Representations

Plaintiff alleges that defendants affirmatively misrepresented

> specific terms of the mortgage transaction such as a fixed interest rate period and a lower mortgage payment and that she would be able to refinance her loan before higher payments kick in, promising plaintiff mortgage terms that they had no intention of providing, and inflating Plaintiff's income to qualify her for a loan that she could not in reality afford. Plaintiff was further misled by representations made to her in her attempts to modify the terms of the loan when they became too burdensome for her.

***6** Compl. ¶ 43. These allegations are incorporated into all three fraud/misrepresentation claims.

Fed.R.Civ.P. 9(b) requires that a claim for fraud or misrepresentation allege with particularity "the circumstances constituting fraud or mistake." The pleading party must "detail with particularity the time, place, and manner of each act of fraud, plus the role of each defendant in each scheme." *Lancaster Cmty. Hosp. v. Antelope Valley Hosp. Dist.,* 940 F.2d 397, 405 (9th Cir.1991). These requirements apply to all claims averring fraud. *Vess v. Ciba-Geigy Corp. USA,* 317 F.3d 1097, 1103-04 (9th Cir.2003).

Plaintiff's allegations do not satisfy this requirement. Nothing indicates when the alleged representations were made, how they were made, or the individual making the representations.[FN8] Plaintiff argues that this Rule 9(b) standard nonetheless should not apply, because she "cannot provide the names of those involved on the lender and servicing side of the transaction. That is information only those parties would know." Opp'n, 18-19. Even if this argument is accepted, it does not excuse plaintiff's failure to specify how the alleged affirmative misrepresentations were made (e.g., orally or in writing), or when they were made. Federal cases relaxing the requirements of Rule 9(b) for claims alleging misrepresentation by omission or concealment do not apply to affirmative representations. Accordingly, insofar as plaintiff's fourth, fifth, and sixth claims are based on affirmative representations, these claims are dismissed with leave to amend.

FN8. Plaintiff's complaint also failed to identify which defendant made the representations. " Rule 9(b) does not allow a complaint to merely lump multiple defendants together[,] but requires plaintiffs to differentiate their allegations when suing more than one defendant." *Swartz v. KM-*

PG LLP, 476 F.3d 756, 764-65 (9th Cir.2007). This defect is likely to be at least partially cured by amendment, as plaintiff's opposition attributes these allegations to defendant Greenpoint.

Of course, given the way the closing papers were executed, it may be that plaintiff can do no more than allege that agents of Greenpoint committed the acts complained of. If so, she can allege the same, setting for the circumstances limiting her ability to plead more in an amended complaint.[FN9]

[FN9] Because the court concludes that plaintiff has failed to adequately allege a claim for intentional or negligent affirmative misrepresentation against any party, the court does not address plaintiff's allegations of civil conspiracy to commit such misrepresentation. *Okun,* 29 Cal.3d at 454, 175 Cal.Rptr. 157, 629 P.2d 1369. Plaintiff's argument that MERS and EMC aided or abetted an affirmative misrepresentation-an argument raised in opposition to this motion but not in the complaint-is similarly predicated on plaintiff having successfully stated a claim for misrepresentation as to at least one party owing the plaintiff a duty. *See also Henry v. Lehman Commer. Paper, Inc.,* 471 F.3d 977, 993 (9th Cir.2006).

2. Misrepresentation by Omission or Concealment

Plaintiff also alleges omission as a basis for her three misrepresentation claims. Greenpoint allegedly “withheld from Plaintiff other information necessary to make [its] [affirmative] representations not misleading, in particular by not providing proper and timely disclosures under TILA.” Compl. ¶ ¶ 48, 56, 60. In support of plaintiff's TILA claim, plaintiff alleges that Greenpoint “failed to disclose to Plaintiff that her income would be insufficient to repay the loan, and further failed to provide Plaintiff with information with respect to reasonable alternatives and/or more conventional loan terms.” *Id.* at ¶ 37. Plaintiff further alleges that Greenpoint failed to make certain timely “disclosures with respect to calculation of interest.” *Id.* at ¶ 36. All of these allegations pertain to conduct at the time the loan was negotiated and entered.[FN10]

[FN10] Although the complaint makes the above allegations as to “defendants,” plaintiff's opposition memorandum states that these allegations pertain to defendant Greenpoint.

To prevail on a claim for fraudulent concealment or omission under California law, plaintiff must show, inter alia, that defendants failed to disclose information that they had a specific duty to disclose. Cal. Civ.Code §§ 1709-1710, *Lingsch v. Savage,* 213 Cal.App.2d 729, 735, 29 Cal.Rptr. 201 (1963). Here, defendants EMC and MERS argue that they owed no such duty to plaintiff. Plaintiff's opposition does not address this argument, and plaintiff's complaint does not contain allegations supporting the inference of such a duty at the time the omissions allegedly occurred.

***7** Nor has plaintiff alleged facts sufficient to support a claim for civil conspiracy to commit fraudulent concealment or omission. I begin by noting that the California Supreme Court has explained that allegations of conspiracy “cannot create a duty.... It allows tort recovery only against a party who already owes a duty” to the aggrieved party. *Applied Equipment Corp.* 7 Cal.4th at 514, 28 Cal.Rptr.2d 475, 869 P.2d 454. Thus, “tort liability arising from conspiracy presupposes that the coconspirator is legally capable of committing the tort, i.e., that he or she owes a duty to plaintiff recognized by law and is potentially subject to liability for breach of that duty.” *Id.* at 511, 28 Cal.Rptr.2d 475, 869 P.2d 454. California courts have applied this rule in multiple contexts. *See id.* (dismissing claim for civil conspiracy for tortious interference with contract brought against contracting party),

Doctors' Co. v. Superior Court, 49 Cal.3d 39, 44, 260 Cal.Rptr. 183, 775 P.2d 508 (1989) (insurance bad faith claim against non-insurer), *Gruenberg v. Aetna Ins. Co.,* 9 Cal.3d 566, 576, 108 Cal.Rptr. 480, 510 P.2d 1032 (1973) (same), *Klistoff v. Superior Court,* 157 Cal.App.4th 469, 68 Cal.Rptr.3d 704 (2007) (when statute imposes duties on certain parties, other parties cannot be liable in civil conspiracy for violation of the statute), *Brown v. Professional Community Management, Inc.,* 127 Cal.App.4th 532, 25 Cal.Rptr.3d 617 (2005) (same), *Everest Investors 8 v. Whitehall Real Estate Ltd. Partnership XI,* 100 Cal.App.4th 1102, 123 Cal.Rptr.2d 297 (2002) (claim for civil conspiracy to breach fiduciary duty only available against parties who owe a fiduciary duty), *Khajavi v. Feather River Anesthesia Med. Group,* 84 Cal.App.4th 32, 100 Cal.Rptr.2d 627 (2000) (non-employer could not be liable for civil conspiracy to wrongfully discharge employee in violation of public policy).

Whatever the extent of the *Allied Equipment* rule, it cannot mean that a conspiracy in which some members do not owe the primary duty but are *necessary* for the success of the conspiracy are nonetheless free of liability or alternatively, perhaps, that the duty possessing tort feasor has engaged others to conceal or obfuscate his responsibility. Whether that is the case here is uncertain under the present pleadings. What is certain is that the plaintiff has not pled such a relationship or necessity. Accordingly, it follows that the allegations regarding fraud in the making of the loan must be dismissed against EMC and MERS, although with leave to amend. Moreover, the court's conclusion that no civil conspiracy liability will lie under fraud by omission claim as currently pled does not determine the applicability of civil conspiracy liability as to plaintiff's remaining claims.

3. Rescission: Remaining Issues

The above arguments do not dispose of plaintiff's claims for fraud or misrepresentation based on omissions against defendant Greenpoint. Insofar as plaintiff's claim for rescission may be based on this remaining claim for fraud, the court adopts MERS and EMC's alternate argument for dismissal of the rescission claim.

***8** To rescind a contract on the basis of fraud under Cal. Civ.Code § 1689(b)(2), a rescinding party must “[r]estore to the other party everything of value which he has received from him under the contract or offer to restore the same upon condition that the other party do likewise, unless the latter is unable or positively refuses to do so.” FN11 Plaintiff has not alleged that she has offered to return the loan, and apparently concedes that she is currently unable to do so. Instead, plaintiff argues that the court may modify the rescission procedures to allow plaintiff to make payments over time. However, all the cases cited by plaintiff which have accepted such delayed return of the consideration have concerned rescission under TILA, rather than rescission under California law. Courts interpreting the California statute have held that a party seeking rescission must credibly offer to return everything to the other party. *See Rodriguez v. Litton Loan Servicing LP,* No. 2:09-cv-00029, 2009 U.S. Dist. LEXIS 43143, *9-*10, 2009 WL 1326339 (E.D.Cal. May 11, 2009) (J. England), *Lopez v. Chase Home Financial, LLC,* No. 09-cv-0449, 2009 WL 981676, (E.D.Cal., April 9, 2009) (J. O'Neill) (quoting *Fleming v. Kagan,* 189 Cal.App.2d 791, 796, 11 Cal.Rptr. 737 (1961)), again with leave to amend. Accordingly, plaintiff's sixth cause of action, for rescission of the loan, is dismissed as to MERS and EMC.

FN11. Because of the confusion regarding the identity and roles of the parties in this case, it is not clear which party is the proper defendant in the rescission action, i.e., to which party this offer should have been made or whether any party's able or willing to restore the property to plaintiff free of the indebtedness in issue. Because the court resolves the rescission claim on other grounds, the court does not address this issue.

B. Non-misrepresentation Claims for Equitable Relief

Plaintiff further seeks injunctive relief in her claims for quiet title, unfair debt collection, violation of California Civil Code § 2923.5, unfair competition, and declaratory judgment.

1. Quiet Title

Plaintiff's first cause of action is for quiet title against all defendants. MERS and EMC seek dismissal of this claim on two grounds. First, defendants argue that plaintiff has not satisfied the pleading requirements for a claim to quiet title under California law. Second, defendants argue that exhibits which this court may consider demonstrate that the quiet title claim lacks merit. The court rejects both arguments for dismissal of this claim.

a. Pleading Requirements for California Quiet Title Claims

Under California law, a claim for quiet title must include a) a description of the property, including both its legal description and its street address, b) the title of the plaintiff and the basis of the title, c) the adverse claims to the title of the plaintiff, d) the dates as of which the determination is sought, e) and a prayer for the determination of the title of the plaintiff. Cal.Code Civ. Pro. § 761.020. Defendants argue that plaintiffs have not satisfied any of these requirements.[FN12]

Plaintiff has satisfied the requirements of sections 761.020(a), (b), (d) and (e). The complaint adequately identifies the property by address. Compl. ¶ 1. Plaintiff alleges that she is the owner of the record of the property as her basis for title. *Id.* ¶ 23, 11 Cal.Rptr. 737. Plaintiff identifies the date of the filing of the complaint as the date for which determination is sought. *Id.* ¶ 34, 11 Cal.Rptr. 737. Plaintiff seeks a judicial declaration that the title to the property is vested in plaintiff alone and that defendants have no right to the property and should be forever enjoined from asserting a right to the property. *Id.*

***9** As to subsection (c), identification of the adverse claims, MERS and EMC argue that they do not have an adverse claim to the title, and that plaintiff has failed to identify such an adverse claim, because there has not been a trustee's sale and plaintiff is still the holder of the legal title. However, the right of sale provided by the deed of trust is an interest in the property. In addition, while the right of sale is formally lodged with the trustee, the beneficiaries have the power to direct the trustee to exercise this right. *South Bay Building Enterprises, Inc. v. Riviera Lend-Lease, Inc.,* 72 Cal.App.4th 1111, 1120, 85 Cal.Rptr.2d 647 (1999) ("When a debtor defaults on a secured real property loan, the lender-beneficiary may institute nonjudicial foreclosure proceedings to trigger a trustee's sale of the property to satisfy the obligation."), *Moeller v. Lien,* 25 Cal.App.4th 822, 830, 30 Cal.Rptr.2d 777 (1994) ("Upon default by the trustor [under a deed of trust containing a power of sale], the beneficiary may declare a default and proceed with a nonjudicial foreclosure sale."). This interest, the beneficiaries' power to cause a sale of the property, is effectively a lien on the property. *Monterey S.P. P'ship v. W.L. Bangham,* 49 Cal.3d

[FN12] FN12. Defendants also argue plaintiff has not complied with the requirement in Cal. Civ.Code § 761.020 that the complaint in a quiet title action be verified. A party ordinarily verifies a pleading by swearing to the truth of the matters alleged in a pleading. 4 Witkin, California Procedure (4th ed.), Pleading § 420. Plaintiff has included a verification page in the original complaint swearing to the truth of the facts alleged. Compl. at p. 17. The court finds the complaint is sufficiently verified.

