



## THE AMERICAN ALLIANCE OF PARALEGALS, INC.

*Advancing the Paralegal Profession  
by Focusing on the Individual Paralegal*



# THE ALLIANCE ECHO

*A quarterly publication of the American Alliance of Paralegals, Inc.*

[www.aapipara.org](http://www.aapipara.org)

Vol. 5– Winter 2007 Issue

### **PRESIDENT'S MESSAGE**

Debbie Repass, AACP, RP

It is a new year and a time for the American Alliance to try something new! In keeping with the goal to focus regionally and provide CLE opportunities twice a year, the board of the American Alliance is joining with the Paralegal Association of Wisconsin to host a joint Education Seminar in May. Details are still being worked out, but the date and place are set. So mark your calendars for Friday, May 18 to attend the joint Education Seminar in Milwaukee, Wisconsin. The board of the American Alliance will hold its mid-year meeting immediately following the Education Seminar. Members are encouraged to attend.

The Annual Meeting will still be held in September or October, but instead of having an entire day of educational seminars, a speaker on national affairs will be the highlight. As soon as the details have been confirmed, we will let you know. I can tell you it will be in Delaware.

The board hopes these changes will allow us to reach more of our members by providing functions on both sides of the country.

I hope that by the time you received this newsletter the new Members Only

Webpage will be launched. As soon as it is, you will receive an e-mail containing your Password and User ID. If your e-mail information is not current with the Director of Membership, please send an e-mail to [membership@aapipara.org](mailto:membership@aapipara.org).

The board created a definition for a continuing legal education ("CLE") unit. The American Alliance Certified Paralegal ("AACP") Renewal Guidelines were finalized and the first of our renewals received. This information is on the website under the Certification tab.

A question has come up several times about why the American Alliance requires 18 hours to maintain its certification. The board again reviewed this policy and based on information on current requirements where regulation/certification is either required or voluntary, the standard is leaning toward a greater number of hours. To validate the point, California (where CLEs are mandatory to work as a paralegal), effective January 1, 2007, increased its CLEs so that a paralegal

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If you like to write articles or have articles you have written and would like to submit them to *The Alliance Echo* for publication, contact Karen Ray at [secretary@aapipara.org](mailto:secretary@aapipara.org).

must now have four hours of mandatory continuing legal education in legal ethics and four hours of mandatory continuing legal education in either general law or in an area of specialized law. The American Alliance, known for leading the way in education in the profession, set its standard high from the start after researching proposed regulatory/certification schemes. It is one of the ways that the American Alliance continues to lead the profession.

A linking agreement was finalized. If any entity wants to link to our website, they will need to enter into an agreement with the American Alliance.

The Florida State Bar sent a final response to the Florida Supreme Court in which they directly addressed the American Alliance's comment letter. It reads as follows:

#### **Response to Comment of American Alliance of Paralegals, Inc.**

The American Alliance of Paralegals, Inc. (hereinafter "AAP") sent comments to The Florida Bar when the rule was in the discussion phase. The comments and the bar's response are included in Appendix "C." The comment filed herein is similar. The AAP supports the adoption of Chapter 20 but would like the American Alliance Certified Paralegal (AACP) designation added to the eligibility requirements. The rule as proposed states that an individual holding a PACE certification as offered by the National Federation of Paralegal Associations (NFPA) and individuals holding a CLA/CP certification as offered by the National Association of Legal Assistants (NALA) are eligible to become registered as a Florida Registered Paralegal. These two organizations are well known and long standing. In Florida alone there are three thousand, four hundred and fifty-six (3,456) CLA/CPs. There are eighteen paralegals holding the PACE certification. According to the AAP website, there is one paralegal in Florida holding the AACP certification. The NALA and NFPA programs are widely

recognized by the paralegal profession. Should other organizations such as AAP gain such recognition within the paralegal profession; the rule can be amended to allow registration based on their certification as well. Although the rule does not recognize the AACP designation, members of AAP holding that designation can become Florida Registered Paralegals under one of the other eligibility requirements. As noted in AACP's comment, an individual must hold a Bachelor's degree, and Associates' degree, or a certificate in order to gain the AACP designation. Holding a Bachelor's degree or Associates' degree also makes an individual eligible for Florida Registered Paralegal status.

