Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1967

Prudential Federal Savings & Loan Association v. The St. Paul Insurance Companies and First American Title Insurance and Trust Company : Brief of Respondent, Prudential, Federal Savings & Loan Association

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.Pugsley, Hayes, Rampton & Watkiss and Harry D. Pugsley; Attorneys for Respondent, Prudential Federal Savings & Loan Association

Recommended Citation
Brief of Respondent, *Prudential v. St. Paul Insurance*, No. 10765 (1967).
https://digitalcommons.law.byu.edu/uofu_sc2/3930

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

In the Supreme Court of the State of Utah

PRUDENTIAL FEDERAL SAVINGS & LOAN ASSOCIATION, a corporation,
Plaintiff and Respondent,

-vs.-

THE ST. PAUL INSURANCE COMPANIES,
Defendant and Appellant,

and

FIRST AMERICAN TITLE INSURANCE AND TRUST COMPANY,
Defendant and Respondent.

Case No. 10765

BRIEF OF RESPONDENT, PRUDENTIAL FEDERAL SAVINGS & LOAN ASSOCIATION

Appeal from Summary Judgment of the Third Judicial District Court in and for Salt Lake County, Utah, Honorable A. H. Ellett presiding.

PUGSLEY, HAYES, RAMPTON & WATKISS and HARRY D. PUGSLEY
600 El Paso Natural Gas Building
Salt Lake City, Utah
Attorneys for Respondent, Prudential Federal Savings & Loan Association

DRAPER, SANDACK & SAPERSTEIN and DELBERT M. DRAPER, JR.
606 El Paso Natural Gas Bldg.
Salt Lake City, Utah
Attorneys for Respondent, First American Title Insurance and Trust Company

SKEEN, WORSLEY, SNOW & CHRISTENSEN and JOSEPH J. PALMER
701 Continental Bank Bldg.
Salt Lake City, Utah
Attorneys for Appellant

FILED

TABLE OF CONTENTS

	Page
RELIEF SOUGHT BY RESPONDENT	1
STATEMENT OF FACTS	2
ARGUMENT	6
POINT I. THE ACTION WAS FOR DECLARATORY JUDGMENT AND THE COURT FAIRLY MET THE ISSUE ON SUMMARY JUDGMENT AS TO THE LANGUAGE OF THE DOCUMENTS TO BE INTERPRETED AND THE RESPONSE OF THE PARTIES TO THE PLEADINGS IN THE PROCEEDING	6
POINT II. THE RULES OF THE COURT WERE FOLLOWED IN THE PRESENTATION OF THE MOTION FOR SUMMARY JUDGMENT, AND THE DEFENDANTS WERE AFFORDED FULL OPPORTUNITY TO PRESENT THEIR POSITION BEFORE THE COURT PRIOR TO THE RENDITION OF JUDGMENT	6
POINT III. NO MATERIAL ISSUE OF FACT EXISTED, NOT COVERED BY THE AFFIDAVITS BEFORE THE COURT, WHICH WAS NECESSARY FOR THE DETERMINATION OF THE DECLARATORY JUDGMENT PRAYER AND THE INTERPRETATION OF THE INDEMNITY BOND BEFORE THE COURT	10

TABLE OF CONTENTS

Page

POINT IV. THE COURT DID NOT ERR IN ITS INTERPRETATION OF THE INDEMNITY BOND, AND PROPERLY DETERMINED THAT THERE WAS NO "OTHER INSURANCE" OR "OTHER INDEMNITY" SO AS TO EXCLUDE THE LIABILITY FOR THE DEFALCATION AND DISHONEST ACTS OF THE EMPLOYEE ROWLEY 10