454, 460, 261 Cal.Rptr. 587, 777 P.2d 623 (1989). Cal.Code Civ. Pro. § 760.010(a) provides that a lien may properly be the subject of a quiet title action. Plaintiff has therefore alleged each of the elements of a quiet title claim.

b. Merits of Plaintiff's Quiet Title Claim

Having clarified the interest challenged by plaintiff's quiet title claim, the court turns to defendants' challenge to the merits of that claim. Plaintiff bases her claim on two theories.

First, plaintiff argues that no one other than plaintiff has a right to cause the subject property to be sold because the loan and associated deed of trust should be rescinded. However, plaintiff's only claim for which rescission is an available remedy is the claim under Cal. Civ.Code § 1689(b)(2). Because Greenpoint has not attacked the pleadings, the claim for rescission is presently undisputed as to that party.

Second, plaintiff argues that even if some person has the right to cause the property to be sold, defendants in this suit are not that person, because “they are not the holders of the note in due course or true beneficiaries under the deed of trust.” Opp'n 6:15-16. Plaintiff alleges that the obligation under the promissory note has been assigned to a person not a party to this suit. None of the exhibits in this case speak directly to the promissory note-all concern the deed of trust-and defendants have not made any statement regarding who is the current creditor. Under California Civil Code section 2936, “The assignment of a debt secured by mortgage carries with it the security.” Similarly, under California Civil Code section 2932.5:

> Where a power to sell real property is given to a mortgagee, or other encumbrancer, in an instrument intended to secure the payment of money, the power is part of the security and vests in any person who by assignment becomes entitled to payment of the money secured by the instrument.

***10** Thus, plaintiff contends when the alleged transfer of the promissory note occurred, as a matter of law the beneficiary's rights under the deed of trust were transferred as well, regardless of whether the latter transfer was intended or recorded. Opp'n, 11.

Greenpoint's status as a creditor is key to defendants' arguments that they do have the right to initiate a nonjudicial foreclosure. However, EMC and MERS have not addressed plaintiff's allegation that an assignment of the promissory note has occurred, such that Greenpoint is no longer the creditor. Although it is not clear to the court that plaintiff's theory has merit, MERS and EMC have not met their burden of showing that plaintiff cannot succeed on this theory.

2. Unfair Debt Collection

Plaintiff's seventh cause of action is brought against all defendants, for violation of California's Rosenthal Fair Debt Collection Practices Act, Cal. Civ.Code § 1788 *et seq.*, and the Federal Fair Debt Collection Act, 15 U.S.C. § 1692 *et seq.* Plaintiff alleges that “defendants caused significant damage to plaintiff's credit history, by reporting past due payments even though Plaintiff has been working in good faith to reasonably modify loan payment terms in accordance with the received instructions.” Compl. ¶ 65. MERS and EMC argue for dismissal of this claim on the ground that they are not “debt collectors” subject to liability under either act, and on the ground that foreclosure on the property is not a collection of debt.

As to the first argument, defendants offer no discussion what it means to be a debt collector under either statute, or of whether plaintiff's factual allegations fail to support the inference that MERS and EMC are debt collectors. Accordingly, this argument does not meet defendants' burden of showing that plaintiff has failed to state a claim for relief.

Defendants separately argue that their alleged reporting of plaintiff's past-due status to credit reporting agencies is an action undertaken in furtherance of foreclosure, and thereby not debt collection activity. Defendants rely on two cases. The first is *Heinemann v. Jim Walter Homes, Inc.,* 47 F.Supp.2d 716, 722 (N.D.W.Va.1998), which held that "publication of the notice of sale and the final trustees sale" of a mortgaged property was not collection of a debt, and thus not within the scope of the FDCPA. Second is *Hulse v. Ocwen Fed. Bank, FSB,* 195 F.Supp.2d 1188, 1204 (D.Or.2002), which followed *Heinemann* to conclude that "Foreclosing on a trust deed is distinct from the collection of the obligation to pay money," such that "any actions taken ... in pursuit of the actual foreclosure may not be challenged as FDCPA violations." *Hulse* then held that the act of causing a trustee's notice of sale to be filed could not support an FDCPA claim. *Id.* at 1203-04. The conduct alleged here is factually distinct from that at issue in these cases. The purported debt collection activity in those cases was the posting of a notice of sale and other activity solely connected with foreclosure, whereas plaintiff's claim here is based on reporting of default to credit reporting agencies, an activity that might have some incidental connection to foreclosure, but that is also squarely connected to debt collection. While *Hulse* and *Heineman* held that an action's connection with foreclosure is not sufficient to demonstrate that the act is debt collection activity, defendants here argue that a connection to foreclosure demonstrates that an act is not debt collection activity. These cases simply do not stand for that proposition.

3. Violation of California Civil Code § 2923.5

***11** Plaintiff's eighth claim alleges that defendants violated California Civil Code section 2923.5 by not attempting to contact and negotiate a loan with plaintiff prior to filing the notice of default. Compl. ¶ 69. SB 1137 has been codified as California Civil Code sections 2923.5 and 2923.6.[FN13]

Section 2923.5(a)(2) provides that as a prerequisite to the filing of a notice of default, a "mortgagee, beneficiary or authorized agent" must "contact the borrower in person or by telephone in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure." Cal. Civ.Code § 2923.5(a)(2). EMC prepared a notice of compliance with section 2923.5 which was attached to the notice of default, and which states that EMC attempted to contact plaintiff. Defs.' RFJN Ex. 4. However, plaintiff specifically alleges that this notice of compliance is untruthful, and that no effort to contact plaintiff was made. Compl. ¶ 11. For purposes of the present motion, the court must credit plaintiff's allegation.

Defendants also argue that section 2923.5 does not provide for a private right of action. Section 2923.5 does not explicitly provide such a right. Under California law, an implied right of action exists only when the legislature so intended. *Moradi-Shalal v. Fireman's Fund Ins. Companies,* 46 Cal.3d 287, 305, 250 Cal.Rptr. 116, 758 P.2d 58 (1988). Plaintiff in this case has not attempted to show that the legislature had this intention. Instead, plaintiff concedes that no private right of action exists, and attempts to enforce section 2923 .5 through her claim brought under California's unfair competition law. That claim is discussed below. In light of plaintiff's concession, this court will not independently evaluate the legislature's intent. The court assumes for purposes of this case that section

[FN13] FN13. Plaintiff's complaint also alleges that defendants violated Senate Bill 1137, which has been codified as Cal. Civ.Code §§ 2923.5 and 2923.6, although plaintiff's complaint contains no allegations pertaining to § 2923.6. In her opposition to the present motion, plaintiff alleges that defendants also violated § 2923.6 by failing to reach an agreement with plaintiff renegotiating the loan. However, § 2923.6 only imposes a duty on members of the loan pool to each other. *Fuentes v. Duetsche Bank,* No. 09 CV 502 JM(PCL), 2009 WL 1971610, *2 (S.D.Cal. July 8, 2009).

2923.5 does not provide a private right of action.

4. California's Unfair Competition Law

Plaintiff's eleventh claim is for unfair competition in violation of Cal. Bus. & Prof.Code section 17200 . This statute proscribes “unlawful, unfair, or fraudulent business acts.” *Id.* Here, plaintiff alleges that defendants acted unlawfully, as specified in plaintiff's other claims; plaintiff does not otherwise allege that defendants' acts were unfair or fraudulent. Compl. ¶¶ 81-82, *see also* Opp'n at 28.

Defendants raise two challenges to this claim. First, they argue that plaintiff does not satisfy the statutory standing requirements. The UCL provides a private right of action to “any person who has suffered injury in fact and has lost money or property as a result of ... unfair competition.” Cal. Bus. & Prof.Code § 17204. *See also Californians for Disability Rights v. Mervyn's, LLC,* 39 Cal.4th 223, 228, 46 Cal.Rptr.3d 57, 138 P.3d 207 (2006). At least one claim, her unfair debt collection claim, alleges that plaintiff has suffered financial loss as a result of damage to her credit history. The parties have not addressed whether plaintiff's other alleged injuries satisfy section 17204, or whether in an unfair competition claim for which standing is provided by the unfair debt collection injury plaintiff may attain the full range of remedies she seeks on this claim, and the court need not address these issues in disposing of this motion.

***12** Defendants also argue that plaintiff's unfair competition claim fails because plaintiff has not alleged a “pattern of behavior” or a “course of conduct” constituting a business practice. This argument relies on a prior version of the unfair competition statute. In 1992, the Legislature amended section 17200 to expand the definition of unfair competition to include “any unlawful, unfair, or fraudulent business *act* or practice.” (emphasis added). The 1992 amendments thereby overruled the cases defendants rely upon that limited the statute's application to a “pattern of conduct”. *See Stop Youth Addiction, Inc. v. Lucky Stores, Inc.,* 17 Cal.4th 553, 570, 71 Cal.Rptr.2d 731, 950 P.2d 1086 (1998) (quoting *State of California ex rel. Van De Kamp v. Texaco, Inc.,* 46 Cal.3d 1147, 1169-170, 252 Cal.Rptr. 221, 762 P.2d 385 (1988)). The California Supreme Court has interpreted the 1992 amendment as overruling that part of *Van De Kamp* that interpreted the statute to require more than a single “act.” *United Farm Workers of America, AFL-CIO v. Dutra Farms,* 83 Cal.App.4th 1146, 1163, 100 Cal.Rptr.2d 251 (2000) (citing *Stop Youth Addiction, Inc.,* 17 Cal.4th at 570, 71 Cal.Rptr.2d 731, 950 P.2d 1086). Accordingly, under the current version of the statute, even a single act may create liability. *United Farm Workers of America, AFL-CIO,* 83 Cal.App.4th at 1163, 100 Cal.Rptr.2d 251 (*see CRST Van Expedited, Inc. v. Werner Enterprises, Inc.,* 479 F.3d 1099, 1107 (2007) (“a business act or practice need not be an ongoing pattern of conduct”).

Accordingly, defendants' motion to dismiss is denied as to plaintiff's unfair competition claim.

5. Declaratory Relief

Plaintiff's twelfth cause of action is for declaratory and injunctive relief. Plaintiff seeks “a declaration as to the validity of the purchase money loan agreement, loan transaction, and Defendants' right to proceed with the non-judicial foreclosure of the Premises.” Compl. ¶ 90. Plaintiff bases her claim to declaratory and injunctive relief on her other eleven causes of action, and specifically on the grounds that the loan and deed of trust are void, and that defendants “might not be actual holder[s] of the original note of the Premises.” Compl. ¶¶ 88-89. Defendants argue that because all of plaintiff's other claims should be dismissed, plaintiff is not entitled to declaratory relief. Because the court has not dismissed various causes of action, defendants' motion to dismiss is denied as to plaintiff's claim for declaratory relief.[FN14]

[FN14] FN14. In opposing the present motion,

> plaintiff additionally argued that the Notice of Default, Notice of Sale and Substitution of Trustee filed by defendants violated statutory procedural requirements, namely California Civil Code sections 2924, 2924f (b) (1), and 2934a, by failing to provide specific required information. Although plaintiff did not explain how these allegations pertain to any of plaintiff's other claims, these allegations, if included in an amended complaint, may provide an independent ground for declaratory judgment.

C. Non-misrepresentation Claims for Damages

1. Truth in Lending Act (TILA)

Plaintiff's second claim is for a violation of the Truth in Lending Act, 15 U.S.C. § 1639. This claim is alleged against Greenpoint and EMC but not MERS. EMC argues that this claim should be dismissed against EMC for two reasons.

a. Whether EMC Is An Assignee under TILA

TILA imposes liability for failure to make initial disclosures only on the original creditor and that creditor's assignees. 15 U.S .C. §§ 1640, 1641. EMC argues that it is only a servicer and not an assignee subject to such liability. TILA explicitly excludes most servicers in the position EMC contends it occupies from the definition of “assignees.” 15 U.S.C. § 1641(f). To be liable as an assignee, the servicer must own the obligation, and the servicer's ownership must not be based on assignment from another creditor made solely for administrative convenience in servicing the obligation. §§ 1641(f)(1)-(2); *see also Hubbard v. Ameriquest Mortg. Co.,* No. 05-CV-389, 2008 U.S. Dist. LEXIS 75799, *9-*10, 2008 WL 4449888 (N.D.Ill. Sept. 30, 2008). Here, plaintiff alleges that the loan has been assigned to EMC. Compl. ¶ 19. Rather than arguing that any assignment was made solely for the purposes of administrative convenience, EMC argues that contrary to plaintiff's allegation, EMC has not taken assignment of the loan.