The American Alliance Board is not happy with this decision, but there is nothing more that can be done. The board, however, will continue its effort to educate the legal community and the public about the American Alliance.

The Marketing Committee's "Frequently Asked Questions" are ready to post on the website. As soon as we get the "Members Only" Webpage up and running, the "Frequently Asked Questions" will be listed on a tab on the main page.

For those who receive *Legal Assistant Today*, turn to page 88 of the January/February 2007 issue and read about the American Alliance's Director of National Affairs, Marie E. Koster, in her role as a trust and estate paralegal.

In the same issue of *Legal Assistant Today* on page 14, Director of Education, Laura Ahtes, AACP, RP, DCP, and member, Vanessa Beam, CLAS, AACP, are quoted in an article about online paralegal programs.

If any of you are published in periodicals, let us know so we can post the information on the website. Knowing about your fellow members and their accomplishments is a great way to promote the American Alliance.

The new secure online payment program was launched in time to register for the Annual Education Seminars. It was successful and the board is in the process of converting membership renewal to an online process. Keep checking the website for further announcements.

The board received an inquiry earlier this year about the use of paralegal designations. After lengthy research, it was discovered that many states have no set policy on the use of paralegal designations. Some states addressed the issue with regard to attorneys, but not paralegals. I brought the issue to the attention of the ABA Standing Committee on Paralegals and asked them to address it. The matter was placed on its November 3-4, 2006 board meeting, and the response I received was that the Committee decided not to take any action and we were not given a reason.

The board has received very little feedback regarding sending out the agenda to members in advance of the board meeting. The board will be deciding whether or not to continue this process in the very near future. If you feel this is a valuable member benefit to receive the agenda even though you are unable to participate on the conference call, let the board know. Otherwise, the board may vote to discontinue sending out advanced agendas. Members may still participate in the board meetings by telephone.

The board and committee chairs are looking for members who have an interest in the following areas:

- Annual Seminar
- CLEs
- Membership
- News articles or materials to be included in the Newsletter
- Website

If you are interested, please contact me at [president@aapipara.org](mailto:president@aapipara.org) or any one of the board members.

Your board accomplished a lot in 2006! There are many things that can be accomplished in 2007, but I would like to see 2007 as the year that the American Alliance finds a way to educate the legal community and the public on the value of the association. If you have ideas about ways to accomplish this, please send them to the board.

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**AMERICAN ALLIANCE  
MEMBER LAT'S PARALEGAL  
OF THE YEAR RUNNER UP**

Hard work and dedication are what prompted attorney M. Lynne Osterholt to nominate Paralegal of the Year runner up, Denise Cunningham, for LAT's prestigious award. Osterholt pointed to one recent case as an example of Cunningham's perseverance. While the attorney-paralegal team was representing a client from another case, Cunningham found out that an employee performing surgery at a Louisville, KY physician's office was not licensed. After consulting with her supervising attorney, Osterholt, who has a private practice, Cunningham called an investigator from the state attorney general's office to express her concern.

In 1989, Cunningham got involved with the Kentucky Paralegal Association, which is made up of five paralegal associations within the state. She recently concluded a two-year term as director of the board of directors. She also has served as treasurer and corresponding secretary. In 1991 and 1997, she co-chaired the association's statewide conferences. Cunningham was awarded KPA's statewide Founders Award in 2001. "[It's] an honor I am quite proud of — the award hangs proudly in our office reception area," she said. Most recently, she became a member of the American Alliance of Paralegals Inc. in 2003.

In addition to her commitments to LAP, KPA, LBA and the American Alliance, Cunningham has served on the advisory

board for Sullivan University's legal studies department since 1992, and the University of Louisville's Paralegal Studies Program for 10 years. She also is a volunteer for Catholic Charities in the Senior Services program.

