

How a Fateful 2002 Decision by the President of Fidelity National Killed the Industry's Most Promising Chance for Modernization in the Past Half Century

Could an underwriter famous for its company-wide, cram-down staff cuts turn this cool and beautiful staff reduction thing down? Incredibly, it had happened.

No question, Bill Foley was key. "If he glances at it and tosses it aside, we're dead," said one Working Group member. "If he sits down and reads it, we're in business."

It was a gray day in Chicago, cold and windy. The four men who came together that day from different parts of the country were chilled as they stamped the snow off their feet in the lobby of the Renaissance Hotel on Wacker Drive.

They were concerned and they were anxious. They had come to meet with the senior management of Fidelity National Financial Corporation, parent of the largest family of title insurance companies in America. Their contact was the president, Patrick Stone. Their real target, however, was Chairman William P. Foley II. That was the one they needed to see.

Patrick Stone hadn't been told exactly who would be coming or what they wanted to talk about. But it had been made clear to him that it was something extremely important, something Chairman Foley needed to be present for.

William P. Foley II was legendary. A graduate of West Point who had later earned a law degree, he'd barely come out of the S&L meltdown of the 1980s with his reputation intact. But then he'd taken a small regional title insurance company and vaulted it up through acquisitions and hard-nosed management to number one in the country in less than ten years. It had bought Chicago Title Insurance, a company twice its size. He was a tough and astute deal maker, aggressive, and as sharp as they come. Not everyone who'd done business with him or worked for him wound up a fan of his but they all respected him. It was said that when he treated people on the other side especially nicely it meant he was planning to make things tough for them later on.

They were early. They sat off the lobby in an adjoining lounge, had coffee, and waited for their hour. They were quiet, nervous. They'd been working towards this day for two years. Their mission was critical, they felt, for the industry they served, the title insurance industry.

The thing they'd come to talk about was different, unusual. Financially it was a bombshell, a way title companies could save hundreds of millions every year, maybe billions.

There was one big problem. This was something the *entire* industry would have to participate in. Nobody could win unless everybody won. That can be a tough sell. Hard-charging, highly-competitive companies don't want anybody to win except them.

They had a hunch Bill Foley wouldn't see it that way. Yes he's

tough, but they thought he'd love their deal. It helps reduce staff costs and he loves reducing staff costs. And if he liked it that would go a long way towards getting everybody on board. Maybe even First American, a hard sell.

They were happy to talk to Patrick Stone but it was Bill Foley they really needed. Yes, Patrick Stone's title was president, and unlike most of Bill Foley's title-side lieutenants he wasn't a wimp. He was dark and grim and good at being Chairman Foley's hatchet-man assistant. He enjoyed it.

At two o'clock the lead man of the group went into the lobby, picked up a house phone and asked to be connected to the room of Patrick Stone.

The operator came back in a few seconds saying there was no such person registered in the hotel.

"There has to be. He's here. He has to be here. Please check again, and check, too, to see whether you have a Bill Foley registered. It's William P. Foley II."

She checked. "I'm sorry, sir, neither is a guest here."

They were puzzled, annoyed. Meeting here instead of at Fidelity National headquarters in California had been Patrick Stone's idea. The date, December 12, 2001, was his choice, too, not theirs. Where was he? And where was Foley?

As they stared at each other in bewilderment they couldn't help but review in their minds, one more time, these last two years.

At first they'd thought the thing would take three months, tops. They had one long three-day meeting, then another. After four months of this they could see they were just beginning. For every difficulty they solved a half-dozen new ones appeared. It took a full year to come up with a workable outline, a basic scheme for how the thing might work. Even then many tough issues were yet to be resolved. One of the toughest was still in limbo: the choice of a technology partner.

At one point they talked about giving it up, showing it to someone like Parker Kennedy of First American. Then they could bow out and let him handle it. After an intense discussion they decided they couldn't do that. Parker Kennedy is great guy, they thought, but no way would he be willing or able to structure something for the entire industry, which is the only way it could

work. None of the industry's five controlling underwriters could do that or even try to do that. Not with all their heavy competition, the collisions in city after city, and the lawsuits. Even if they were all friends it would be tough.

They kept going. They decided to work secretly. If any of the top companies learned what they were doing that might spell the end. They gave the thing a code name, "Fee Simple Hosting," and set up a company, the FSH Working Group LLC, to create it. They set up an online file-sharing facility using a secret internet IP address. They formed a Delaware corporation to own and manage the facility. The title industry would own it.

(*Fee Simple*, of course, is real estate ownership, what is insured in title policies; an internet *hosting* service is where title policies were to be stored.)

They'd meet for two or three days at a time in a hotel in some convenient city, often Chicago, often over weekends. The talks were lively, the debates heated. They'd work at home on documents and spreadsheets. One dedicated virtually all of his time to the effort, handing his company to lieutenants to manage. One brought into it several employees, technology people who became huge contributors. Over time, ten other outside people were brought in, badly needed specialists.

Progress was slow. One member offered to contribute capital to keep it going. "No," said another, the one whose brainstorm started it all, "we'd just spend it. Let's keep going."

Slowly, the difficulties were resolved and the problems solved. Things began coming together. Numbers were inserted where numbers needed to be. Estimates were made when necessary. No one was better qualified to make them than this group.

Today they'd come to Chicago with a fully formed solution. This was stop number one, the title industry's largest family of companies. All five top companies needed to say yes or it was no deal. Fidelity National had to be first.

A voice in the lounge was trying get their attention. "Pick up a house phone. There's a message for you."

The group's leader hustled to the lobby, then returned.

"Pat Stone is in Suite 1212."

"What about Foley?"

"She didn't say."

Suite 1212 was empty when they got there. On the sideboard were gourmet sandwiches and drinks. They wondered whether they were for them. They doubted it.

"What do you want to bet on Foley?" asked one.

No one responded.

A few minutes later Patrick Stone appeared.

They introduced themselves. Each of the four was head of his own company, each well known in the industry. Mr. Stone recognized three and knew the fourth man's firm. All had held multiple jobs in the industry. Three had been senior executives of

major insurers. Two had been CEOs of regional underwriters. One was the nation's foremost expert on industry finance and had been CFO of a major title insurer. One was CEO of the largest tech company serving the industry. Two had been CEO of large title agencies. Two were attorneys. One had been CEO of the industry's largest consulting firm, working with more than a hundred title companies nationwide. Three had been president of their state title association. Every one of them had worked hands-on in multiple U.S. states. Not just three or four states, many. All had been in the industry more than forty years. None was in the employ of a major title insurer at that time.

"Will Mr. Foley be with us?"

"No, he's not in Chicago today," replied Stone.

The group exchanged glances. This was going to be tough.

At this point they had a sense of what had happened. Chairman Foley was the most astute deal maker in the world. Finding ways to score points with him was tough for people like Patrick Stone. He had arranged this meeting – in Chicago, not Santa Barbara – thinking he might be shown something he could carry back to Santa Barbara and claim credit for. That's why William P. Foley II wasn't in the room.

Two hours later the presentation was over. They had read every word of "Introducing FeeSimpleHosting" out loud. Patrick Stone appeared to pay attention but was impossible to read. Did he get it? Was he for it? He didn't say.

The group angled for a shot at CEO Foley. They had copies of everything for him. The Participation Agreement they'd brought required his signature, not Stone's.

Could the Group come to Santa Barbara and brief Mr. Foley?

Could a conference call be arranged to discuss his questions?

Mr. Stone deflected all suggestions. He'd get back to them.

Down in the lobby, the group huddled.

It didn't look good.

END OF PART ONE