***13** Given that the Notice of Default prepared by defendants appears to identify EMC as the actual beneficiary under the deed of trust, the judicially noticeable evidence is ambiguous, and must be interpreted in favor of plaintiff. Accordingly, this argument for dismissal fails.

b. Statute of Limitations under TILA

EMC argues that plaintiff's TILA claim was filed after the expiration of TILA's one-year statute of limitations for claims for civil damages. 15 U.S.C. § 1640(e). Plaintiff's TILA claim is based on a failure to disclose the method that would be used to calculate interest, Compl. ¶ 36, failure to disclose that interest was added to principal during the initial period of fixed payments, *Id.* at ¶ 13, basing the loan on an inflated appraisal, *Id.* at ¶ 37, failure to disclose that plaintiff's income would be insufficient to pay the loan, *Id.* at ¶ 37, failure to provide plaintiff with information regarding alternative possible loan terms, *Id.* at ¶ 37, and originating the loan in violation of their unspecified underwriting standards, *Id.* at ¶ 38. All of these allegations pertain to conduct at the time the loan was originated, in late 2005. Plaintiff's complaint was filed on April 20, 2009, over three years after the alleged conduct.

Plaintiff responds that her TILA claim is not barred by TILA's one-year statute of limitations because plaintiff is entitled to either equitable tolling or equitable estoppel.[FN15] The Ninth Circuit has held that TILA's limitations period may be tolled:

> the limitations period in Section 1640(e) runs from the date of consummation of the transaction but that the doctrine of equitable tolling may, in the appropriate circumstances, suspend the limitations period until the borrower discovers or had reasonable opportunity to discover the fraud or

[FN15] Although plaintiff's memorandum refers only to equitable tolling, her arguments also implicate equitable estoppel.

nondisclosures that form the basis of the TILA action.

King v. California, 784 F.2d 910, 915 (9th Cir.1986). District courts applying *King* have held that the related doctrine of equitable estoppel is also available for TILA claims. *See, e.g., Ayala v. World Sav. Bank, FSB,* 616 F.Supp.2d 1007 (C.D.Cal.2009). " '[E]quitable estoppel applies when a plaintiff who knows of his cause of action reasonably relies on the defendant's statements or conduct in failing to bring suit.' " *Socop-Gonzalez v. INS,* 272 F.3d 1176, 1184 (9th Cir.2001) (*en banc*) (quoting *Stitt v. Williams,* 919 F.2d 516, 522 (9th Cir.1990)).

A finding of equitable estoppel rests on the consideration of a non-exhaustive list of factors, including: (1) the plaintiff's actual and reasonable reliance on the defendant's conduct or representations, (2) evidence of improper purpose on the part of the defendant, or of the defendant's actual or constructive knowledge of the deceptive nature of its conduct, and (3) the extent to which the purposes of the limitations period have been satisfied.

Santa Maria v. Pacific Bell, 202 F.3d 1170, 1176 (9th Cir.2000), *overruled on other grounds by Socop-Gonzales,* 272 F.3d 1176. While a plaintiff need not specifically allege equitable tolling or estoppel in a complaint, the complaint must provide a factual basis to support either theory. *Cervantes v. City of San Diego,* 5 F.3d 1273, 1277 (9th Cir.1993).

***14** Plaintiff's complaint alleges that she discovered that the interest rate was not fixed and that interest had been added to the principal during the period of initial payments "at the time when her fixed payment period expired," although plaintiff does not allege when that time occurred. Compl. ¶ 13. However, plaintiff has made no allegations concerning whether she had "reasonable opportunity" to discover the basis of her TILA claim at an earlier point, *King,* 784 F.2d at 915, i.e., whether the basis for these claims could have been discovered through the exercise of reasonable diligence, *Socop-Gonzales,* 272 F.3d at 1184-85.

Plaintiff also argues that the statute of limitations should not bar her TILA claim because of defendants' misconduct. An argument for equitable estoppel requires "some active conduct by the defendant 'above and beyond the wrongdoing upon which the plaintiff's claim is filed, to prevent the plaintiff from suing in time.' " *Lukovsky v. City & County of San Francisco,* 535 F.3d 1044, 1052 (9th Cir.2008) (quoting *Guerrero v. Gates,* 442 F.3d 697, 706 (9th Cir.2006)). The complaint does not identify any separate misconduct that would have this effect. The complaint contains no allegations of such separate misconduct.

Accordingly, plaintiff's TILA claim is dismissed with leave to amend.

2. Real Estate Settlement Procedures Act (RESPA)

Plaintiff's third claim is that all defendants violated the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* Defendants allegedly violated RESPA by "accepting fees, kickbacks, or other things of value from the other Defendants" as compensation for referrals. Compl. ¶ 41.

RESPA also imposes a one-year statute of limitations. 12 U.S.C. § 2614. Like plaintiff's TILA claim, this cause of action also accrued at the time the loan was entered, in late 2005. Compl. ¶ 41. Plaintiff again argues that her claim is timely because of equitable tolling.

While the Ninth Circuit has not decided whether the RESPA statute of limitations is jurisdictional, and thus whether equitable tolling or estoppel are available under RESPA, district courts in this circuit have held that tolling is available. *See Brewer v. IndyMac Bank,* 609 F.Supp.2d 1104, 1118 (E.D.Cal.2009) (following *Lawyers Title Ins. Corporation v. Dearborn Title Corp.,* 118 F.3d 1157, 1166-67 (7th Cir.1997)), *Kay v. Wells Fargo & Co.,* *N.A.,* No. 07-01351, 2007 WL 2141292 (N.D.Cal. July 24, 2007), *Blaylock v. First Am. Title Ins. Co.,* 504 F.Supp.2d 1091, 1106 (W.D.Wash.2007); *but see Hardin v. City Title & Escrow Co.,* 797 F.2d 1037, 1040-41 (D.C.Cir.1986) (holding that the RESPA statute of limitations is jurisdictional and not subject to equitable tolling). *Brewer* held that the *King* test for equitable tolling under TILA also governed equitable tolling under RESPA. 609 F.Supp.2d. at 1118 (citing *King,* 784 F.2d at 915). FN16

> FN16. The court notes that the *King* phrasing of the test for equitable tolling mirrors the tests used by the Ninth Circuit in in other contexts. *See, e.g., Santa Maria,* 202 F.3d at 1178 (ADA claim), *Stoll v. Runyon,* 165 F.3d 1238, 1242 (9th Cir.1999) (Title VII).

Plaintiff argues that the RESPA statute of limitations should be tolled for the same reasons provided for tolling of the TILA limitations period, and plaintiff provides no further allegations or argument on this issue. As explained above, plaintiff has not provided factual allegations supporting such tolling.

***15** Defendants alternatively argue that plaintiff's RESPA claim fails because plaintiff has failed to plead certain other elements of a RESPA claim. First, defendants contend that plaintiff failed to allege that any fees paid were not for services actually rendered. While plaintiff disputes that such an allegation is required, the complaint specifically alleges that fees, kickbacks, etc. were made in exchange for referrals, and by implication, not for services. Second, defendants contend that plaintiff must specifically allege pecuniary loss, under 12 U.S.C. § 2605. As the cases cited by defendants demonstrate, courts have interpreted this requirement liberally. *See Hutchinson v. Del. Sav. Bank FSB,* 410 F.Supp.2d 374, 383 (D.N.J.2006), *Cortez v. Keystone Bank, Inc.,* No. 98-2457, 2000 WL 536666, 2000 U.S. Dist. LEXIS 5705, *38-40 (E.D.Pa. May 2, 2000). Here, where plaintiff alleges that she was required to pay a referral fee that was prohibited under RESPA, plaintiff has adequately alleged pecuniary loss.

Accordingly, plaintiff's RESPA claim is dismissed with leave to amend with facts supporting equitable tolling.

3. Duty of Good Faith and Fair Dealing

Plaintiff's tenth claim is for breach of the implied covenant of good faith and fair dealing. Plaintiff alleges that defendants breached this covenant by intentionally forcing plaintiff into default and foreclosure by “depriving Plaintiff of an opportunity to properly review, analyze and negotiate the loan terms, and ultimately loan modification terms intentionally forcing Plaintiff into default and eventually foreclosure proceedings.” [sic] Compl. ¶ 77.

A claim for breach of the implied covenant depends upon the existence of an underlying contract. Insofar as this claim is predicated on conduct that occurred prior to completion of the contract, it therefore fails as to all defendants, because no contract existed at that point.

Nonetheless, plaintiff's complaint explicitly states that this claim is also predicated on conduct occurring after the loan was closed, i.e., once a contract existed. Compl. ¶ 77. The only conduct enumerated in this claim that could have occurred after this point is the deprivation of an opportunity to review loan modification terms and the act of intentionally forcing plaintiff into default. *Id.*

EMC and MERS argue that even insofar as this claim is predicated on activity occurring after the initial contract was entered, plaintiff has not alleged the existence of a contract between plaintiff and EMC or MERS. However, plaintiff has alleged that the promissory note has been assigned to EMC, and that MERS is a party to the deed of trust. EMC and MERS have not explained why these instruments do not constitute contracts.

Although plaintiff's allegations regarding loan modification and intentionally forcing plaintiff into foreclosure provide few details, these allegations suffice to state a claim for breach of the covenant of good faith and fair dealing that informs defendants of its basis. Contrary to defendants' argument, plaintiff does not merely allege the legal conclusion that a breach of the covenant occurred. Instead, plaintiff identifies the type of acts that constituted the breach.

***16** Therefore, defendant's motion to dismiss plaintiff's claim for breach of implied covenant of good faith and fair dealing is denied.

IV. CONCLUSION

For the reasons stated above, defendants' motion to dismiss is GRANTED IN PART.

1. The motion is GRANTED as to the following claims as to defendants MERS and EMC, which are DISMISSED WITHOUT PREJUDICE:

a. The second claim, for violation of TILA,

b. The third claim, for violation of RESPA,

c. The fourth claim, for fraud,

d. The fifth claim, for negligent misrepresentation,

e. The sixth claim, for rescission based on fraud,

f. The eighth claim, for violation of Cal. Civ.Code § 2923.5,

g. The ninth claim, for civil conspiracy.

2. The motion is DENIED as to the following claims:

a. The first claim, for quiet title,

b. The seventh claim, for unfair debt collection,

c. The tenth claim, for breach of the implied covenant of good faith and fair dealing,

d. The eleventh claim, for unfair competition,

e. The twelfth claim, for declaratory and injunctive relief.

Plaintiff is GRANTED twenty days to file an amended complaint.

IT IS SO ORDERED.

E.D.Cal.,2009.
Yulaeva v. Greenpoint Mortg. Funding, Inc.
Not Reported in F.Supp.2d, 2009 WL 2880393 (E.D.Cal.)

END OF DOCUMENT

C

Circuit Court of Virginia, Fauquier County.
Citizens for Fauquier County
v.
SPR Corporation, Stefano Parlagreco, and Thomas A. Greenland
AT LAW NO. CL 94-40.

March 27, 1995.

***1** This case is before the Court on a demurrer to the Plaintiff's single count motion for judgment alleging a civil conspiracy by the Defendants. It suggests that they conspired to maliciously file and prosecute federal and state claims against the Plaintiff, knowing that such actions lacked a factual predicate. The following allegations of fact are contained in the Motion for Judgment and, under familiar principles, must be taken as true on demurrer.
Thomas D. Horne, Judge.

Both the Plaintiff and the Defendant, SPR are Virginia corporations. Messrs. Parlagreco and Greenland are residents of Fauquier County and shareholders of SPR.

The Plaintiff alleges that the Defendants unlawfully conspired to file against it both federal and state law suits. These actions were commenced in December, 1990, with the filing of claims against both the instant Plaintiff Citizens for Fauquier County (CFFC) as well as others. CFFC is an entity whose purpose is to make known its views on matters of public interest in Fauquier County. Earlier in that year, CFFC had undertaken to oppose a venture between SPR and the County of Fauquier.

The undertaking by SPR and the County of Fauquier involved the development and rental of office space by SPR for use by the County. Defendants alleged in their federal and state claims that CFFC and others had, in the course of pursuing their objectives, conspired to interfere with contractual relations, conspired to harm business, and otherwise hindered SPR, Parlagreco, and Greenland in their venture, thereby causing them injury.

On February 1, 1991, the United States District Court dismissed with prejudice all claims filed by SPR, Parlagreco, and Greenland then pending in that court. A notice of appeal was subsequently filed and ultimately dismissed voluntarily. On September 24, 1992, SPR, Parlagreco, and Greenland nonsuited the state court action.

In a prior action before this Court, the instant Plaintiff sought relief against these Defendants for having filed the federal and state court suits. It alleged in Law No. CL92-362, filed December 11, 1992, that the instant Defendants had maliciously prosecuted both the federal and state court actions, conspired to injure the Plaintiff by such malicious prosecutions, and had conspired to injure the Plaintiff in its business and reputation under Virginia Code ” 18.2-499 and 18.2-500.