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**Joint Educational Seminar  
between the Paralegal  
Association of Wisconsin and  
the American Alliance of  
Paralegals – May 18, 2007**

The Paralegal Association of Wisconsin, Inc. is excited to announce that it will host a first ever joint educational seminar with the American Alliance of Paralegals, Inc. in Milwaukee, Wisconsin on May 18, 2007. The joint seminar will provide an opportunity for paralegals to interact with one another on a national level and to provide an outstanding day of seminars designed to advance the practice of paralegals. In addition to the day of seminars, the Paralegal Association of Wisconsin will hold its annual Board of Director's meeting the evening before the seminar and the American Alliance of Paralegals will hold its Board of Director's meeting the following day. Please mark your calendars for the 18<sup>th</sup> of May and make plans to visit the great City of Milwaukee, Wisconsin.

Please watch your newsletter/ announcements for further information regarding the location of the seminar, speaker's topics and additional details regarding the seminar.

John C. Goudie  
Seminar Committee

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**NATIONAL NEWS:** The following are two case laws we thought you might find of interest. Both cases are from Ohio.

**Court Sets Guidelines for Labor Relations Services That May Be Provided By Nonlawyers**

2006-0839. Ohio State Bar Assn. v. Burdzinski, Brinkman, Czarzasty & Landwehr, Inc., 2006-Ohio-6511. On Final Report by the Board on the Unauthorized Practice of Law, No. UPL 04-05. Respondents are enjoined from the drafting or writing of contracts. Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

Opinion:  
<http://www.supremecourtofohio.gov/rod/new/pdf/0/2006/2006-Ohio-6511.pdf>

(Dec. 27, 2006) In a decision announced today, the Supreme Court of Ohio held that:

(1) A nonlawyer does not engage in the unauthorized practice of law by representing another in union-election matters or in the negotiation of a collective bargaining agreement when the activities of the nonlawyer are confined to providing advice and services that do not require legal analysis, legal conclusions or legal training.

(2) It is the unauthorized practice of law for a nonlawyer to draft or write a contract or other legal instrument on behalf of another that is intended to create a legally binding relationship between an employer and a union, even if the contract is copied from a form book or was previously prepared by a lawyer.

The Court's 7-0 opinion, authored by Chief Justice Thomas J. Moyer, also affirmed the authority of the Supreme Court to define and regulate professional activities that involve the practice of law in the area of labor relations.

The case arose from a complaint filed by the Ohio State Bar Association (OSBA) alleging that a Dayton-based management consulting firm, Burdzinski, Brinkman, Czarzasty & Landwehr, and its nonlawyer principals, Bernard F. Burdzinski II and his wife, Connie S. Brinkman-Burdzinski, were providing labor relations services to their third-party corporate clients that constituted the unauthorized practice of law.

The Supreme Court's Board on the Unauthorized Practice of Law reviewed the OSBA complaint. A hearing was conducted before a three-commissioner panel, after which the board adopted the panel's findings of fact and conclusions of law. The board concluded that the Burdzinski firm and Mr. Burdzinski had engaged in the unauthorized practice of law when they negotiated the settlement of union election issues, served as lead negotiator in collective bargaining negotiations, and drafted collective-bargaining agreements on behalf of others. The board also found that Connie Burdzinski had engaged in unauthorized practice when she drafted collective-bargaining agreements. The board recommended that the Supreme Court order the respondents to cease from the same or similar conduct, and order the respondents to reimburse the costs and expenses incurred by the board and the OSBA.

The Burdzinski firm and the cited individuals filed objections to the board's findings, and the Court heard oral arguments in the case earlier this year.

In today's unanimous decision, the Court began by rejecting arguments by Burdzinski that this Court is barred from regulating the activities of labor relations practitioners because that field has been preempted by the federal government. Chief Justice Moyer noted that the U.S. Supreme Court has identified only two categories of cases where state authority is preempted by federal labor laws: "(1) those that reflect the concern that 'one forum would enjoin, as illegal, conduct which the other forum would

find legal' and (2) those that reflect the concern 'that the [application of state law by] state courts would restrict the exercise of rights guaranteed by the Federal Acts.'