CONCLUSION 19

AUTHORITIES CITED

29A Am. Jur. p. 153 13

19 Am. Jur. 2d. Corporations, Sec. 1079 16

19 Am. Jur. 2d. p. 673, Corporations, Sec. 1267 18

19 Am. Jur. 2d. Corporations, Sec. 1263 16

5 Appleman p. 170, Sec. 3055 14

Couch, Cyclopedia of Insurance Law, p. 3635 13

Pomeroy, Equity Jurisprudence, 3rd Ed. Sec. 675 17

CASES CITED

Gray v. Defa, 103 U. 339, 135 P.2d 251 8

TABLE OF CONTENTS

Page

Gordon v. Continental Casualty Co., 319 P. 555, 181 A. 574 17

Fremont Trust Co. v. Noyes, 246 Mass. 197, 141 N.E. 93 (1923) 18

STATUTES CITED

78-33-1 UCA 1953 6

78-33-2 UCA 1953 7

78-33-12 UCA 1953 7

31-11-8 UCA 1953 14

31-11-10 UCA 1953 14

31-25-14 UCA 1953 14

In the Supreme Court of the State of Utah

PRUDENTIAL FEDERAL SAVINGS & LOAN ASSOCIATION, a corporation,
Plaintiff and Respondent,

-vs.-

THE ST. PAUL INSURANCE COMPANIES,
Defendant and Appellant,

and

FIRST AMERICAN TITLE INSURANCE AND TRUST COMPANY,
Defendant and Respondent.

Case No. 10765

REPLY BRIEF OF PRUDENTIAL FEDERAL SAVINGS & LOAN ASSOCIATION

RELIEF SOUGHT BY RESPONDENT

Prudential Federal Savings & Loan Association has filed this action for a declaratory judgment regarding the fidelity bond issued to it by Appellant, and the District Court has entered such decalartory judgment interpreting the terms thereof. Respondent (hereinafter referred to as "Prudential") asks for affirmance of such judgment.

STATEMENT OF FACTS

We feel that the statement of facts submitted by appellant omits basic factual matters as related to the positon of Prudential n this proceeding. These facts are set forth as follows:

On or about June 30, 1960, appellant issued its fidelity bond, No. 404-F09886-B, with $1,000,000.00 coverage on all of Prudential's employees. Delmer D. Rowley was then such an employee, and during 1962 to 1965 was one of its Loan Officers charged with closing loans for Prudential. No dispute exists as to the fact of the employment of Delmar D. Rowley during the effective period of the fidelity bond, and that the said fidelity bond was before the court (Exh. P-1) though not introduced actually in evidence by stipulation until after the order was made by the court.

It was discovered in 1965 that said Rowley had apparently embezzled or wrongfully applied the proceeds of four different loans which he had handled as Loan Officer for his employer, Prudential, in the following amounts: $14,900.00 in December, 1962; $17,845.20 in October, 1963; $14,389.57 in December, 1964; $17, 437.-75 in March of 1964. He was charged with such crime in the United States District Court, District of Utah, in Case No. CR 66-65, *United States of America v. Delmer D. Rowley,* and after a plea of "not guilty" was found

guilty by a jury of violating Section 657, Title 18, United States Code Annotated, as charged on all four counts, and on July 26, 1965, he was sentenced to be imprisoned in pursuance of such and subsequently was imprisoned and served his sentence for embezzlement.

The defendant St. Paul Insurance Companies paid to Prudential the amount of the embezzlements on the last three items noted above, but has refused to pay the first one, being the so-called "Parker Loan." Demand for the payment of the said four losses under the terms of the policy was made at the same time, and St. Paul has asserted that it has a defense to the payment of the fourth one, namely the Parker Loan embezzlement, on the grounds of "other indemnity," or "other insurance" provisions of its policy.

The indemnity bond was identified in the complaint by specific number, and hence no uncertainty existed in the mind of the defendant St. Paul as to the nature of it, and it by its answer duly admitted that for valuable consideration received it had issued to the plaintiff its said policy as identified, which provides the indemnification set forth therein. The said policy is specific in its terms and conditions, and particularly paragraph I of the insuring clauses provides:

> (A)I, "Any loss by reason of any dishonest, fraudulent or criminal act of any employee as heretofore defined, or of any director or trustee

> of the insured while performing acts coming within the scope of the usual duties of an employee, including loss of property by reason of any such act of any such employee, and also including the dishonest issue of stock, share or investment certificates by any such employee, whether acting alone or in collusion with others."