Defendants' demurrers to the first, second, and fourth counts of the Motion for Judgment in Law No. CL92-362 were sustained, although the Plaintiff was granted leave to replead. The Court overruled the demurrer to the civil conspiracy count as to each of the Defendants. Although the Defendants' demurrers to an Amended Motion for Judgment were again sustained as to the first, second, and fourth counts, the demurrers to the civil conspiracy count against each of the Defendants in the present case were again overruled.

On August 9, 1993, the Court entered an order of nonsuit as to the remaining civil conspiracy count alleged against SPR, Parlagreco, and Greenland in Law No. CL92-362. Plaintiff appealed the adverse ruling of the trial Court as to the three counts to which a demurrer was sustained. Finding no error, the Supreme Court denied review of the action of the trial court. Thus, for purposes of determining the merits of the instant demurrer, the Court will treat as final the rulings adverse to the Plaintiff as to its claims of malicious prosecution of the federal and state lawsuits and of statutory conspiracy. The Plaintiff filed the Motion for Judgment in the instant action on February 8, 1994.

***2** In this case, Law No. CL94-40, the Plaintiff, in a single count motion for judgment alleging civil conspiracy by the Defendants, seeks a judgment, jointly and severally, in the amount of $400,000.00 in compensatory damages and $1,000,000.00 in punitive damages.

On June 13, 1994, the Defendants filed a demurrer to the motion for judgment, asserting that the suit does not state a cause of action against the Defendants. A fair reading of the pleadings and memoranda evidences the following theories in support of the defendants' demurrer: 1) that Plaintiff has failed to state a claim for civil conspiracy against them because Parlagreco and Greenland pursued the law suits as shareholders of SPR and not in their individual capacities; 2) that as officers, directors, and shareholders of SPR Corporation, Parlagreco and Greenland cannot as a matter of law conspire with the corporation; 3) that the Circuit Court of Fauquier County, in Law No. CL92-362, ruled that, as a matter of law, the filing of the law suits by these Defendants were not acts of malicious prosecution, and consequently, res judicata would serve as a bar to the present claims; 4) that the Plaintiff does not allege an unlawful act or unlawful means to perform a lawful act as a conspiratorial goal which would support a claim of for civil conspiracy under Virginia law; and 5) that ' 8.01-271.1 of the Code of Virginia is not an actionable “wrong” that would support a claim of civil conspiracy.

After consideration of the memoranda of law filed with the Court and the argument of counsel, and for the reasons hereinafter stated, the Court finds that Plaintiff has not sufficiently stated a cause of action for civil conspiracy and will sustain the demurrer.

In ruling on a demurrer, the Court may consider facts expressly alleged, facts fairly inferred from facts alleged, and facts impliedly alleged. Rosillo v. Winters, 235 Va. 268 (1988). A review of the pleadings would suggest there are factual issues raised by the first two grounds stated above which cannot be resolved on demurrer.

The Defendants contend that the doctrine of res judicata is applicable to the instant claim as a result of the ruling of the trial court on the instant Plaintiff's prior claims. The doctrine of res judicata only applies if the judgment in the first claim goes to the merits of the case. Hosier v. Hosier, 221 Va. 827 (1981). A decision on an issue of law on a demurrer, is a decision on the merits and constitutes res judicata as to any other proceedings where the same parties and the same issues are involved. Gimbert v. Norfolk Southern R. Co., 152 Va. 684 (1929). In order for res judicata to apply, however, the same parties (or parties in privity) must be involved in the same cause of action in both claims, in addition to the requirement that the first claim must have been finally adjudicated. See, e.g., Dotson v. Harman, 232 Va. 402 (1986); K & L Trucking Co. v. Thurber, 1 Va. App. 213 (1985); Allstar Towing, Inc. v. City of Alexandria, 231 Va. 421 (1986); Faison v. Hudson, 243 Va. 413 (1992).

***3** In determining whether two claims constitute the same cause of action, the Supreme Court of Virginia has looked to two factors: the nature of relief sought and the elements of proof. See, e.g., Wright v. Castles, 232 Va. 218 (1986); Bernau v. Nealon, 219 Va. 1039 (1979).

In the present case, the Court is of the opinion that the causes of action alleged in the first claim and the second claim are substantially different. The prior claim for malicious prosecution failed to state a claim of special injury. This failure to plead special injury was fatal to Plaintiff's earlier action for malicious prosecution.

The instant claim for conspiracy is not dependent upon malicious prosection as the actionable wrong through which the conspiracy acted and caused damage to the Plaintiff. Plaintiff alleges a civil conspiracy based on the “unlawful” filing of a lawsuit under Virginia Code ' 8.01-271.1, Code of Virginia.

A civil conspiracy is an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful. Hechler Chevrolet, Inc. v. General Motors Corp., 230 Va. 396, 402 (1985). Said another way, a civil conspiracy is a combination of two or more persons to accomplish by concerted action an unlawful or oppressive object, or a lawful object by unlawful or oppressive means. Bull v. Logetronics, Inc., 323 F. Supp. 115 (E.D. Va. 1971).

Virginia Code ' 8.01-271.1 provides that sanctions shall be imposed by the Court upon attorneys and/or parties who file with the court a pleading, motion, or other paper which, after reasonable inquiry is not well-grounded in fact, or is not interposed for improper purpose, such as to harass or cause unnecessary cost in litigation.

In determining whether the allegations, on their face, constitute a cause of action for civil conspiracy in Virginia, two questions must be asked: 1) Has the Plaintiff alleged an unlawful act or unlawful means to perform a lawful act as a conspiratorial goal supporting a claim of civil conspiracy as a cause of action under Virginia law?; and 2) May an action for civil conspiracy be maintained where ' 8.01-271.1, Code of Virginia is the basis of the alleged wrong?

As stated above, a civil conspiracy is an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful. Hechler at 402. Thus, the Court must determine whether allegations based on a violation of Virginia Code ' 8.01-271.1 describe an “unlawful act” or the “use of unlawful means to do an act which is lawful.”

The Court finds, as logic dictates, that violating ' 8.01-271.1 is unauthorized by Virginia law, and that such a violation can fairly be construed as “unlawful.” The Court finds that the Plaintiff accordingly has not failed to allege an “unlawful act” or the “use of unlawful means to do an act which is lawful.” The Court will not sustain a demurrer on this basis.

***4** In determining whether or not the allegations state a cause of action for civil conspiracy, the Court must look to the allegations of the underlying wrong. As the Supreme Court has observed,

“The gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy and not the mere combination of two or more persons to accomplish an unlawful purpose or use unlawful means. In other words, the basis of the action is the wrong which is done under the conspiracy and which results in damage to the plaintiff.” Gallop v. Sharp, 179 Va. 335, (1942).

Accordingly, the Court must rule whether or not an alleged violation of Virginia Code ' 8.01-271.1 is a proper foundation upon which to base a claim of civil conspiracy.

The Supreme Court of Virginia has not set a standard setting forth the requirements for the underlying alleged wrong in a case of civil conspiracy. This Court has reviewed case law in other jurisdictions for guidance.

Courts have in some instances employed an analysis based on the culpability level of the underlying wrong in a civil conspiracy. In at least one jurisdiction, the underlying wrong in a civil conspiracy action must be an intentional tort or a crime. “To establish an underlying unlawful act in Pennsylvania, plaintiff must prove that the parties came together for the express purpose of committing either a criminal act or an intentional tort.” Advanced Power Systems v. Hi-Tech Systems, 801 F.Supp. 1450, 1458 (E.D.Pa. 1992).

Other courts have ruled that a tort must have been committed as a result of a civil conspiracy for the conspiracy to be actionable. “Because no separate and distinct civil conspiracy tort exists, liability attaches only if one of the conspirators is liable for an underlying tort." Riley v. Dow Corning Corp., 767 F.Supp. 735, 740 (M.D.N.C. 1991). "A claimant must plead specific wrongful acts which constitute an independent tort." John's Insulation v. Siska Const. Co., 774 F.Supp. 156, 161 (S.D.N.Y. 1991). "Because [the plaintiff] has failed to state any tortious action, its conspiracy action must also fail." Admiral Ins. v. Columbia Ins., 486 N.W.2d 351, 359 (Mich.App. 1992).

A less stringent standard, allowing for an underlying nontortious "wrong," has been established in some jurisdictions. "To establish the •wrongful act' element of civil conspiracy, [third-party plaintiff] must satisfy all the elements of a cause of action for some other tort or wrong." General Life Ins. Co. v. Rana, 769 F.Supp. 1121, 1125 (N.D. Calif). "[A] cause of action for civil conspiracy cannot stand by itself, but must rest upon the successful allegation of an underlying wrong." Barney v. Aetna Cas. & Sur. Co., 230 Cal.App.3d 981 (1986). "[Defendants] interpret the...elements of civil conspiracy to require allegations of an unlawful, overt act which must itself be independently actionable in tort. We disagree. Quoting American Jurisprudence 2d, this court in Illinois Traffic Court Driver Improvement Educational Foundation v. Peoria Journal Star, Inc., 494 N.E.2d 939, 944 (Ill.App.3 Dist. 1986), noted that ••in a civil action based on a conspiracy, no cause of action can exist in the absence of an overt, tortious, or unlawful act committed in the furtherance of the conspiracy.' (16 Am.Jur.2d, Conspiracy ' 51.' The conjunctive •or' in this passage indicates alternatives in a series and not, as defendants argue, cumulative requirements of the tort. Therefore, we hold that an alleged overt or unlawful act need not be tortious or otherwise actionable in tort to support a cause of action for civil conspiracy." Vance v. Chandler, 597 N.E.2d 233, 235 (Ill.App.3 Dist. 1992). "Conspiracy is not itself actionable in the absence of an underlying wrongful act or tort." Williams v. Mercantile Bank of St. Louis, 845 S.W.2d 78, 85 (Mo.App. E.D. 1993).

***5** An alternative dichotomy to that analysis is one based on the actionability of an underlying claim. "An act which does not constitute a basis for an action cannot serve as the basis for a conspiracy claim." Czarnecki v. Roller, 726 F.Supp. 832, 840 (S.D.Fla. 1989). "[T]he act (or means) need only be •of such a character as to create an actionable wrong'." Alexander v. Evander, 596 A.2d 687, 700 (Md.App. 1991) (quoting Knoche v. Standard Oil Co., 138 Md. 278, 113 A. 754 (1921)). "To be actionable a civil conspiracy must embody an underlying wrong which would be actionable in the absence of a conspiracy." Connolly v. Labowitz, 519 A.2d 138, 143 (Del.Super. 1986). "A conspiracy cannot be made the subject of a civil action unless something is done which, without the conspiracy would give a right of action." Palmer v. Westmeyer, 549 N.E.2d 1202, 1207 (Ohio App. 1988). "Where damage results from an act which, if done by one alone, would not afford ground of action, the like act would not be rendered actionable because done...in pursuance of a conspiracy." Id. "Under Florida law, actionable civil conspiracy must be based on an existing independent wrong or tort that would constitute a valid cause of action if committed by one actor." Williams Elec. Co. Inc. v. Honeywell, Inc., 772 F.Supp. 1225, 1239 (N.D.Fla. 1991).

In Virginia, the dividing line has not been drawn expressly. Under the first analysis, which sets a standard according to the type of wrong, Virginia case law seems to indicate that a wrong, even though not a common law tort action, would form a proper underpinning in a claim of civil conspiracy. In Hechler, a civil conspiracy was defined as "an agreement or understanding between two or more persons to do an unlawful act, or to use unlawful means to do an act which is lawful." Hechler at 402. The language in Logetronics does not indicate that "unlawful" might not include acts "unauthorized by law" which are not common law torts or crimes. Logetronics at 134. There is no Virginia authority which would preclude a civil conspiracy claim under '8.01-271.1 under this analysis.

Under the actionability analysis, however, Virginia law indicates that a claim of civil conspiracy may not be maintained using ' 8.01-271.1. It is well-established Virginia law under Gallop v. Sharp that “the gist of the civil action of conspiracy is the damage caused by the acts committed in pursuance of the formed conspiracy,” that “the basis of the action is the wrong which is done under the conspiracy and which results in damage to the plaintiff.” Gallop, 179 Va. at 335, 19 S.E.2d at 84. This statement of the law is consistent with the actionability standard in that it requires focus on the underlying alleged wrong. Where there is no actionable claim for the underlying alleged wrong, there can be no action for civil conspiracy based on that wrong. For this reason, an action for conspiracy based upon malicious prosection must failed, as any harm to the Plaintiff caused by such prosecution is barred by the actions of the trial court in the prior proceeding.