Noting that this case deals solely with the activities of third-party consultants, not with the ability of employers or unions to represent themselves in labor negotiations or elections, the Chief Justice wrote that neither of the circumstances invoking federal preemption were applicable. He also pointed to a line of U.S. Supreme Court decisions consistently deferring to the states in matters involving licensing standards and regulation of lawyers and other learned professions.

With regard to specific consulting services provided by Burdzinski that were found by the board to constitute the practice of law, Chief Justice Moyer wrote that the firm's gathering of information about employee concerns and complaints leading up to union elections, and its development of communication and management strategies to help employers resist unionization of their employees, did not involve legal analysis or require legal training, and therefore were not activities restricted to attorneys.

With regard to the firm's "coaching" of employers on arranging and conducting union elections, Chief Justice Moyer noted that "(n)ormally, advising a client on how to comply with a regulatory scheme would be the practice of law, but in this case ... respondents use NLRB-prepared writings, rather than their own analysis or training, to advise their clients. Despite the use of words like 'challenge,' 'objection,' and 'settlement' in the record regarding election matters, these terms are not used as legal terms in this context. Rather, respondents follow a strict set of guidelines published by the NLRB, without analysis or interpretation. Presenting prepackaged legal advice of this nature is not the practice of law."

Regarding the active role undertaken by Burdzinski's nonattorneys in negotiating collective bargaining agreements, the Chief

Justice again cited the NLRB's promulgation of very specific issue guidelines and rules as a pivotal factor. "While we have previously found negotiating on behalf of another to be the practice of law, our precedent is distinguishable from the facts of this case. ... Respondents here are not negotiating the settlement of a legal dispute, nor are they negotiating a business or real-estate contract in which all elements of the contract are negotiable. Rather, there is a clearly defined scope of allowable subjects for negotiation. Because of the close federal regulation and the limited subjects for negotiation, we conclude that respondents' conducting of negotiations on behalf of their clients with employees or employees' representatives during collective bargaining is not the practice of the law."

On the remaining issue of drafting actual collective bargaining contracts, the Chief Justice wrote: "We have consistently held that drafting contracts or legal instruments on behalf of another is the practice of law. The fact that respondents may copy the contracts or use forms from a form book does not change the nature of the act. In *Geauga Cty. Bar Assn. v. Canfield* (2001) ... the respondent argued that simply copying a form contract was not the practice of law. We rejected that argument. ... The drafting or writing of a contract or other legal instrument on behalf of another is the practice of law, even if the contract is copied from a form book or contract previously prepared by a lawyer."

Based on this analysis, the Court's ruling enjoins the Burdzinski firm and its principals from the further drafting or writing of contracts, but permits them to continue to advise their clients on union election matters.

**Contacts**

Ian Robinson, 330.337.8761, for the Ohio State Bar Association.

Thomas P. Whelley II, 937.463.4931, for Bernard Burdzinski et al.

**Please note:** *Opinion summaries are prepared by the Office of Public Information for the general public and news media. Opinion summaries are not prepared for every opinion released by the Court, but only for those cases considered noteworthy or of great public interest. Opinion summaries are not to be considered as official headnotes or syllabi of Court opinions. The full text of this and other Court opinions from 1992 to the present are available online from the Reporter of Decisions:*

<http://www.supremecourtofohio.gov/ROD/newpdf/>. In the Full Text search box, enter the eight-digit case number at the top of this summary and click "Submit."

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***Non-Lawyers May Assist Parties in Workers' Comp Cases If Commission Guidelines Followed***

**2004-0817. Cleveland Bar Assn. v. CompManagement, Inc., 2004-Ohio-6506.**

On Certified Report by the Board of Commissioners on the Unauthorized Practice of Law, No. UPL 02-04. The board's recommendation is rejected and the cause is remanded.

Moyer, C.J., Resnick, Lundberg Stratton and O'Connor, JJ., concur.

O'Donnell, J., concurs in judgment only.

F.E. Sweeney, J., dissents.

Pfeifer, J., dissents with opinion.

Opinion:

<http://www.sconet.state.oh.us/rod/newpdf/0/2004/2004-Ohio-6506.pdf>

(Jan. 3, 2005) The Supreme Court of Ohio ruled today that non-lawyers who assist and represent parties in state workers' compensation claim proceedings are not engaged in the unauthorized practice of law if they conform their activities to guidelines adopted by the Ohio Industrial Commission earlier this year.

