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NO. _____

SUPREME COURT OF THE STATE OF WASHINGTON

NO. 40752-3

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON, OFFICE OF THE INSURANCE
COMMISSIONER,

Petitioner,

v.

CHICAGO TITLE INSURANCE COMPANY,

Respondent.

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PETITION FOR REVIEW

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I. INTRODUCTION

The Insurance Commissioner (“Commissioner”) is charged with protecting policyholders from unfair or deceptive practices. RCW 48.30.010. The Commissioner has found that consumers are harmed when title insurance companies, directly or indirectly, give inducements (such as gifts, sponsorships, and free advertising) to real estate or mortgage brokers, and other middlemen in order to solicit business. Appendix¹ (App.) at 88. When real estate and mortgage brokers steer home-buyers to a title insurer or its agent, buyers are not told that their business is part of an unspoken quid pro quo. *Id.* at 86, 88.

To protect the public, the Legislature and the Commissioner have prohibited inducements in the business of insurance and specifically in the area of title insurance where abuses have permeated the market place. *Id.* at 86-88. The Legislature created the agent appointment requirement so that any person authorized to act on behalf of an insurer is clearly identified as an agent to the Commissioner and the public. RCW 48.17.160. An “agent” is a person or entity appointed by an insurer to solicit insurance. RCW 48.17.010(2007). Insurance companies act through their appointed agents and benefit from the business their agents solicit.

¹ Because the Clerk’s Papers have not yet been transferred, relevant portions of the record below are attached in the Appendix.

The Court of Appeals decision is contrary to the insurance statutes and cases from this Court recognizing that the Insurance Code defines the insurer-agent relationship and in turn the obligations of the insurer. In conflict with statutes, rule, and case law, the decision allows title insurance companies to insulate themselves from the conduct of their agents through creative drafting of their private agency contracts.

In addition, the decision harms the public interest by allowing title insurance companies to profit from their agents' illegal conduct. The "business of insurance is one affected by the public interest," and there is a substantial public interest in preserving the Commissioner's authority to protect consumers from unfair and deceptive conduct of insurers and their agents. RCW 48.01.030.

II. IDENTITY OF PETITIONER

Mike Kreidler, Washington State Insurance Commissioner, asks this Court to accept review of the Court of Appeals decision terminating review designated in Part III of the petition.

III. COURT OF APPEALS DECISION

On February 29, 2012, Court of Appeals Division II issued the attached opinion under case number 40752-3-II. App. at 1-14.

IV. ISSUES PRESENTED

- A. The Insurance Code vests broad authority in the Insurance Commissioner to define unfair trade practices and protect consumers in the insurance marketplace. Did the Court of Appeals err when it concluded the applicable statutes and rule do not hold a title insurer responsible for the illegal practices used by its agent to sell the insurer's policies?
- B. The Insurance Code prescribes that agents solicit applications on behalf of insurers. Where the evidence in the record only addresses Chicago Title's failure to exercise control over its agent's solicitation practices, did the Court of Appeals err when it concluded the insurer had no right to control its agent?
- C. Did the Court of Appeals err when it ordered that the initial order entered by the administrative law judge be "reinstate[d]," rather than remand to the agency to modify the final order?

V. STATEMENT OF THE CASE

A. Statutory And Regulatory Framework

The Legislature extensively regulates trade practices in the business of insurance and gives the Commissioner broad authority to define unfair or deceptive practices. RCW 48.30.010. Title insurance offers unique challenges in the regulation of unfair trade practices. Most insurance is marketed and sold by the insurance company or its agent directly to the consumer. App. at 86. With title insurance, however, consumers usually obtain a policy from the title insurer recommended by a real estate agent, mortgage lender or other "middleman," involved in the purchase or sale of the consumers' real estate. *Id.* Title companies "wine

and dine” these middlemen to induce them to steer consumers to particular title insurers. *Id.* The Commissioner found that these marketing practices do not benefit consumers. *Id.* Once steered to a title agent, consumers often cannot or do not compare insurers’ prices and products prior to purchase. *Id.* Inducements for middlemen affect the competition in the title insurance market and add to the cost of title insurance. *Id.* at 88.