The maximum amount of such coverage is $1,000,000.00. The fidelity bond policy contains the exclusion clause which is at issue in this declaratory judgment, namely:

> "OTHER INSURANCE.—If the insured holds other valid or collectible indemnity against any loss, covered hereunder, the Underwriter shall be liable hereunder only for such amount of such loss as is in excss of the amount of such other indemnity, not exceeding the amount of coverage hereunder."

First American, through its local title insurance agent, Security Title Company, had issued and delivered to Prudential its preliminary report on the Parker loan transaction on December 21, 1962. The embezzlement by Rowley was on December 26, 1962. A policy of title insurance was issued to Prudential in August, 1963, which omitted the First Federal prior mortgage (duly shown in the preliminary report) though in fact the First Federal mortgage had not been paid and was still a first lien ahead of the Parker mortgage. It is this policy of title insurance, issued eight months after Mr. Row-

ley's wrongful taking of the mortgage loan funds, which St. Paul claims is "other insurance" or "other indemnity."

In the meantime, the defendant St. Paul had brought before the court on its motion the defendant First American. It is to be noted hat no counterclaim or cross-claim was filed by the defendant St. Paul against First American, and hence the court was bound to make its determination predicated upon the complaint itself, which was solely for declaratory judgment as to the interpretation of the language of the fidelity bond, the prayer ending:

> "Wherefore plaintiff prays that the court make a declaratory judgment as to the liability of defendant in this matter to it under the terms of its policy; and interpret the policy and issue judgment stating whether or not the said defendant is excused from its liability by reason of the existence of the said policy of title insurance which was issued in August, 1963, though the money was appropriated in December of 1962."

The District Court considered the matters before it on Motion for Summary Judgment (R. 27 and 30) and Affidavit (R. 33), Memorandum (R. 46), and statements of counsel, and made its Findings of Fact and Summary Judgment in pursuance of the prayers for declaratory judgment as to the interpretation of the terms of the said bond.

The contents of the Affidavit of Mr. Hayden M. Calvert, Vice-President of Prudential (R. 33-36) do not appear to be controverted and hence such are adopted without restatement here.

ARGUMENT

POINT I

THE ACTION WAS FOR DECLARATORY JUDGMENT AND THE COURT FAIRLY MET THE ISSUE ON SUMMARY JUDGMENT AS TO THE LANGUAGE OF THE DOCUMENTS TO BE INTERPRETED AND THE RESPONSE OF THE PARTIES TO THE PLEADINGS IN THE PROCEEDING.

POINT II

TH RULES OF THE COURT WERE FOLLOWED IN THE PRESENTATION OF THE MOTION FOR SUMMARY JUDGMENT, AND THE DEFENDANTS WERE AFFORDED FULL OPPORTUNITY TO PRESENT THEIR POSITION BEFORE THE COURT PRIOR TO THE RENDITION OF JUDGMENT.

As this is a procedure for declaratory judgment, it seems appropriate to refresh our minds as to the jurisdiction in these matters. Section 78-33-1 U.C.A. 1953 reads:

"Jurisdiction of district courts — Form — Effect. — The district courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree."

Section 78-33-2 U.C.A. 1953 reads:

"Rights, status, legal relations under instruments or statute may be determined. — Any person interested under a deed, will or written contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The statutes and cases make it clear that the Court shall construe contracts, either before or after breach and thereby eliminate any uncertainties which exist. All parties having a direct interest in the contract or issue may be joined and the determination made by the Court is binding. Section 78-33-12 U.C.A. 1953 declares this chapter to be "remedial" to settle uncertainty and insecurity with respect to rights and legal relations "and is to be liberally construed and administered."

Consistent decisions affirm the general purpose of the chapter to enable parties to seek and receive answers to contractual disputes. The interpretation of the "other insurance" or "other indemnity" exclusion clause of the $1,000,000.00 fidelity policy issued by St. Paul is a classical situation for determination by declaratory judgment. In *Gray v. Defa,* 103 U. 339, 135 P.2d 251, this Court held that in such an action a counterclaim could be filed if necessary to seek a final adjudication of rights (here to quiet title). This decision refers to the wide judicial discretion granted to the judge in these declaratory judgment proceedings.