In today's 5-2 decision, written by Justice Alice Robie Resnick, the Court addressed a

complaint filed by the Cleveland Bar Association with the Court's Board of Commissioners on the Unauthorized Practice of Law. The complaint alleged that Dublin-based CompManagement, Inc. (CMI) and its employees had engaged in the unauthorized practice of law while providing services to parties in state workers' compensation claim proceedings before the Ohio Industrial Commission and Bureau of Workers' Compensation (BWC). CMI is one of several large "third-party administrator" companies that provide similar workers' compensation support services to many large public and private employers.

After reviewing written pleadings and hearing testimony from the parties, the board found that a number of work activities performed by CMI employees on behalf fee-paying clients had been construed in earlier Ohio court decisions to be the "practice of law," and were therefore activities that could not legally be performed by a corporation or by an individual who is not a licensed attorney. The board submitted its findings to the Court, with a recommendation that the justices order CMI and its non-lawyer employees to cease performing the identified "practice of law" activities.

CMI filed objections asking the Court to overrule the board's findings and recommendation. It was joined by more than 80 Ohio employers, business and labor organizations including (among others) the Ohio Chamber of Commerce, Ohio Manufacturer's Association, Ohio AFL-CIO and Ohio School Boards Association, who filed *amicus curiae* briefs urging the Court to find that the services CMI provided for its clients did not constitute the unauthorized practice of law.

Writing for the Court, Justice Resnick rejected the board of commissioners' recommendation and remanded the case to the board with instructions to reexamine the actions of CMI and its employees by applying guidelines for non-attorney practice adopted by the Industrial Commission in June 2004 as Resolution No. R04-1-01.

Quoting Supreme Court decisions from the 1930s, Justice Resnick wrote that key objectives of the 1924 constitutional amendment creating Ohio's workers' compensation system were that the system operate "without necessity for recourse to law suits or employment of attorneys or payment of court costs," and that the system "provide a speedy, simple and inexpensive method to compensate workers for work-related injuries, 'and do away with the vexatious and protracted litigation which had proved so costly, exhaustive and unsatisfactory, oftentimes resulting in great injustice.'"

Consistent with those objectives, she wrote, "lay representation has been a feature of Ohio's workers' compensation system since its inception. ... By 1970, actuarial firms in particular had become the primary means by which many Ohio employers discharged their obligations under the Workers' Compensation Act." On Dec. 31 of that year, she noted, a group of 13 such firms entered into an agreement with the Unauthorized Practice of Law Committee of the Ohio State Bar Association that enumerates "various functions that actuarial firms may and may not properly perform and recommends 'to others concerned' that they follow these principles as standards of proper conduct for actuarial service companies."

Although that 1970 agreement was not legally binding, Justice Resnick wrote, the Industrial Commission and parties appearing before it have relied on the agreement's list of permissible and prohibited actuarial functions as the "cornerstone" of agency policy on nonlawyer appearance and practice for more than 30 years. Noting that sudden uncertainty caused by the board of commissioners' May 2004 ruling in this case had caused the temporary cessation of 70 percent of workers compensation hearings pending across the state, Justice Resnick said the Industrial Commission had responded by adopting a new policy resolution, R04-1-01, in June of this year that codified and

updated the practice guidelines in the 1970 agreement to reflect current realities.

Justice Resnick observed that the resolution continues to reserve to attorneys the specific tasks of conducting direct and cross-examination of claimants or witnesses at official hearings, giving legal advice or opinions on legal issues to injured workers or employers and providing stand-alone hearing representation for a fee without providing other services. At the same time, she noted, the resolution authorizes non-lawyer representatives to assist and represent claimants and employers in filing claims and protests, to investigate and gather statements from parties and witnesses about a claim, to prepare and file Industrial Commission and BWC forms and reports on behalf of a client, to make requests for postponements or continuances and to attend and speak at hearings regarding factual data including investigation results, contents of medical reports and other documents in the case file.