In response to this practice, the Commissioner adopted the illegal inducement regulation prohibiting title insurers from providing anything with an aggregate value greater than \$25. Insurance companies are responsible for illegal inducements, made either directly or indirectly through an agent. App. at 75 (Former WAC 284-30-800)(2007).² This rule addressing the specific abuses in the title insurance business is based on a general statutory prohibition against illegal inducements. App. at 74 (Former RCW 48.30.150)(2007).³

Notwithstanding this rule, in 2006, the Commissioner found 1) that the title insurance industry had created new schemes for providing inducements to middlemen, and 2) illegal inducements in the title

² In 2008, the Legislature codified the essence of WAC 284-30-800 in RCW 48.29.210. Although not controlling in this case, RCW 48.29.210 also prohibits title insurers or their agents from directly or indirectly giving inducements. The statute goes further by prohibiting all gifts and inducements, except for those explicitly allowed by rule. RCW 48.29.210(2). In 2009, the Commissioner repealed WAC 284-30-800, and enacted WAC 284-29-100 through 265, explicitly outlining what is permitted to be given. The new statute and new rules are based on the language in the former rule, prohibiting “direct or indirect” inducements.

³ In 2009, RCW 48.30.150 was amended in manner not relevant to this case.

insurance market were widespread. App. at 88. Chicago Title was one of the insurers found to have lured consumers by making illegal inducements. *Id.* at 91. In response, the Commissioner issued a Technical Advisory in 2007, again putting the title insurance industry on notice that the prohibition on illegal inducements applies to both the insurers and their agents. *Id.* at 115-118.

B. Factual Background

Since 1993, Land Title Company (“Land Title”) has been the appointed agent of Chicago Title.⁴ App. at 132. Land Title is not an insurance company authorized by the Commissioner to issue its own title insurance policies. It has authority to offer policies only for insurers that have formally appointed Land Title as their agent. *Id.* at 70 (Former RCW 48.17.150(1)(g)(i)(2007)).⁵ Land Title is appointed to act as the agent of Chicago Title. *Id.* at 79.⁶ Chicago Title itself does not directly solicit any title insurance policies in the four counties where Land Title acts as Chicago Title’s agent - all solicitation of Chicago Title’s title insurance policies in those counties is performed by Land Title. *Id.* at 130, 131.

⁴ Chicago Title and the Court of Appeals repeatedly and erroneously refer to Land Title as an “underwritten title company” or “UTC.” App. 2-3,5. However, the Insurance Code does not recognize the term “UTC.” Regardless of the label Chicago Title has adopted, Land Title is only licensed and authorized by law to act as Chicago Title’s agent.

⁵ RCW 48.17.150(1)(g)(i) was amended in 2008. This requirement is now found in RCW 48.17.160(1).

⁶ By agreement, Land Title is permitted to offer policies for other companies only when Chicago Title refuses to accept the risk. App. at 83.

In 2008, the Commissioner conducted an investigation and determined that, while soliciting insurance business for Chicago Title, Land Title offered illegal inducements such as Seahawks tickets, restaurant meals, and free advertising. App. at 124-125. Because WAC 284-30-800(2)(2007) prohibits direct and indirect inducement payments by insurers, the Commissioner commenced regulatory enforcement action against Chicago Title for the acts of its agent, Land Title. App. at 123-128.

C. Procedural History

The administrative proceeding against Chicago Title was conducted in two phases. Phase I addressed the Commissioner's authority to take action against Chicago Title based on the actions of its agent, Land Title. The issue was addressed on summary judgment. App. at 76. An administrative law judge's initial order ruled in favor of Chicago Title, but the agency's Final Order ruled that Chicago Title is legally responsible for illegal inducements made by its agent. App. at 15-64. The superior court affirmed the Final Order, but the Court of Appeals reversed, holding that the Commissioner lacks authority to impose "vicarious liability" on Chicago Title for the illegal solicitations of Land Title. App. at 8-10, 13-14.

VI. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Pursuant to RAP 13.4(b), the Commissioner requests that review be granted for two reasons. First, the decision of the Court of Appeals conflicts with decisions of the Supreme Court. RAP 13.4(b)(1). In addition, this petition involves an issue of substantial public interest that put consumers statewide at risk of unfair and deceptive practices. RAP 13.4(b)(4). Accordingly, review should be granted.

A. The Court of Appeals' Failure To Apply The Statutory And Regulatory Prohibitions Protecting Consumers From Indirect Inducements Is A Matter Of Substantial Public Interest

“The business of insurance is one affected by the public interest...” RCW 48.01.030. Therefore, “the legislature created the office of the insurance commissioner and conferred upon that office the duty of enforcing the provisions of the code.” *Ins. Co. of North America v. Kueckelhan*, 70 Wn.2d 822, 831, 425 P.2d 669 (1967).