***6** Prosser and Keeton also emphasize that the injury caused by the acts comprising the underlying wrong, not the mere combination of the actors in a conspiracy, is the heart of a civil conspiracy claim. “[S]ome act must be committed by one of the parties in pursuance of the agreement.” Prosser and Keeton on Torts, Fifth Edition, Joint Tortfeasors ' 46 Concerted Action. “The gist of the action is not the conspiracy charged, but the tort working damage to the plaintiff.” Id. (quoting James v. Evans, 149 F. 136, 140 (3rd Cir. 1906).)

A motion made under ' 8.01-271.1 is not itself an actionable claim in Virginia. It is a collateral proceeding to a substantive cause of action. Federal jurisprudence regarding Rule 11 of the Federal Rules of Civil Procedure supports this position. Rule 11 is an analogous federal provision materially similar to Virginia's ' 8.01-271.1. See, Oxenham v. Johnson, 241 Va. 281 , 286 (1991). The Supreme Court of the United States has noted the collateral nature of the relief granted pursuant to Rule 11. Cooter & Gell v. Hartmax Corp., 496 U.S. 384 (1990).

A Virginia court has incorporated Rule 11 analysis in ruling on ' 8.01-271.1 . In Covington v. Haboush, 28 Va. Cir. 360 (1992), the Circuit Court of the City of Richmond was presented with the issue of whether Virginia Code '8.01-271.1 can constitute a cognizable claim by itself. That Court ruled that the code section “is not a substantive right and cannot form the basis for a cause of action. Sanctions under ' 8.01-271.1 have to be sought by motion in a pending action. Id. at 363. That Court cited Cohen v. Lupo, 927 F.2d 363 (9th Cir. 1991), wherein the Court of Appeals for the Ninth Circuit stated that Rule 11 is a rule of court and not a separately actionable substantive right and that there can be ”no independent cause of action instituted for Rule 11 sanctions.“”

There being no cause of action for a claim under ' 8.01-271.1, the Court rules that it may not be the foundation of a claim for civil conspiracy. A party seeking relief under ' 8.01-271.1 may not bring a separate claim under that code section. Simply alleging a conspiracy to violate ' 8.01-271.1 does not create an actionable claim. “Since the underlying...counts do not state a cause of action, the allegations that the acts constituting [the underlying wrong] were the result of the conspiracy cannot •breathe life into a cause of action which was otherwise nonexistent'." Williams v. Mercantile Bank of St. Louis, 845 S.W.2d 78, 85 (Mo.App. E.D. 1993) (quoting Bockover v. Stemmerman, 708 S.W.2d 179, 182 (Mo.App. 1986). The Court sustains the defendants' demurrer on this basis.

***7** Mr. Miller shall draw an Order consistent with this opinion to which counsel may note their exceptions.

Va.Cir.Ct. 1995.
Citizens for Fauquier County v. SPR Corp.
Not Reported in S.E.2d, 37 Va. Cir. 44, 1995 WL 1055819 (Va.Cir.Ct.)

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United States Bankruptcy Court, E.D. Virginia,
Richmond Division.
In re LANDAMERICA FINANCIAL GROUP, INC., et al., Debtors.
Frontier Pepper's Ferry, LLC, Plaintiff,
v.
Landamerica 1031 Exchange Services, Inc., Defendant.
Howard Finkelstein, Plaintiff,
v.
Landamerica 1031 Exchange Services, Inc., Defendant.
Matthew B. Luxenberg, Trustee of the Matthew B. Luxenberg Revocable Family Trust, Plaintiff,
v.
Landamerica 1031 Exchange Services, Inc., Defendant.
Bankruptcy No. 08-35994-KRH.
Adversary Nos. 08-03148, 08-03171, 09-03023.

May 7, 2009.

West KeySummary
Bankruptcy 51 🔑2543

51 Bankruptcy
51V The Estate
51V(C) Property of Estate in General
51V(C)2 Particular Items and Interests
51k2543 k. Property Held by Debtor as Trustee, Agent, or Bailee. Most Cited Cases

Exchange funds delivered to a Chapter 11 debtor on behalf of plaintiffs for the purpose of facilitating three like-kind exchange transactions under § 1031 of the Internal Revenue Code constituted property of the debtor's bankruptcy estate. Although the exchange funds were deposited into the debtor's commingled operating account, the funds were not excluded from property of the bankruptcy estate because they were not the subject of an express or resulting trust. The plain, unambiguous language of the exchange agreements clearly established that it was neither the debtor's nor the plaintiffs' intent to create an express trust. Further, the agreements constituted integrated contracts by including a merger clause, and this precluded the plaintiffs from using parol evidence to prove the existence of an express trust. 26 U.S.C.A. § 1031; 11 U.S.C.A. § 541.

Bruce E. Arkema, Ronald Allen Page, Jr., Cantor Arkema, P.C., Richmond, VA, for Plaintiff.

Dion W. Hayes, John H. Maddock, III, McGuireWoods LLP, Richmond, VA, for Defendant.

MEMORANDUM OPINION

KEVIN R. HUENNEKENS, United States Bankruptcy Judge.

***1** Before the Court are the cross-motions for partial summary judgment of the plaintiffs Frontier Pepper's Ferry, LLC ("Frontier"), Howard Finkelstein ("Finkelstein"), and Matthew B. Luxenberg, Trustee of the Matthew B. Luxenberg Revocable Family Trust ("Luxenberg" and together with Frontier and Finkelstein the "Plaintiffs"), on the one hand, and of the defendant, LandAmerica 1031 Exchange Services, Inc. ("LES" or "Debtor"), and the Intervenors, The Official Committee of Unsecured Creditors of LandAmerica Financial Group, Inc. (the "LFG Committee") and The Official Committee of Unsecured Creditors of LandAmerica 1031 Exchange Services, Inc. (the "LES Committee" and together with the LFG Committee the "Committees"), on the other hand.

The question presented by the cross motions for partial summary judgment is whether certain exchange funds and other consideration delivered to LES on behalf of the Plaintiffs for the purpose of facilitating three like-kind exchange transactions under § 1031 of the Internal Revenue Code constitute property of the bankruptcy estate of LES where the exchange funds were deposited into a commingled operating account of the Debtor. On April 15, 2008, the Court issued a Memorandum Opinion in *Millard v. LandAmerica 1031 Exchange Services, Inc.*[FN1] wherein the Court addressed many of the same legal issues that are presented in these motions. The primary factor that distinguishes *Millard* from the motions at bar is that the exchange funds in *Millard* were deposited into segregated accounts whereas the exchange funds that are the subject of these motions were deposited into the commingled operating account of the Debtor. For many of the same reasons as previously enunciated in *Millard,* the Court answers the question presented by the cross-motions in these cases in the affirmative. The exchange funds are not held by the Debtor subject to an express trust or a resulting trust and cannot be excluded from property of the bankruptcy estate for that reason.

This case is one of over 100 adversary proceedings that have been brought, so far, by former customers of LES in connection with its chapter 11 bankruptcy case. Each of these former customers asserts that money and other consideration deposited with LES to facilitate like-kind exchanges under § 1031 of the Internal Revenue Code was held in trust for its benefit and should be returned to it. As of November 26, 2008, the date that LES filed its bankruptcy petition (the "Petition Date"), LES had approximately 450 uncompleted exchange transactions. Each of these uncompleted exchange transactions was governed by a separate exchange agreement executed by LES and its former customer.

LES identified two primary types of exchange agreements that it had utilized in the course of its operations: (a) agreements that included language contemplating that the applicable exchange funds would be placed into an account or sub-account associated with the relevant customer's name (the "Segregated Account Agreements"); and (b) agreements that did not include this "segregation" language (the "Commingled Account Agreements"). Approximately 50 of the uncompleted exchange transactions involved Segregated Account Agreements while the remaining approximately 400 of the uncompleted exchange transactions involved Commingled Account Agreements.

***2** The Court entered a protocol order on January 16, 2009, wherein the Court stayed the litigation in all but five of the over 100 adversary proceedings (the "Protocol Order"). Five lead cases were selected to proceed on an expedited basis because they presented legal and factual issues that were common to certain of the other adversary proceedings. Two of the select cases were representative of customers who had Segregated Account Agreements: customers with escrow account agreements and customers with segregated exchange agreements. The *Millard* case, in which the Court issued its April 15, 2008, Memorandum Opinion, was representative of customers who had segregated exchange agreements. In *Millard,* the Court held that the exchange funds held by LES in segregated accounts were property of its bankruptcy estate.

The three lead cases now before the Court are representative of customers who had Commingled Account Agreements: those with type A agreements, those with type B agreements, and customers with hybrid type B agreements whereunder both cash and non-cash proceeds were transferred to LES. As defined by the parties, Commingled Type A Cases generally involve the wire transfer of exchange funds to an LES account at SunTrust Bank; Commingled Type B Cases generally involve the deposit by LES of exchange funds into an LES account at SunTrust Bank.[FN2] Other than the inclusion of non-cash proceeds, the hybrid agreements are otherwise Type B agreements. Finkelstein's and Frontier's cases are representative of the "Commingled Type B" cases and Luxenberg's case is representative of the "Commingled Type A" cases.

By Order entered February 10, 2009, the Court divided the litigation involving the five lead cases into phases and limited the scope of the first phase to tracing of exchange funds, contractual interpretation of the exchange agreements, the existence of an express trust and the existence of a resulting trust. Specifically, the Court declined to consider at this stage of the litigation whether the exchange agreements are, or should be, the subject of a constructive trust. Hearing was conducted on the cross-motions for partial summary judgment on April 16, 2009, at which counsel for the parties presented argument. Pursuant to the terms of the Court's Protocol Order, all of the parties to the stayed adversary proceedings were permitted to file amicus briefs advocating their respective positions.

This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.[FN3] The Court has subject matter jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§ 157(a) and 334 and the General Order of Reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (M) and (O), in which final orders or judgments may be entered by a bankruptcy judge. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1409(a).

Issues Presented

***3** Plaintiffs contend that they are entitled to partial summary judgment because their exchange funds were held by LES in trust for their benefit, and, therefore, the exchange funds should be turned over to them outside of the bankruptcy pro rata distribution system. LES and the Committees counter that all three Plaintiffs entered into agreements with LES to facilitate like-kind exchange transactions under Section 1031 of the Internal Revenue Code. All three deposited money or other consideration (the "Exchange Funds") with LES which was in all respects treated as property of LES. LES and the Committees point out that under the terms and provisions of the exchange agreements, the Plaintiffs each disclaimed all "right, title and interest" in and to the Exchange Funds and provided LES with exclusive rights of "dominion, control and use" of the Exchange Funds. LES and the Committees assert that the Plaintiffs vested full authority over the Exchange Funds with LES; and, in so doing, transferred clearly more than bare legal title to the Exchange Funds. LES promised to pay a defined rate of interest on the Exchange Funds and to repay the Exchange Funds at some future point in accordance with the contractual terms. LES and the Committees therefore argue that the Exchange Agreements created nothing more than a debtor-creditor relationship; and, as unsecured creditors of LES, Plaintiffs are not entitled to any recovery beyond that which the Bankruptcy Court grants to similarly-situated creditors in due course.

Undisputed Facts

Plaintiff Luxenberg is a physician residing in California. He is the trustee of the Matthew B. Luxenberg Revocable Family Trust, a trust created under California law. Plaintiff Frontier is a Virginia limited liability company with its principal place of business in Richmond, Virginia. Plaintiff Finkelstein is an individual residing in Garden City, New York

Defendant Debtor LES is a wholly owned subsidiary of LandAmerica Financial Group, Inc. ("LFG"). On November 24, 2008, LES ceased doing business as a qualified intermediary for like-kind exchanges, and on November 26, 2008, it filed, along with LFG, a petition for relief under Chapter 11 of the United States Bankruptcy Code in this Court. The LES Committee and the LFG Committee are both statutory committees appointed in the respective bankruptcy cases of LES and LFG. The Committees were each granted leave to intervene in this action.

Prior to the Petition Date, LES was a qualified intermediary for like-kind exchanges consummated by taxpayers pursuant to § 1031 of the Internal Revenue Code, 26 U.S.C. § 1031 ("1031 Exchange"). A 1031 Exchange allows a taxpayer to defer the payment of tax that otherwise would be due upon the realization of a gain on the disposition of business or investment property. *Id.* In the typical transaction, an exchanger such as one of the Plaintiffs assigns its rights as seller under a purchase agreement for the disposition of business or investment property (the "Relinquished Property") to a qualified intermediary such as LES. The purchaser of the Relinquished Property transfers the net sales proceeds directly to the qualified intermediary.

***4** The exchanger must identify like-kind replacement property (the "Replacement Property") within 45 days. The exchanger has 180 days to close on the Replacement Property. *See id.* The qualified intermediary purchases the Replacement Property and then transfers the Replacement Property to the exchanger. In the event that the Replacement Property is not identified or closed within the specified time periods, then the qualified intermediary pays an amount equal to the net sales proceeds to the exchanger. This series of transactions is governed by a written exchange agreement executed by the exchanger and the qualified intermediary.