Citing a 1986 decision, *Henize v. Giles*, in which the Supreme Court authorized a significant but limited role for non-lawyer representatives in state unemployment compensation proceedings, Justice Resnick wrote that the Court has a parallel duty to protect workers' compensation claimants and employers from harm by unqualified or conflicted lay representatives, while advancing the state's considerable public policy interest in a fast, simple, informal and cost-effective administrative process for resolving the medical claims of injured workers.

“Because of the undeniable similarities in the unemployment compensation and workers' compensation settings, and considering that mandating the use of attorneys at the administrative level would frustrate the goals and designs of the workers' compensation system, we hold that nonlawyers who appear and practice in a representative capacity before the Industrial Commission and the Bureau of Workers'

Compensation in conformity to Industrial Commission Resolution No. R04-1-01 are not engaged in the unauthorized practice of law. Accordingly, the board's recommendation is hereby rejected, and the cause is remanded to the board with instructions to consider any allegations by (the Cleveland Bar Association) that (CMI) failed to act in accordance with standards now set forth in Resolution No. R04-1-01.”

Justice Resnick's opinion was joined by Chief Justice Thomas J. Moyer and Justices Evelyn Lundberg Stratton and Maureen O'Connor. Justice Terrence O'Donnell concurred in judgment only.

Justice Francis E. Sweeney dissented without opinion.

Justice Paul E. Pfeifer entered a dissenting opinion in which he agreed with the board of commissioners' finding that CompManagement and its employees had engaged in specific conduct that constituted the unauthorized practice of law, and said the company should be sanctioned for that conduct.

“I believe that the practice of law is the practice of law and that nonlawyers should not be authorized to engage in it. I believe this notwithstanding putative cost savings. ... The market is overflowing with young, enterprising attorneys willing to perform this work. The surfeit of attorneys would keep costs about where they are now,” wrote Justice Pfeifer. “In any event, I do not find cost savings to be a relevant issue. CompManagement engaged in the unauthorized practice of law and ought to be punished accordingly.”

### **Contacts**

Aubrey Willacy, 216.241.7740, for the Cleveland Bar Association.

Robert M. Kincaid, Jr., 614.228.1541, for CompManagement, Inc.

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**Welcome New Members**

- Carla D. Chrisp, Virginia
- Santiago Cirilo, Tennessee
- Mary Dancho, Indiana
- Anthony J. Iannini, Delaware
- Paula N. Mattina, Arizona
- Kathleen Miller, Oregon
- Karen S. Osmundon, Delaware
- Amy A. Rudolf, Wisconsin

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**DIRECTOR OF NATIONAL AFFAIRS LAT's FEATURED "myspeciality" PARALEGAL**

Marie Koster tells of her career as a trust and estate paralegal in the January/February 2007 issue of LAT on page 88.

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**DIRECTOR OF EDUCATION QUOTED IN LAT ON ONLINE EDUCATION**

Director of Education, Laura Ahtes, AACP, RP, DCP, says that "Online paralegal programs don't meet the ABA educational requirements. Therefore, we need to protect the educational standards nationally." Read the rest of the article in the January/February 2007 issue of LAT on page 14.

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**MEMBER QUOTED IN LAT ON ONLINE EDUCATION**

American Alliance member, Vanessa Beam, CLAS, AACP, is quoted in the January/February 2007 issue of LAT on page 14 as well. She says that "Online programs are usually so fly-by-night that I would be afraid to hire someone who had only trained that way."

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**Congratulations To Our Newest AACP's!**

- Tonya L. Helton, AACP
- D. Aileen Polli, AACP

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**American Alliance Treasurer to present at Paralegal SuperConference for In-House Paralegals™ in San Francisco, California - Feb. 5-6, 2007 on Anti-Trust Compliance**

Barbara Wallace, AACP, RP, DCP, Treasurer, American Alliance of Paralegals, Inc., an Anti-Trust Compliance Paralegal with DuPont in Wilmington, Delaware will present a workshop on anti-trust compliance. It is a highly informative workshop that reviews the steps you need to know to comply with anti-trust regulations.

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