To protect the insurance-buying public, the Legislature enacted statutes addressing unfair trade practices, and granted the Commissioner broad authority to address additional unfair trade practices. RCW 48.30.010(2); *Omega Nat'l Ins. Co. v. Marquardt*, 115 Wn.2d 416, 427, 799 P.2d 235 (1990). In *Omega*, this Court agreed that a strong insurance regulator was necessary to protect consumers against an unfair solicitation practice that concealed information from consumers. *Id.* at 427.

This petition addresses the threshold issue in the effective regulation of title insurance: whether a title insurer is accountable to the chief regulator for illegal inducements paid by its appointed agent. RCW 48.30.150 specifically prohibits such inducements, and applies to both insurers and their agents. Consistent with the statute, WAC 284-30-800 prohibits insurers from paying illegal inducements “directly or indirectly.”

The Court of Appeals decision lacked any analysis of the applicable insurance unfair trade practices statutes and rules, and failed to address the Commissioner’s broad regulatory authority under RCW 48.30.010(2). The Court of Appeals failed to recognize that RCW 48.30.150 applies to both insurers and agents, or that WAC 284-30-800 applies to direct and indirect inducements. The Court of Appeals briefly mentioned WAC 284-30-800, but failed to include RCW 48.30.150 or WAC 284-30-800⁷ in its analysis. App. at 2, 8-14

Chicago Title did not argue, and the Court of Appeals did not hold, that WAC 284-30-800 was invalid. Instead, the Court of Appeals ignored the rule, and relied solely on the absence of the phrase “vicarious liability” in the Insurance Code. App. at 8-10. The Court of Appeals provided no

⁷ Although WAC 284-30-800 was repealed after being codified in RCW 48.29.210, the language in the new statute prohibiting “direct or indirect” inducements mirrors the language of WAC 284-30-800, which the Court of Appeals ignored in its analysis. Therefore, the Court of Appeals decision equally undermines the Commissioner’s ability to enforce the new laws and hold a title insurer accountable for its agent’s actions.

authority for the proposition that a tort theory of liability is applicable to insurance regulation, a wholly distinct area of the law.

In addition to granting the Commissioner broad authority to regulate unfair trade practices, the Legislature created the agent appointment process, and statutorily defined the scope of the agency relationship that appointment creates. RCW 48.17.160 outlines the process an insurer must satisfy before it is permitted to allow anyone, including another company, to solicit insurance on its behalf.

The Legislature also defined the scope of the agency relationship created by an agent's appointment. Under the Insurance Code, an agent is appointed for the purpose of soliciting applications for policies:

“Agent” means any person appointed by an insurer to solicit applications for insurance on its behalf....

App. at 68 (Former RCW 48.17.010)(2007)⁸. RCW 48.17.010 provides that an appointed insurance agent has been given authority by the insurer to solicit insurance policies on the insurer's behalf.

In the absence of a statutory definition, this Court broadly construed the word “solicitation” in interpreting the Insurance Code. Solicitation is not limited to direct, person-to-person communication with the insured. *Nat'l Fed. of Ret. Pers. v. Ins. Comm'r*, 120 Wn.2d 101, 112,

⁸ In 2009, this definition of “agent” was amended in a manner not material to this Petition. RCW 48.17.010(16) (defining “title insurance agent”).

838 P.2d 680 (1992) (holding that mailers recommending certain insurance policies sent by the association, without instruction or involvement from the insurers, was solicitation of insurance). Instead, solicitation is broadly understood to include anything designed to tempt, lure, invite, or excite a consumer to action. *Nat'l Fed'n*, 120 Wn.2d at 112 (citing Black's Law Dictionary 1564 (4th ed. 1968)).

The Court of Appeals failed to accord the proper weight to the definition of agent found in RCW 48.17.010.⁹ The Court of Appeals did not consider the meaning of solicitation in the Insurance Code. As a result, it erroneously concluded that Land Title's "marketing" is not "solicitation."

However, when an insurer's statutorily appointed agent pays an inducement in order to solicit title insurance, it is acting within the scope of its statutory authority as an agent of the insurer. The insurer has "indirectly" paid the inducement to sell its policies. Exercising his judgment, the Commissioner concluded that to effectively address the problems inducements create in the market, insurers must be held responsible for their illegal inducements, even those paid indirectly through their agents.