In connection with its business as qualified intermediary for like-kind exchanges, LES maintained a general, multipurpose checking account at SunTrust Bank, Inc. ("SunTrust") since 1992. This checking account was titled in LES' own name, bearing an account number with the last four digits "3318." LES used this account as its general operating account. The SunTrust account received cash from various sources including cash (i) in the form of certain customers' exchange funds, (ii) in the form of service fees charged to customers, (iii) in the form of interest, and (iv) in the form of returns on LES' investments. LES disbursed funds from the SunTrust account to pay its expenses, to pay dividends to LFG, to make investments in other investment vehicles, and to purchase replacement property for customers who had not insisted that their exchange funds be deposited in segregated accounts. LES used funds in the SunTrust account to invest in a variety of short-term investments, including money market mutual funds, short-term bonds, certificates of deposit, floating rate notes, and auction rate securities.[FN4] The auction rate securities were held in a brokerage investment account at SmithBarney and SunTrust Robinson Humphrey. Each evening, the aggregate cash balance in the SunTrust account was swept out into an LES overnight investment account and then returned to the SunTrust account the following morning. The SunTrust account is referred to as the commingled account of LES (the "Commingled Account").

Plaintiffs Frontier, Finkelstein, and Luxenberg executed separate Exchange Agreements with LES (the "Exchange Agreements") [FN5]. The Exchange Agreements were identical as to certain key provisions regarding LES's control and use of the funds transferred to LES by Plaintiffs. The Exchange Agreements uniformly provide that Plaintiffs assigned to LES their rights as sellers under purchase agreements for three Relinquished Properties. The net consideration from the sale of Plaintiffs' Relinquished Properties was initially deposited into the Debtor's Commingled Account.[FN6] From the moment the Plaintiffs authorized LES to receive the proceeds of their Relinquished Property sales, LES commingled those funds and treated them as its own.

Section 2 of each of the Exchange Agreements provides in pertinent part:

> ***5** (c) LES shall have sole and exclusive possession, dominion, control and use of all Exchange Funds, including interest, if any, earned on the Exchange Funds.... Taxpayer shall have no right, title, or interest in or to the Exchange Funds or any earnings thereon and Taxpayer shall have no right, power, or option to demand, call for, receive, pledge, borrow or otherwise obtain the benefits of any of the Exchange Funds....

The Exchange Agreements differ with respect to Section 3. Luxenberg's Exchange Agreement provides that "Taxpayer will receive interest on the Exchange Funds at ... [accrual of interest at a certain rate] from the first business day following *LES' receipt of funds via wire transfer to the LES account in Richmond, Virginia, that it maintains at SunTrust Bank for the purpose of collecting taxpayers' exchange funds,* or from three business days after receipt in Richmond, Virginia, if sent by check ...." (emphasis added).FN7 In contrast, the Exchange Agreements executed by Frontier and Finkelstein provide that *"LES will deposit the Exchange Funds in an account maintained at SunTrust Bank in Richmond, Virginia,* and guarantees Taxpayer will receive interest on the Exchange Funds at ... [accrual of interest at a certain rate] from the first business day following receipt of funds via wire transfer at Richmond, Virginia, or from three business days after receipt in Richmond, Virginia, if sent by check ...." (emphasis added). FN8

Section 4 of each of the Exchange Agreements sets forth the procedures for Plaintiffs to identify their Replacement Properties. Section 5 of each of the Exchange Agreements sets forth the terms under which LES will acquire the Replacement Properties and transfer them to Plaintiffs. Section 6 of each of the Exchange Agreements makes clear that the sole purpose of the Exchange Agreements is to facilitate the exchange of the Relinquished Properties for the Replacement Properties. Section 6(c) of each of the Exchange Agreements limits the duties and obligations of LES. That section provides:

> LES shall only be obligated to act as an intermediary in accordance with the terms and conditions of this Exchange Agreement and shall not be bound by any other contract or agreement, whether or not LES has knowledge of any such contract or agreement or of its terms or conditions. LES has undertaken to perform only such duties as are expressly set forth herein, and no additional duties or obligations shall be implied hereunder or by operation of law or otherwise.

Each of the Exchange Agreements contains an integration (or merger) clause in section 11 providing that "[t]his Exchange Agreement contains the entire understanding between and among the parties hereto."

Standard for Entry of Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure, made applicable to these proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that summary judgment should be granted "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 327, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In determining whether this showing has been made, the court must assess the evidence in the light most favorable to the party opposing the motion. *See, e.g., Charbonnages de France v. Smith,* 597 F.2d 406, 414 (4th Cir.1979).

***6** The United States Supreme Court has made clear that summary judgment is not a disfavored procedural shortcut, but rather an integral part of the Federal Rules, which are designed "to secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett,* 477 U.S. at 32 (quoting Fed.R.Civ.P. 1); *see also Thompson Everett, Inc. v. Nat'l Cable Adver., L.P.,* 57 F.3d 1317, 1322-23 (4th Cir.1995); *Sibley v. Lutheran Hosp. of Md., Inc.,* 871 F.2d 479, 483 n. 9 (4th Cir.1989); *Schultz v. Wills (In re Wills),* 126 B.R. 489, 494 (Bankr.E.D.Va.1991).

A party moving for summary judgment bears the initial burden of demonstrating that there is no genuine issue of material fact. *See Celotex Corp. v. Catrett,* 477 U.S. at 322. Summary judgment is appropriate only where there are no "disputes over facts that might affect the outcome of the suit;" disputes over mere peripheral or irrelevant facts are not sufficient. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202

(1986).

If the moving party demonstrates that there is no genuine issue of material fact, the burden shifts to the nonmoving party to produce evidence to demonstrate that there is indeed a genuine issue for trial. Fed.R.Civ.P. 56(e)(2) ("When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must-by affidavits or as otherwise provided in this rule-set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party."); *see also Celotex Corp. v. Catrett,* 477 U.S. at 325; *RGI, Inc. v. Unified Indus., Inc.,* 963 F.2d 658 (4th Cir.1992).

The parties all assert that summary judgment is appropriate in this case because there is no dispute as to any material fact regarding the subject transactions. Resolution of the matters in dispute involves the interpretation of three substantially similar contracts, none of which is ambiguous.[FN9] Furthermore, as all of the parties have filed motions for summary judgment, no party can be heard to complain that it will be deprived of a right to trial if summary judgment is entered.

Discussion

Section 541 of the Bankruptcy Code provides for the creation of a bankruptcy estate upon the filing of a bankruptcy petition.[FN10] Property included within that estate is defined very broadly to include every interest that a debtor has in property as of the commencement of the bankruptcy case, wherever located and by whomever held. *United States v. Whiting Pools, Inc.,* 462 U.S. 198, 204-05, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983) ("The House and Senate Reports on the Bankruptcy Code indicate that § 541(a)(1)'s scope is broad."); *Grochal v. Ocean Tech. Servs. Corp. (In re Baltimore Marine Indus.),* 476 F.3d 238, 240 (4th Cir.2007) ("Section 541 of the Bankruptcy Code governs the composition of the bankruptcy estate and provides a broad definition of 'property of the estate.' ").

***7** In line with the broad definition of "property of the estate," money held in a bank account in the name of a debtor is presumed to be property of the bankruptcy estate. *See, e.g., In re Amdura Corp.,* 75 F.3d 1447, 1451 (10th Cir.1996) ("We presume that deposits in a bank to the credit of a bankruptcy debtor belong to the entity in whose name the account is established."); *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re U.S.A. Diversified Prods., Inc.),* 100 F.3d 53, 55 (7th Cir.1996) ("Property of the debtor is defined to include all legal or equitable interests of the debtor ... and obviously that includes the interest that a depositor has in the money in his account, more precisely the money owed him by the bank by virtue of the account.") (internal quotations omitted); *Asurion Ins. Servs., Inc. v. Amp'd Mobile, Inc. (In re Amp'd Mobile, Inc.),* 377 B.R. 478, 483 (Bankr.D.Del.2007) ("Property held by a debtor is presumed to be property of the estate."); *Sousa v. Bank of Newport,* 170 B.R. 492, 494 (D.R.I.1994) (the bankruptcy estate "includes funds held in a checking or savings account"); *Stratton v. Equitable Bank, N.A.,* 104 B.R. 713, 726 (D.Md.1989) (funds deposited in an account owned and controlled by the debtor become the debtor's property).[FN11]

In this case, the facts mandate a presumption that the Exchange Funds are the property of the LES bankruptcy estate. The Exchange Funds were derived from the proceeds of the sale of the Relinquished Properties that Plaintiffs had assigned to LES. The Exchange Funds were transferred from the third party purchasers of these Relinquished Properties directly into the Commingled Bank Account of LES by the closing agents. The transferred funds remained in that Commingled Bank Account through the Petition Date. Plaintiffs never had any ability to withdraw the funds. The Commingled Bank Account was and remains under the complete control of LES. Only LES had the ability to disburse or withdraw the funds. As LES maintained the Exchange Funds in its general operating account in its name and under its control and as LES had the right to use the funds to pay its own expenses, the money is presumably property of the LES bankruptcy estate. *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re USA Diversified Products, Inc.),* 100 F.3d at 55 (estate property "includes the interest that a depositor has in the money in its account"); *Elsaesser v. Gale (In re Salt Lake City R. V., Inc.),* No. 95-03264-7, 1999 WL 33486709, at *4 (Bankr.D.Idaho, March 17, 1999) ("[m]oney in a bank account under the debtor's control presumptively constitutes property of the debtor's estate...."); *In re Amdura Corp.,* 75 F.3d at 1451 (10th Cir.1996) (holding that the funds in the debtor's bank account were the property of the estate, where the debtor held the account exclusively in its own name, earned interest on the account, and had the right to use the funds to pay its own expenses and those of its subsidiaries, without any consideration of which subsidiaries had contributed funds to the account).

***8** To rebut this presumption that the funds are property of the bankruptcy estate of LES, Plaintiffs must show that they retained some right to the funds. Any such right to the funds must be established as an interest in property recognized under state law.[FN12] *Butner v. United States,* 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). Plaintiffs contend that LES was temporarily holding the Exchange Funds on their behalf solely for the purpose of facilitating the exchange of the Relinquished Properties for the Replacement Properties. Plaintiffs maintain that they never parted with their equitable interest in the ownership of the Exchange Funds [FN13] and that LES was holding the Exchange Funds in trust for Plaintiffs' benefit. Therefore, they assert, although the Exchange Funds may have been commingled in the general operating account of LES, the funds did not become property of the LES bankruptcy estate. 11 U.S.C. § 541(d).[FN14]

Whether property in the possession of the Debtor is held in trust for Plaintiffs is a question of state law. *Butner,* 440 U.S. at 55. While federal law creates the bankruptcy estate, state law defines the scope and existence of the debtor's interest in property. *Raleigh v. Ill. Dept. of Revenue,* 530 U.S. 15, 20, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000) ("The 'basic federal rule' in bankruptcy is that state law governs the substance of claims, Congress having 'generally left the determination of property rights in the assets of the bankrupt's estate to state law.' ") (quoting *Butner,* 440 U.S. at 57). LES and Plaintiffs agreed that the Exchange Agreements would be governed by Virginia law.[FN15] That contractual choice of law provision is determinative of the law to be applied in this case. *See Holmes Envtl., Inc. v. SunTrust Banks, Inc. (In re Holmes Envtl., Inc.),* 287 B.R. 363, 374 (Bankr.E.D.Va.2002) *(citing Tate v. Hain,* 180 Va. 402, 410, 25 S.E.2d 321, 324 (1943)).

Under the terms of the Court's February 10, 2009, order, the question to be resolved at this stage of the litigation is whether the Exchange Funds are excluded from property of LES' bankruptcy estate because of the existence of either an express trust or a resulting trust.[FN16] The Court will look to the law of the Commonwealth of Virginia in analyzing these two issues. Plaintiffs bear the burden of proving the existence of a trust. *See Page v. Page,* 132 Va. 63, 110 S.E. 370, 372 (1922) (party seeking to establish a trust has the burden of proving its existence); *Chiasson v. J. Louis Matherne & Assocs. (In re Oxford Mgmt., Inc.),* 4 F.3d 1329, 1335 (5th Cir.1993) ("When the property of an estate is alleged to be held in trust, the burden of establishing the trust's existence rests with the claimants.").

Under Virginia law, an express trust is created only where there is "an affirmative intention to create it." *Peal v. Luther,* 199 Va. 35, 37, 97 S.E.2d 668, 669 (1957); *Leonard v. Counts,* 221 Va. 582, 588, 272 S.E.2d 190, 194 (1980) (an express trust is "based on the declared intention of the trustor."). The affirmative intention to create a trust may be established by "either express language to that effect or circumstances which show with reasonable certainty that a trust was intended to be created." *Woods v. Stull,* 182 Va. 888, 902, 30 S.E.2d 675, 682 (1944); *Rivera v. Nedrich,* 259 Va. 1, 6, 529 S.E.2d 310, 312 (1999).