In our pending case we believe it to be significant that appellant, St. Paul, has not sought assistance by counterclaim or cross-complaint. Its Answer (R. 5) defends on the "other insurance or indemnity" theory and prays only that it have "judgment declaring it to have no liability to plaintiff." The document then contains a Motion to bring in First American so that complete relief may be accorded.

Some complaint is found in appellant's brief that the Affidavit in support of the Motion for Summary Judgment was filed and served on appellant on July 14 and the argument was on July 18. The Motion had been served by plaintiff on July 1 by mail. We find no offense to the Rules by this timing. Accompanying the Affidavit on July 14 was a Memorandum In Support of Motion

for Summary Judgment. Thus counsel was fully advised well in advance of the hearing date, not only of the Motion, the Affidavit, but also of plaintiff's legal argument as reflected by the Memorandum. No surprise can be claimed. We do not wish to wrestle with a procedural interpretation of Rule 56(c) on the need for filing Affidavits at least ten days before hearing of the Motion for Summary Judgment. Said subsection merely provides that the "motion shall be served at least 10 days before the time fixed for the hearing."

In the Court's discretion, had he felt that any imposition was being felt by defendants, the matter could have been continued. Counsel for St. Paul was permitted to make a tender of proof, the matter was argued on its merits and the decision reached. Thereafter Findings and Summary Judgment were duly served, July 20, 1966, and St. Paul filed its Motion to Amend the Findings and Judgment (R. 63) on August 1, 1966, and then on September 22, 1966 filed two Affidavits in support of such Motion (R. 73-80). These were duly argued October 18, 1966 and the Motion to Amend was denied October 19, 1966. Ample consideration was thus afforded to St. Paul on its Affidavits and no real prejudice can be asserted on the timeliness of the original Affidavit filed by plaintiff.

It is interesting to note that the Affidavit by Mr. Calvert, Vice President of Prudential, is criticized by

appellant as not being within the purview of Rule 56(c), but one of St. Paul's Affidavits is by Mr. Palmer, counsel for St. Paul.

We believe that the discretionary powers of the Court under the declaratory judgments act have been wisely exercised. No abuse of time requirements has existed. Appellant, St. Paul, was afforded ample opportunity to make tenders of proof, file affidavits, make motions and argue the matter twice. The procedural steps taken are ample to satisfy all requirements of due process of justice.

POINT III

NO MATERIAL ISSUE OF FACT EXISTED, NOT COVERED BY THE AFFIDAVITS BEFORE THE COURT, WHICH WAS NECESSARY FOR THE DETERMINATION OF THE DECLARATORY JUDGMENT PRAYER AND THE INTERPRETATION OF THE INDEMNITY BOND BEFORE THE COURT.

POINT IV

THE COURT DID NOT ERR IN ITS INTERPRETATION OF THE INDEMNITY BOND, AND PROPERLY DETERMINED THAT THERE WAS NO "OTHER INSURANCE" OR "OTHER INDEMNITY" SO AS TO EXCLUDE THE LIABILITY FOR THE DEFALCATION AND DISHONEST ACTS OF THE EMPLOYEE ROWLEY.

The real issue is the interpretation of appellant St. Paul's own chosen language in its escape clause in the indemnity bond. At the inception we call to the Court's attention the time-tested rule of strict construction on exclusionary provisions of a policy of insurance. This fidelity bond must be construed as coverage of the "loss by reason of any dishonest, fraudulent or criminal act of any employee." The "other insurance" or "other indemnity" provision is an exception, exclusion or limitation. Liberal construction in favor of the insured is enjoined on the Court. In decisions your Court has referred to this as "strictissimi juris."

Prudential has sought aid from the Court in the problem of proper interpretation of this exclusionary clause. Four loan proceeds were misapplied by the Loan Officer, Rowley. Claim for all four losses was made upon St. Paul. Three of the losses were paid, but the Parker loan loss was denied because of the "other insurance or other indemnity" clause as stated in the Answer.

Prudential thus finds itself between two insurance companies. No one denies its loss by reason of the taking of the funds by Rowley. The jury in the United States District Court found him guilty of such and he was imprisoned for the same. The requirement of the fidelity bond coverage, "any dishonest, fraudulent or criminal act of any employee" has been met. At the time of the taking of the funds by the Loan Officer, Rowley, no

title insurance was in force or effect. Only a preliminary title report was in its files. Some eight months later a policy of title insurance was issued. The title company says that this was by mistake; defenses are asserted that the knowledge of Rowley as Loan Officer was knowledge of Prudential. Even St. Paul, in its brief, says that the title insurance agent issued the policy by mistake (p. 5).