⁹ Courts give substantial deference to the Commissioner's interpretation of insurance statutes and rules. *Premera v. Kreidler*, 133 Wn. App. 23, 37, 131 P.3d 930 (2006); *Regence Blue Shield v. Ins. Comm'r*, 131 Wn. App. 639, 646, 128 P. 3d 640 (2006). The Court of Appeals gave no deference to the Commissioner.

B. The Court Of Appeals Decision Conflicts With The Supreme Court's Longstanding Analysis Of The Existence And Scope Of The Insurer And Agent Relationship

The Court of Appeals' flawed analysis regarding the existence and scope of an insurer and agent relationship abrogates this Court's decision in *Day v. St. Paul Fire & Marine Ins. Co.*, 111 Wash. 49, 189 P. 95 (1920) and conflicts with the analysis prescribed for the business of insurance in *Miller v. United Pacific Casualty Ins. Co.*, 187 Wash. 629, 636-9, 60 P.2d 714 (1936), and *American Fidelity & Casualty Co. v. Backstrom*, 47 Wn.2d 77, 81, 287 P.2d 124 (1955). Once an agency relationship is established, the conduct and knowledge of an insurance agent is imputed to the insurer if the conduct and knowledge are within the scope of the agency relationship. *Ellis v. Wm. Penn Life Assur. Co.*, 124 Wn.2d 1, 16, 18, 873 P.2d 1185 (1994); *Miller*, 187 Wash. at 636-39. This is true even when the insurer claims the agent's acts are illegal. *Miller* at 634. The question is how to determine the existence and scope of the insurer and agent relationship.

As this Court held in *Day*, the existence and scope of the insurer and agent relationship is statutorily defined. In the insurance context, this Court looks first at whether a person or company was appointed as an agent in compliance with the appointment statute. *Day*, 111 Wash. at 51-53. Where an agent has been appointed, as is the case with Land Title, the

courts will look to the statutory definition of “agent” to define the agent’s duties and the insurer’s liabilities. *Id.* at 52, 53. The Commissioner’s Final Order is consistent with this Court’s decisions, and held Chicago Title accountable for its agent’s illegal solicitation while procuring business for Chicago Title.

The Court of Appeals erred when it minimized the holding in *Day* as merely recognizing “a new method to determine who the law will consider to be an agent,” and that *Day* did not address the scope of the agency. App. at 9 (emphasis added). In *Day*, this Court determined that in the Insurance Code, “the duties and powers of such insurance agents... are defined.” *Day*, 111 Wash. at 52. Further, the Insurance Code “was passed for the purpose of clearly defining the insurance company’s duties and liabilities.” *Id.* at 54. Under *Day*, appointment under the Insurance Code conclusively determines the existence of the agent-insurer relationship with respect to the solicitation of the business of insurance.

The Court of Appeals’ holding that “Washington’s insurance code is silent regarding ... the scope of agency generally...” directly conflicts with this Court’s analysis in *Miller* and *Backstrom*. In both *Miller* and *Backstrom*, the Court considered the definition of “agent” in the Insurance Code to determine the scope of an insurance agent’s authority to bind the insurer. *Miller*, 187 Wash. at 636, *Backstrom*, 47 Wn. 2d at 81. The

conduct at issue here is solicitation of insurance, and RCW 48.17.010 is clear that solicitation is the purpose of the agent's appointment. The statute leaves no opening to negotiate away responsibility when the insurer solicits business through an agent.

C. The Court Of Appeals Decision Conflicts With The Supreme Court's Analysis Of The Common Law Of Agency In Insurance Matters

Rather than applying the case law and statutes applicable to agency in the context of insurance regulation, the Court of Appeals improperly applied common law doctrines applicable to other fields of law. As a result, the Court of Appeals decision allows Chicago Title to bypass the consumer protection provisions imposed by statute, rule and case law, and engage in unrestricted solicitation tactics by using an agent to improperly induce middlemen to steer consumers to buy Chicago Title's policies.

The common law of agency is not applicable to the question of whether an appointed agent's solicitation of insurance falls within the scope of the agent's authority, because RCW 48.17.010 conclusively encompasses solicitation within the scope of an appointed agent's authority. However, even if the common law is applied to analyze this question, it should not be interpreted in a manner that frustrates the statutory agent appointment requirements and negates the public

protection provided by the State's unfair and deceptive practice regulations.