***9** There is no express language in the Exchange Agreements that creates a trust. The words "trust," "trustee," or "beneficiary" do not appear anywhere in the Exchange Agreements. Given the omission of any language normally associated with the creation of a trust, Plaintiffs must demonstrate with "reasonable certainty" circumstances that show the parties to the Exchange Agreements nevertheless intended to create a trust. *Woods v. Stull,* 182 Va. at 902, 30 S.E.2d at 682.

The Court thus turns to an examination of whether Plaintiffs have demonstrated the parties' intent to create a trust despite the absence of express language to do so. Although formal or technical words are not necessary to create a trust, the fact that the Exchange Agreements make no mention of a "trust" is significant in determining whether a trust was intended. *See In re Estate of Vallery,* 883 P.2d 24, 27 (Colo.App.1993). Here, not only is there an absence of any language that the parties intended to create a trust, but there is language in the Exchange Agreements that actually evidences an intent *not* to do so. Plaintiffs, in the Exchange Agreements, conveyed exclusive possession, dominion,[FN17] control and use of the Exchange Funds to LES. They also disclaimed any right, title or interest in and to the Exchange Funds. The conveyances, combined with the disclaimers, are inconsistent with the establishment of a trust. Under a trustee-beneficiary relationship, the trustee holds legal title to the trust property and the beneficiary holds an equitable interest in the trust property. *Kubota Tractor Corp. v. Strack,* Case No. 4:06cv145, 2007 WL 517492, at *4 (E.D.Va. Feb.6, 2007) (citing *Broaddus v. Gresham,* 181 Va. 725, 731, 26 S.E.2d 33, 35 (1943)) (reversed on other grounds, *Kubota Tractor Corp. v. Strack (In re Strack),* 524 F.3d 493 (4th Cir.2008)). However, Plaintiffs relinquished any and all interests in the property, including the equitable interest that a beneficiary of a trust would retain in trust property. Plaintiffs expressly disclaimed the equitable interest that they now ask this Court to find that they otherwise somehow retained.

Further evidence that the parties did not intend the Exchange Agreements to create a trust can be found in the parties' agreement to limit the duties of LES to those expressly contained in the Exchange Agreements. A trust necessarily requires the establishment of fiduciary duties. *See Restatement (3d) of Trusts § 2* (2003) (stating that a trust is a fiduciary relationship with respect to property); *In re NOVA Real Estate Inv. Trust,* 23 B.R. 62, 66 (Bankr.E.D.Va.1982) ("A trust involves a duty of the fiduciary to deal with particular property for the benefit of another.").[FN18] Fiduciary duties create a special relationship of trust and good faith that goes beyond the duties set forth in an ordinary contract between commercial parties. *See Balbir Brar Ass'n v. Consol. Tracking Servs. Corp.,* At Law No. 137795, 1996 WL 1065615 at *5 (Va.Cir.Ct. October 1, 1996) (distinguishing between contract duties and fiduciary duties).

***10** The parties to the Exchange Agreements acknowledged that LES was not undertaking any duties not expressly set forth in the Exchange Agreements (i.e. the contract duties) including any implied duties or any duties imposed by operation of law. This limitation on the scope of LES' duties eliminates any argument that LES had a duty to act as a fiduciary for Plaintiffs. *Metric Constructors, Inc. v. Bank of Tokyo-Mitsubishi, Ltd.,* Case No. 99-2330, 2000 WL 1288317, at *4 (4th Cir. Sept.13, 2000) (holding that no fiduciary duties existed where the plaintiff "expressly consented (in the Consent Agreement) to the [defendants'] disclaimer of any fiduciary relationship toward it"). The Exchange Agreements provide that LES was acting in the narrow capacity of an exchange facilitator. The parties agreed that LES assumed no duties not expressly set forth in the Exchange Agreements, including fiduciary duties, and none can be implied or imposed by operation of law. LES merely had the contractual duty to effect the exchanges. The unambiguous language of the Exchange Agreements makes clear that LES and Plaintiffs intended their relationships to be relationships of contract obligor and obligee.

The Exchange Agreements were integrated contracts. *See Robinette v. Robinette,* 4 Va.App. 123, 354 S.E.2d 808, 810 (1987); *see also Lysk v. Criswell (In re Criswell),* 52 B.R. 184, 197 (Bankr.E.D.Va.1985) (holding that an integrated agreement containing a merger clause precluded parties from claiming any reliance on “terms, conditions, statements, warranties, or representations not contained [in the integrated agreement]”). Plaintiffs therefore cannot utilize extrinsic evidence to modify or alter the contracts' plain statements (i) that Plaintiffs had no interest, including any equitable interest, in or to the Exchange Funds and (ii) that LES owed to Plaintiffs no duty, including any fiduciary duty, not expressly set forth in the Exchange Agreements. *Robinette v. Robinette,* 4 Va.App. at 128, 354 S.E.2d at 810 (holding that a party cannot introduce parol evidence to show the existence of a trust if it would defeat or contradict the terms of an express agreement). The objective language of the Exchange Agreements precludes consideration of any subjective belief that the parties may have had regarding the relationship between them. *Boone v. U.S. Attorney,* Case No. 7:06VA00006, 2006 WL 1075010, at *3 (W.D.Va. Apr.21, 2006) (“Boone may have had a subjective intent to the contrary, but it is the objective manifestation of intent, as shown by the words used in the agreement, that governs.”).

Plaintiffs maintain that they intended for the Exchange Funds to be held in escrow by LES and that their funds were to be used only for the acquisition of the replacement properties. They argue that the Fourth Circuit has held that an escrow arrangement is a specialized type of express trust under Virginia law. *Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron),* 155 F.3d 718, 722 (4th Cir.1998). Plaintiffs point to various provisions of their Exchange Agreements such as (i) section 6(b) wherein LES acknowledges that it entered into the agreement solely to facilitate the tax deferred exchanges, (ii) section 2(a) wherein LES agreed to hold and apply the Exchange Funds in accordance with the terms of the agreement, (iii) section 2(b) wherein LES stated that it would use the Exchange Funds to purchase the replacement properties, (iv) section 3(a) wherein LES unconditionally guaranteed the return and availability of the Exchange Funds, and (v) section 1(c) wherein LES promised to return the funds if closing on the Replacement Properties did not occur within the stated time period. Like the title company in *Dameron,* Plaintiffs argue, LES was serving as an escrow agent holding and disbursing the funds under certain specified contingencies.

***11** The term “escrow” (like the word “trust”) is notably absent from the parties' Exchange Agreements. In *Dameron,* the Forth Circuit found the parties' real estate closing instructions exhibited an intention to create a trust. Those instructions stated that “[y]ou may not cash, deposit, or disburse our funds until you have fully complied with all instructions.” 155 F.3d at 721 n. 2. The Exchange Agreements did not similarly restrict LES' use of the funds. Rather, LES was vested with all legally-cognizable indicia of ownership. LES was given sole and exclusive possession, dominion, control and use of the Exchange Funds. LES bore the risk of any bad investments it made and was free to use the funds to operate its business activities without any limitations whatsoever.

The Restatement of Trusts provides that if the parties to an agreement intend that the person receiving money will have the unrestricted use of it, being liable to pay a similar amount back to the payor, with or without interest, a debt is created. Restatement (Third) of Trusts § 5(k). *See also Altura P'ship v. Breninc., Inc. (In re B.I. Fin. Servs. Group, Inc.),* 854 F.2d 351, 354 (9th Cir .1988).

("[l]ack of control by the payor over treatment of its money is an indication of the establishment of a debtor-creditor, not trust, relationship."); *In re Morales Travel Agency,* 667 F.2d 1069, 1071 (1st Cir.1981) (holding that there was a debtor-creditor relationship, rather than a trustee-beneficiary relationship, where the payor did not require the debtor to keep its proceeds separate from debtor's own funds and where there was no specific restriction placed upon the debtor's use of the payor's proceeds).

As the Exchange Funds were held in the commingled operating account of LES and as LES maintained both control over those funds and had the unrestricted right to use those funds as it saw fit, the funds cannot be said to have been held in escrow. *Dameron,* 155 F.3d 718, is simply inapplicable to this case and, under the facts presented here, cannot form the predicate for finding an express trust.

Further confirmation of this point can be found in the agreement of LES to pay interest to the Plaintiffs on the Exchange Funds at a fixed rate. Again the Restatement of Trusts provides that

> "[i]f there is an understanding between the parties that the person to whom funds are transferred is to pay 'interest' thereon (at a fixed or current rate, and not merely such interest or other earnings as the funds, being invested, may earn), it becomes close to certain that the relationship is a debt rather than a trust. Interest is normally paid for the 'use of funds.' Accordingly, recipients of funds who pay interest are, in the absence of a definite understanding to the contrary, borrowers who are entitled to use the funds for their own purposes."

Restatement (Third) of Trusts § 5(k) cmt. k; *see also Weststeyn Dairy 2 v. Eades Commodities Co.,* 280 F.Supp.2d 1044, 1076-1077 (E.D.Cal.2003) (agreement to pay fixed rate of interest is "more indicative of a debt than a trust"). LES bore all the risk associated with ownership of the funds. The parties' arrangement resembles that of a bank account, not an escrow account.

***12** Plaintiffs also have the burden of proving their ability to trace the property alleged to be held in trust. *See Dameron,* 155 F.3d at 723 ("[A] party claiming entitlement to a trust must be able to trace its assets into the fund or property that is the subject of the trust."); *Hatoff v. Lemons & Assocs., Inc. (In re Lemons & Assocs., Inc.),* 67 B.R. 198, 213 (Bankr.D.Nev.1986) ("A party who wishes to exempt trust property from the estate must not only prove the existence of the trust relationship, but must also specifically identify the trust property in either its original or substituted form."). The tracing of trust property is governed by federal law. *See In re Dameron,* 155 F.3d at 723. Plaintiffs cannot possibly satisfy the tracing requirement. The net proceeds realized from the sale of Plaintiffs' relinquished properties were commingled in the general operating account of LES along with the proceeds from other exchange transactions and along with LES's own funds and investments. The commingled funds were disbursed to pay for exchanges of other exchange customers and to fund LES's operations. Nor is the lowest intermediate balance test available to resolve this issue, as it was in *Dameron.* The operating account of LES was swept daily. Once the account went to zero, tracing became impossible as a matter of law. "[E]ven assuming the existence of a trust relationship, a creditor cannot sufficiently identify or trace the trust res through a commingled fund where the fund is too small to satisfy the claims of similarly situated parties." *In re Lemons & Assocs.,* 67 B.R. at 213.

Finally, the intention of the parties not to create an express trust can be gleaned from their decision to use the qualified intermediary option from among the four safe harbor options available within the Treasury Regulations. Qualified intermediaries are not the only means for effectuating like-kind exchange transactions under § 1031. Treasury Regulation § 1.1031(k) 1(g), which addresses the delivery of funds to third-parties in connection with a 1031

Exchange, provides, in pertinent part, as follows:

> Safe harbors-(1) In general. Paragraphs (g)(2) through (g)(5) of this section set forth four safe harbors the use of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of section 1031 and this section....
>
> (2) Security or guarantee arrangements.
>
> ....
>
> (3) Qualified escrow accounts and qualified trusts
>
> ....
>
> (4) Qualified Intermediaries
>
> ....
>
> (5) Interest and Growth Factors

Treas. Reg. § 1.1031(k)-1(g). These safe harbors are not mutually exclusive. *See* 26 Treas. Reg. § 1.1031(k)-1(g)(1) ("More than one safe harbor can be used in the same deferred exchange, but the terms and conditions of each must be separately satisfied."). Plaintiffs and LES had the option to utilize a "qualified escrow" or to establish a "qualified trust" pursuant to subsection (g)(3) of the Treasury Regulation. The qualified trust option requires a written trust agreement. 26 C.F.R. § 1.1031(k)-1(g)(iii)(B). Instead of using either of these available options, the parties chose the "qualified intermediary" safe harbor. The Exchange Agreements specifically state that: "LES and Taxpayer acknowledge and agree that this Exchange Agreement is intended to satisfy the safe harbor provisions of Section 1.1031(k)-1(g)(4) of the Regulations." Exchange Agreement at ¶ 6(a). The parties did not in addition separately satisfy the terms and conditions of the Treasury Regulations for the creation of either a qualified escrow or a qualified trust. As the LES Committee points out in its brief, the parties' decision to eschew the escrow and trust provisions of the tax code in favor of a different safe harbor evidences that there was no intention to create a trust relationship. The Court thus finds that no express trust was created in any of the three 1031 Exchange transactions at issue.