After evaluating the problem, Prudential elected to seek a judicial determination and has by its complaint alleged its position that appellant St. Paul is liable under the fidelity bond. Prudential does not believe that the policy exclusion gives St. Paul an escape from the clear terms of the covering, insuring clause.

The following provisions in the bond in question are the critical phrases:

> "Other insurance. If the insured holds other valid or collectible indemnity against any loss, covered hereunder, the Underwriter shall be liable hereunder for such amount of such loss as is in excess of such other indemnity not exceeding the amount of coverage hereunder."

This exclusion in defendant's policy is not applicable unless there is "other valid or collectible indemnity against loss covered hereunder. . . ." Such does not excuse defendant from liability on the bond because the policy of title insurance does not cover the type of loss

or losses indemnified by this fidelity bond and because, as will be discussed below, the title policy may be unenforceable as the title insurer asserts that it was issued as a result of mistake of a material fact, and was not intended to cover embezzlement risks which St. Paul claims.

The universal rule is that "other" insurance, as used in defendant's bond, exists only where more than one policy of insurance covers the same interest, in the same property, against the same risk, for the same person. There is "other insurance" only where the insured undertakes to insure the same thing twice over against the same perils. Where one of the above elements is missing there is no double insurance. 29A Am. Jur. p. 153, Insurance Section 961; Couch, Cyclopedia of Insurance Law, page 3635.

It is quite obvious that the two policies of insurance here involved (one a fidelity bond insuring against the dishonest acts of an officer, and the other a title insurance policy insuring only the trust deed beneficiary's interest in specific property) are completely dissimilar, and do not insure against the same peril. The fidelity policy specifically covers, indeed is directly aimed at, the precise situation here involved; whereas, the policy of title insurance specifically excludes from coverage insurance against encumbrances created or suffered by the insured or known to the insured and un-

known to the insurer. No one reasonably can contend that a policy of title insurance covers the peril of defalcating officer's fraudulent failure to remove an encumbrance through his personal use of funds.

The burden of proving that there is double insurance rests with the insurance company pressing that there is an exception to its coverage. 5 Appleman, p. 170, Sec. 3055. Defendant cannot under any factual situation here involved sustain the burden of showing that the two policies in question insured the same property against the same risk.

The two types of insurance, fidelity insurance and title insurance, represent entirely different breeds of coverage. We must consider the definitions set by the Utah statutes, which are as follows:

> 31-11-8. " 'Surety insurance' defined. — Surety insurance . . . (3 fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;"
>
> 31-11-10. " 'Title insurance' defined. Title insurance is insurance of owners of property or others having an interest therein, against loss by encumbrance, or defective titles, or adverse claim to title, and services connected therewith."

Chapter 25 of Title 31 deals solely with title insurance and 31-25-14 spells out the insuring powers as follows:

"Insuring powers. — Every domestic title insurer may issue title policies and may also insure:

(1) the identity, due execution and validity of any note or bond secured by mortgage;

(2) the identity, due execution, validity and recording of any such mortgage;

(3) the identity, due execution and validity of evidence of indebtedness issued by this state or by any political subdivision or district therein, or by any private or public corporation."

As applied to our present problem, it becomes obvious that the belated title insurance policy is not "other insurance" as related to the escape clause in the defendant's fidelity bond defined as "other valid and collectible indemnity." Naturally the Court will apply the rule of strict construction to this escape clause.

Prudential is faced with the position of First American that the policy of title insurance specifically provides it "does not insure against loss or damage by reason of . . . defects, liens, encumbrances, adverse claims against the title as insured or other matters" where such defects, liens, encumbrances or adverse claims were, among other things,

"(1) created, suffered, assumed or agreed to by the insured claiming loss or damage; or

"(2) known to the Insured Claimant at the date such insured Claimant acquired an estate or interest insured by this policy and not known to the Company (meaning the title insurance company) or not shown by the public records; or

"(3) result(ed) in no loss to the insured claimant."