1. The Court of Appeals decision conflicts with this Court's decisions on the doctrine of apparent authority

An agent has apparent authority to act for a principal when the principal makes objective manifestations of the agent's authority to a third person. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 555, 192 P.3d 886 (2008). Here, unrebutted evidence establishes that Land Title is Chicago Title's Agent. App. at 77-78; see RCW 48.17.160. Through its appointment of Land Title, Chicago Title notified the Commissioner that Land Title was authorized to act as Chicago Title's agent. App. at 77-78. This was an objective manifestation to the Commissioner that this particular agent was acting on the insurer's behalf. Pursuant to the appointments on file, the Commissioner relies on insurers to take responsibility for the acts of their agents that fall within the statutorily defined scope of an agent's role (e.g., solicitations on behalf of the insurer). Nothing in the appointment statute or even the common law allows title insurers, in private agreements with their agents, to disclaim their responsibility for complying with statutes and regulations restricting unfair and deceptive solicitation of consumers.

The Court of Appeals' analysis relied on inapposite court cases that do not involve a regulated industry with agent appointment requirements statutorily imposed by the Legislature. The Court of Appeals erroneously relied on *Ranger*, where the record contained no evidence of any objective manifestation by the principal for the conduct taken by the agent. *Ranger*, 164 Wn.2d at 555. In *Ranger*, which involved the specialized and unique business of bail bonds, there was also a question of the scope of the agent's authority to apply funds from one company to bonds issued by other companies. *Id.* at 556. Unlike this case, there was no statute that clearly addressed the conduct within the scope of the agency relationship. In the context of title insurance, any solicitation by the agent, even improper solicitation, is by statute within the scope of the agent's appointment. Therefore, the inducements offered by an agent as a means of soliciting insurance are indirectly the insurer's inducement payments. WAC 284-30-800(2).

The Court of Appeals also applied its own precedent, *DLS v. Maybin*, 130 Wn. App. 94, 121 P.3d 1210 (2005), too broadly when it concluded that the doctrine of apparent authority applies only in the context of a harmed, innocent third party. *DLS* was a tort action by the parent of an employee at an independent McDonald's franchise to collect damages against the McDonald's Corporation for harm caused to their

child. There was no objective manifestation by McDonalds to the parents that the independent franchisee was its agent. *DLS* was not an action brought in the context of the heavily regulated insurance industry, in which the legislature statutorily requires that agent relationships must be formally recognized.

The Court of Appeals' decision conflicts with precedent in the insurance context. In *Pagni v. New York Life Insurance Co*, 173 Wash. 322, 23 P.2d 6 (1933), the insurer argued it was not responsible for statements made by its long-time agent, because the agent "was governed by his written authority issued to him by the insurer; and that, as such agent ... had no power to waive any provision of the policy." 173 Wash. at 348. The Court rejected the argument, stating:

As in the case of agencies in general, *an insurance company is bound by all acts, contracts, or representations of its agent, whether general or special, which are within the scope of his real or apparent authority, notwithstanding they are in violation of private instructions or limitations upon his authority, of which the person dealing with him, acting in good faith, has neither actual nor constructive knowledge.*

173 Wash. at 349-50 (internal quotes omitted, emphasis added).

Thus, the Court of Appeals ignored the longstanding principle that insurers are bound by the acts of their agents, even if the agents are in violation of the private limitations of their authority, unless the person

with whom the agent is dealing has actual or constructive knowledge of the agent's limitation of authority. *Fanning v. Guardian Life Ins. Co. of Am.*, 59 Wn.2d 101, 104, 366 P.2d 207 (1961); *Fletcher v. West Am. Ins. Co.*, 59 Wn. App. 553, 558, 799 P.2d 740 (1990), *review denied*, 117 Wn.2d 1006, 815 P.2d 265 (1991).

The Court of Appeals' flawed analysis strips the protections afforded to consumers, and the industry, by RCW 48.17.160 and RCW 48.17.010. It opens the door for title insurers to use secret agreements to insulate themselves from responsibility for the illegal acts of their agents.