***13** The holdings in the two cases that previously have considered whether commingled funds of 1031 exchange customers held in the name and accounts of a debtor are property of the bankruptcy estate are entirely consistent with the Court's holding here. The Bankruptcy Court for the District of Minnesota has held that exchange funds received by a qualified intermediary in connection with a 1031 exchange were property of the debtor's estate. *Manty v. Miller & Holmes, Inc. (In re Nation-Wide Exch. Servs., Inc.),* 291 B.R. 131, 143 (Bankr.D.Minn.2003). This determination was based on a number of factors, all of which are present in this case:

> The initial commingling of [taxpayer's] funds with those of the Debtor's other clients was not expressly forbidden by the terms of the [Exchange] Agreement. Nowhere does either Agreement specify that the Debtor was to hold the proceeds in a segregated form or account. In point of fact, Term 8 gave the Debtor a discretionary power to choose the form in which it was to hold and invest the proceeds.... The lack of specific client instructions to segregate proceeds, and the Debtor's exercise of substantial control over the funds under contractual warrant, mean that the funds became Debtor's property upon receipt....

Id. (internal quotations omitted).

Similarly, the Bankruptcy Court for the Southern District of California has held that where a qualified intermediary commingled the proceeds it received from its various 1031 exchange customers, deposited those proceeds into general bank accounts held in the debtor's name, and further commingled those proceeds with income from transaction fees that it charged clients for performing as a qualified intermediary, the funds were property of the debtor's estate. *Taxel v. Vaca (In re San Diego Realty Exch., Inc.),* 132 B.R. 424, 429 (Bankr.S.D.Cal.1991).

As the Court has found that the parties to the Exchange Agreements did not intend to create an express trust, Plaintiffs are not now entitled to the imposition of a resulting trust. In Virginia, a resulting trust is "an indirect trust that arises from the parties' intent or from the nature of the transaction and does not require an express declaration of trust." *1924 Leonard Rd., L .L.C. v. Roekel,* 272 Va. 543, 552, 636 S.E.2d 378, 383 (2006) (citing *Tiller v. Owen,* 243 Va. 176, 180, 413 S.E.2d 51, 53 (1992); *Salyer v. Salyer,* 216 Va. 521, 525, 219 S.E.2d 889, 893 (1975)). The party seeking to establish such a trust must do so by clear and convincing evidence. *Id.* (citing *Leonard v. Counts,* 221 Va. 582, 589, 272 S.E.2d 190, 195 (1980)).

"For a resulting trust to arise, the alleged beneficiary must pay for the property, or assume payment of all or part of the purchase money before or at the time of purchase, and have legal title conveyed to another without any mention of a trust in the conveyance." *1924 Leonard Rd.,* 272 Va. at 552, 636 S.E.2d at 383 (citing *Morris v. Morris,* 248 Va. 590, 593, 449 S.E.2d 816, 818 (1994)). *See also Tiller,* 243 Va. at 180, 413 S.E.2d at 53; *Leonard,* 221 Va. at 588, 572 S.E.2d at 194 (1980). In *Morris,* the Supreme Court of Virginia quoted its prior opinion in *Kellow v. Bumgardner,* 196 Va. 247, 83 S.E.2d 391 (1954):

> ***14** The existence of a resulting trust thus depends upon an equitable presumption of intention, based upon the natural precept that one who advances the purchase money for real property is entitled to its benefits. Therefore, after it has been shown that payment of all or a part of the purchase price for property has been paid by one person and title thereto has been placed in the name of another, the factor which will determine whether the title is to be impressed with a trust in favor of the payor is the intention of the party providing the purchase money. If no evidence of intention is available, then the presumed intention will stand; *but if there is evidence that the person who provided the money had some intention other than to secure the benefits for himself, the presumed intention fails and no resulting trust will be recognized.*

Morris, 248 Va. at 593, 449 S.E.2d at 818 (quoting *Kellow,* 196 Va. at 255, 83 S.E.2d at 396) (emphasis added).

In this case the parties entered into fully integrated Exchange Agreements that evidenced an intention not to create a trust. The Court need not divine the intent of the parties from the surrounding circumstances. The parties' intentions are readily discernible from the Exchange Agreements themselves. These were complex, fully-documented, commercial transactions. The parties represented to each other that they were separately represented by counsel and had the advice of other financial professionals.[FN19] If the parties had wanted to create a trust or if they had wanted to create an escrow, they certainly were capable of doing so. They did not. A resulting trust cannot be imposed in the face of Exchange Agreements that demonstrate clearly a contrary intent. The Court thus finds that no resulting trust was created in any of the three 1031 Exchange transactions at issue. This result obtains without regard to the considerable hurdle that Plaintiffs would otherwise have to overcome that a resulting trust must be established through clear and convincing evidence.

Finally, the Court's holding that the Exchange Funds are not excluded from property of the bankruptcy estate because they are not the subject of an express or resulting trust does not lead to an inequitable result. Rather, it furthers one of the primary policies of bankruptcy law-equitable distribution among similarly situated creditors. Impressing the Debtor's funds with the claims of 450 different trusts would, in the end, serve no constructive purpose.[FN20] Each adversary proceeding would have to be litigated to conclusion in order to sort out the proper entitlement of the different trusts to the funds. The scope and complexity of such litigation threatens to consume the entire estate. It would most certainly severely diminish the amount available for distribution to the exchange customers. It will also take years to finally resolve all the cases. The bankruptcy process is designed to address and resolve this very kind of collective action problem. The similarly situated commingled exchangers should be given equal treatment in a prioritized and ratable distribution of estate assets. This can be best accomplished through the plan confirmation process. While it may not be the perfect remedy, it does offer the most inexpensive and expeditious method for distributing these funds on a ratable basis to those who deserve to receive them.

Conclusion

***15** The Exchange Funds are not excluded from property of the estate pursuant to 11 U.S.C. § 541(d) because of the existence of an express trust or as a result of the imposition of a resulting trust. The plain, unambiguous language of the Exchange Agreements clearly establishes that it was not the intent of LES or Plaintiffs to create an express trust. As the Exchange Agreements were integrated contracts, Plaintiffs cannot use parol evidence to prove the existence of an express trust. Given the parties' clear intent in the Exchange Agreements not to create an express trust, it is inappropriate for the Court to impose a resulting trust upon them. This is especially true in this case in which the parties have represented that they relied upon the advice of their own legal and financial professionals, and in which the parties have included a merger clause in their agreement. Therefore, the Court will deny Plaintiffs' motion for partial summary judgment and grant partial summary judgment in favor of the Debtor and the Committees against Plaintiffs. Separate orders shall issue.

FN1. Adv. Pro. No. 08-03147-KRH.

FN2. *See* Joint Motion of Debtor and LES Committee for Order Establishing Scheduling Protocol, ¶ 8.

FN3. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr.P. 7052.

FN4. In the ordinary course of its business, LES invested certain of the exchange funds that it had received from its former customers and which it had deposited into its Commingled Account. Some of the invested exchange funds received by LES are now held in the form of illiquid auction rate securities as a result of the unprecedented recent and rapid economic decline. As a consequence, LES does not have the ability from a liquidity standpoint to fund all of the exchanges it is contractually obligated to complete within the time parameters that § 1031 of the Internal Revenue Code requires as it had committed. To permit one group of exchangers to recover their exchange funds under a trust theory necessarily impacts all of the other exchangers adversely, whether similarly situated or otherwise.

FN5. The Luxenberg Exchange Agreement was executed on November 14, 2008. The Finkelstein Exchange Agreement was executed on July 21, 2008. The Frontier Exchange Agreement was executed on September 22, 2008.

FN6. On November 20, 2008, $1,430,813.96 of net proceeds from the sale of the Relinquished Property that Luxenberg had assigned to LES was wired into the Commingled Account. On September 22, 2008, $1,189,830.50 of net proceeds from the sale of the Relinquished Property that Frontier had assigned to LES was wired into the Commingled Account. On July 21, 2008, $1,482,316 of net proceeds from the sale of the Relinquished Property that Finkelstein had assigned to LES was wired into the Commingled Account. As additional consideration for the sale of the Relinquished Property that Finkelstein had assigned to LES, a note secured by a mortgage on property located at 36-40 West 13th Street, New York, New York, in the amount of $2.1 million was made out and delivered to LES.

FN7. *See* Luxenberg Exchange Agreement at § 3(a). The use of the plural possessive “taxpayers' ” suggests that the funds of multiple customers are being deposited into the same SunTrust account.

FN8. *See* Frontier and Finkelstein Exchange Agreements at § 3(a).

FN9. It is important to determine whether the contracts are ambiguous, since “[i]f a court properly determines that the contract is unambiguous on the dispositive issue, it may then properly interpret the contract as a matter of law and grant summary judgment because no interpretive facts are in genuine issue.” *Washington Metro. Area Transit Auth. v. Potomac Inv. Props., Inc.*, 476 F.3d 231, 235 (4th Cir.2007).

FN10. Section 541 of the Bankruptcy Code provides in pertinent part:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

FN11. *See* 5 Collier on Bankruptcy ¶ 541.09 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. Rev.2008) (“deposits in the debtor's bank account become property of the estate under § 541(a)(1)”).

FN12. One of Plaintiffs' alternative arguments is that LES was acting as a mere conduit for the Exchange Funds; and, as such, the funds are excluded from the LES bankruptcy estate pursuant to § 541(d) of the Bankruptcy Code as a matter of federal common law. In support, Plaintiffs cite *City of Springfield, Mass. v. Ostrander (In re LAN Tamers)*, 329 F.3d 204 (1st Cir.2003); *T & B Scottdale Contractors, Inc. v. United* States, 866 F.2d 1372 (11th Cir.1989). In those cases cited by Plaintiffs in support of this position, the funds originated from a Federal program and were earmarked for a specific statutory purpose. That is not the case here where the Exchange Funds represent the net proceeds of third party purchasers' acquisitions of Relinquished Properties.

FN13. Legal title to property and the equitable interest in property are separate property interests. *See, e.g.*, *In re Halabi*, 184 F.3d 1335, 1337 (11th Cir.1999). Virginia law recognizes the beneficiary as “equitable owner of the trust property.” *Broaddus v. Gresham*, 181 Va. 725, 26 S.E.2d 33, 36 (1943) (quoting 1 Scott on Trusts § 12.1, at 86 (1939)).

FN14. Section 541(d) of the Bankruptcy Code creates a limitation on the otherwise broad definition of property of the estate. That section provides in pertinent part that:

> “property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest ... becomes property of the estate under sub-section (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the ex-

> tent of any equitable interest in such property that the debtor does not hold.”
>
> 11 U.S.C. § 541(d).

FN15. Section 11 of the Exchange Agreements provides that “[t]his Exchange Agreement shall be governed by and construed in accordance with the applicable laws of the Commonwealth of Virginia without regard to the conflict of laws provisions thereof....”

FN16. The Court does not have under consideration at this phase of the litigation whether the imposition of a constructive trust is appropriate. A constructive trust “arise[s] by operation of law, independently of the intention of the parties....” *Crestar Bank v. Williams,* 250 Va. 198, 204, 462 S.E.2d 333, 335 (1995) (citation omitted). Such trusts “occur not only where the property has been acquired by a fraud or improper means, but also where it has been fairly and properly acquired, but it is contrary to the principles of equity that it should be retained....” *Leonard v. Counts,* 221 Va. 582, 589, 272 S.E.2d 190, 195 (1980) (citation omitted). Many of the arguments advanced by the Plaintiffs go to this issue.

FN17. “Dominion” has been defined by one court as “perfect control in right of ownership, and indicates that it was the intention to make the instrument as effectual as a conveyance as it was possible for the parties to make it.” *Baker v. Westcott,* 73 Tex. 129, 11 S.W. 157, 159 (Tex.1889).

FN18. A trustee has a fiduciary obligation to act for the benefit of the trust beneficiary. *See Continental Cas. Co. v. Powell,* 83 F.2d 652, 654 (4th Cir.1936) (“There is a fiduciary relation between trustee and beneficiary; there is not a fiduciary relation between debtor and creditor.”) (internal citations omitted); *Caldwell v. Hanes (In re Hanes),* 214 B.R. 786, 812 (Bankr.E.D.Va.1997) (“The trustee ... is a fiduciary of the trust beneficiaries.”) (internal citations omitted).

FN19. For example, Section 11 of the Exchange Agreements provides that: “Each party hereto and their legal counsel have reviewed this Exchange Agreement and have had an opportunity to revise (or request revision of) this Exchange Agreement and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Exchange Agreement.”

FN20. The court notes that it has yet to address the claims that the Exchange Funds should be impressed with a constructive trust.

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Not Reported in B.R., 2009 WL 1269578 (Bkrtcy.E.D.Va.)

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