Summary and Analysis of Washington Supreme Court Opinion in *Chicago Title Ins. Co. v. Washington Office of the Insurance Commissioner*

Supreme Court of Washington Holds Title Insurance Carrier Vicariously Liable for Agent's Violations

On August 1, 2013, the Supreme Court for the State of Washington issued its decision in *Chicago Title Ins. Co. v. Washington State Office of the Ins. Commissioner*, holding that a title insurance carrier is vicariously liable for its general agent's violations of anti-inducement laws. The court's decision appears to have been driven by the unique facts in the case and should not have a significant impact on independent property and casualty insurance agents.

The court explained that title insurance is different in many ways from typical insurance. Title insurance protects against past claims against insured real estate as opposed to future claims. Title insurance is also unique in how it is provided to the ultimate customer and in how it is marketed and regulated. The court noted that the ultimate consumer of title insurance has little real opportunity to shop or make an informed decision on what title insurance to buy. The customer normally just buys the title insurance recommended by a real estate agent or bank. As a result, the insurance is not marketed to the ultimate customer. Instead, the marketing is directed at middlemen such as real estate agents, builders and mortgage lenders.

Chicago Title Insurance Company ("CTIC") had entered into an agency agreement with Land Title. Land Title was the exclusive agent for CTIC in four Washington State counties. Land Title was only allowed to issue title insurance through CTIC. (The situation was similar to a captive agent.) All of Land Title's customers were required to buy a title insurance policy from CTIC.

The office of the insurance commissioner conducted an investigation of the marketing practices involved in title insurance. The investigation revealed that CTIC had co-advertised with middlemen on over 150 occasions involving costs as high as $4,300. CTIC had also bought food for hundreds of middlemen meetings and sponsored golf tournaments for amounts exceeding $3,000. CTIC had hosted receptions ($13,000) and purchased professional football game tickets ($2,400). The office of the insurance commissioner did not take any action directly against CTIC for these violations. The court observed that this documented that CTIC was aware that large amounts were being spent to solicit middlemen.

The office of the insurance commissioner concluded that CTIC's agent Land Title was also soliciting real estate agents, builders and mortgage lenders with meals, golf tournaments, advertising and game tickets in amounts exceeding $25. The insurance commissioner determined that this was being done on behalf of CTIC and ordered CTIC to pay a fine of $114,500 for Land Title's violations. CTIC maintained that it was not responsible for Land Title's actions in violating anti-inducement laws.

The Washington Supreme Court concluded that Land Title's actions were unlawful and that CTIC was responsible as the principal of Land Title. The court held that CTIC was liable under both Washington statutes and Washington common law. The court explained that the statutes provide that an agent has the authority to solicit insurance, which means that an agent has the authority to market such insurance. It stated that under common law, Land Title had implied or apparent authority on behalf of CTIC to do any acts that are necessary and customary in the business. This was especially true because Land Title had a long-standing and exclusive relationship with CTIC, which was documented by the fact that Land Title only sold CTIC policies and every one of Land Title's customers bought a CTIC policy.

The court said that Land Title's actions were intentional and not negligent. Under such circumstances, it was not unreasonable to hold CTIC vicariously liable for Land Title's actions when the evidence demonstrated that CTIC itself was involved in improper marketing and it could be assumed that CTIC was aware that Land Title was using the same tactics. The court explained that CTIC had never taken any action to stop Land Title's marketing practices and had not investigated Land Title's operations to determine the marketing practices that were being utilized.

The court concluded by stating: "[f]ormer WAC 284–30–800 means what it says: an insurer may not make inducements exceeding $25, "directly or indirectly," through its own channels or through an appointed agent that carries sole responsibility for soliciting and effectuating the parent insurer's policies in a locality."

The court's decision serves to emphasize the Washington State office of insurance commissioner's focus on enforcing the anti-inducement statutes. The insurance commissioner simply does not want agents spending more than $25 to solicit business. However, the facts in this case are unique and it is unlikely that they would be replicated in a situation involving independent property-casualty agents who represent many carriers. Land Title was essentially a captive agent for CTIC. It sold only CTIC policies to each of its clients. It is obvious that the Supreme Court was troubled by the fact that CTIC itself had engaged in improper marketing. This probably provided the impetus for the court to conclude that it was fair for CTIC to be held vicariously liable for Land Title's actions when CTIC was aware of such practices, had not taken any action to stop the practices and had not itself been penalized.

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