It is fundamental that a corporation can act and be bound only through individuals acting as its officers or agents. 19 Am. Jur. 2d Corporations, Sec. 1079. It is also a fundamental rule pertaining to agents generally that the knowledge of an officer or agent will be imputed to the corporation. 19 Am. Jur. 2d Corporations, Sec. 1263. In the specific transaction here involved Delmer D. Rowley, as Loan Officer and Assistant Secretary, was the agent and officer through whom the particular transaction was consummated on behalf of Prudential.

Appellant, St. Paul, has asserted an exception to this general rule, recognized by some authorities, to the effect that where an officer or agent of a corporation or association is acting in a transaction in which he is personally or adversely interested or is engaged in the perpetration of an independent fraudulent transaction, and the knowledge relates to such transaction and it would be to his interest to conceal it, it would be unreasonable to presume that the officer or agent of the corporation would communicate such knowledge to the

corporation, and therefore, the knowledge is not imputed. The wisdom of this exception, at least where the circumstances involve officers of a corporation through whom alone the corporation can act, has been doubted, see Pomeroy, Equity Jurisprudence, 3 Ed. Sec. 675. This exception is not applicable in the circumstances here involved, however. For one reason, that exception applies only where a third person seeks to enforce some demand against the corporation and has no application when the corporation seeks to enforce a contract entered into by such officer on its behalf. *Gordon v. Continental Casualty Co.*, 319 p. 555, 181 A. 574. This is certainly analogous to the present situation where the emblezzlement was in December, 1962 and the title insurance contract was procured in August, 1963, by the same corporate officer.

It will be noted that the exclusion in the title policy specifically excludes encumbrances "known to the insured claimant at the time such insured claimant acquired an estate of interest insured by this policy." Prudential is faced with the position of First American that the encumbrance here involved was fully known to its trust officer and assistant secretary, Delmar D. Rowley. In the case where an officer or agent acts fraudulently, even though he acts for himself or a third person and adversely to the corporation, if he is the sole representative of the corporation in the transaction in question, the corporation will, according to the generally prevailing view, be charged with the knowledge of the officer

or agent. 19 Am. Jur. 2d. p. 673, Corporations, Sec. 1267. *Fremont Trust Co. v. Noyes*, 246 Mass. 197, 141 N.E. 93 (1923).

Appellant, St. Paul, has maintained fidelity insurance for several years against any fraudulent acts on behalf of Delmer D. Rowley. Rowley's fraudulent conduct occurred before the policy of title insurance was mistakenly issued; therefore, the fidelity insurance fully covered this defalcation of Rowley.

Prudential is caught in the position of two insurance companies arguing as to which has the coverage on a loss sustained by it, and is of the opinion that the title policy does not and was not intended to cover the risk of "encumbrances" suffered because of the defalcations of one of its trust officers. When it obtained a bond from appellant, St. Paul, and paid a premium, it was for the very purpose to cover such risks. The policy of title insurance did not insure against this type risk and is, therefore, not "other insurance" within the exclusionary clause in defendant's bond.

Review of the authorities cited by appellant indicates that it is casting the whole defense on the theory that the fidelity insurance is merely "excess" to other insurance. These citations all seem to resolve themselves into a pattern that "excess" insurance applies only where similar type and character policies of insurance

or indemnity exist. As shown above, fidelity insurance and title insurance are two different breeds of insurance. By statutes, by coverage and by language, each has an identity apart from the other.

We assume that First American will brief and discuss this more in particular. Prudential had no other fidelity insurance to protect against loss from fraudulent or dishonest acts of its own employees. This loss was an "inside job." The title insurance policy coverage was against extraneous causes of loss.

CONCLUSION

Prudential urges this court to affirm the declaratory judgment of the District Court. Due procedural steps vested the trial court with jurisdiction and sound discretionary powers were then exercised in conformance with the Rule on declaratory judgments and the spirit of such rule to afford a proper interpretation in the construction of the language of the fidelity insurance policy.

Respectfully submitted,

PUGSLEY, HAYES,
RAMPTON & WATKISS

HARRY D. PUGSLEY