2. The Court of Appeals decision conflicts with a Supreme Court's decision holding that indirect solicitation is encompassed by the Insurance Code

The Court of Appeals erred by concluding that Chicago Title lacks actual authority over Land Title's "marketing," and that on that basis Chicago Title has no actual authority over Land Title's solicitation of title insurance. Land Title is only licensed to conduct business as an agent on behalf of authorized insurers. Once Chicago Title chose to appoint Land Title as its agent, Land Title's solicitation activities were automatically imputed to it. *See Backstrom*, 47 Wn.2d at 81-82 (agent's transfer of an existing policy to a different insured, was imputed to the insurer).

The Court of Appeals' conclusion rested on a provision in Chicago Title's agreement with Land Title prohibiting Land Title from

“marketing” on Chicago Title’s behalf. App. at 4, 10-12 Since Land Title’s marketing addressed only the middlemen used to steer homebuyers’ trust, and since Chicago Title did not directly oversee Land Title’s marketing practices, the Court of Appeals concluded marketing to middlemen is not solicitation of insurance. App. at 10-11. This Court has not interpreted “solicitation” so narrowly. As discussed above, in *Nat’l Fed. Of Retired Persons*, the Court found an indirect solicitation nevertheless comes within the broad meaning of “solicit” as intended in the Insurance Code. *Nat’l Fed. Of Retired Pers.*, 120 Wn.2d at 112. When Land Title gives tickets to sporting events to real estate agents and bankers, it does so only because it believes such gifts will induce the recipients to bring business to Land Title. Because Land Title acts as an agent of Chicago Title, the inducements must be imputed as attempts to gain business for Chicago Title. Nothing in the record refutes that Land Title was able to sell Chicago Title policies as a result of these inducements.

Even if a controversy turns on an agent’s actual authority and the principal’s right of control, the issue is the principal’s right to control the agent, not whether the principal chose to exercise control. Here, it was error for the Court of Appeals to conclude Chicago Title had no right of control on this record. Chicago Title’s argument fails on factual grounds

because Chicago Title's evidence was that it did not exercise control over Land Title. App. at 120, 122. The evidence identified by the Court of Appeals does not address the issue of Chicago Title's *right* to control or monitor Land Title.

RCW 48.30.150 and WAC 284-30-800 hold title insurers responsible for their agents' illegal inducements. The common law cannot be applied to relieve an insurer of this responsibility. A private contract between the insurer and the appointed insurance agent does not alter the rights and responsibilities set forth in the Insurance Code, or the rules adopted pursuant to the Insurance Code. *Fanning*, 59 Wn.2d at 104. If allowed to stand, the Court of Appeals decision leaves consumers without the protection the Legislature and Commissioner established.

D. The Court of Appeals Decision Conflicts With The Administrative Procedure Act (APA) By Ordering Reinstatement Of the Initial Agency Order

The final agency order in this case arose from an adjudicative proceeding under RCW 48.04.010 and RCW 34.05.410-.476. In reviewing a final administrative order, an appellate court can grant only the following forms of relief on judicial review:

(a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order.... The

court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

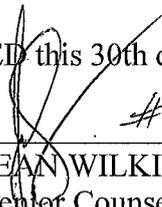
RCW 34.05.574(1). Additionally, the APA provides that only the agency designated review officer is authorized to enter final orders. RCW 34.05.464(7). Only final orders are reviewable on appeal.

Here, the Court of Appeals “reinstated” the initial order of an administrative law judge, entered under 34.05.461(1)(c). *See* WAC 284-02-070(2)(c)(i). This relief is not available under RCW 34.05.574(1) or .464(7). The Court could have remanded this matter back to agency, with instructions to enter a final order based on the court’s decision, but it cannot “reinstated” an initial order .

VII. CONCLUSION

The Commissioner respectfully requests this Court accept review and affirm the agency order holding Chicago Title responsible for the illegal inducements it made through its agent.

RESPECTFULLY SUBMITTED this 30th day of March, 2012.

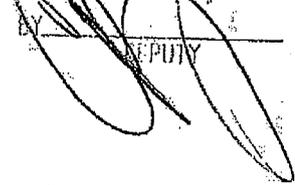

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APPENDIX

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CHICAGO TITLE INSURANCE CO., an
Authorized Insurer,

No. 40752-3-II

Appellant,

v.

WASHINGTON STATE OFFICE OF THE
INSURANCE COMMISSIONER,

PUBLISHED OPINION

Respondent.

JOHANSON, J. — Chicago Title seeks reversal of an Office of Insurance Commissioner (OIC) ruling, arguing that the ruling erroneously imposed vicarious liability on Chicago Title for the regulatory violations of Land Title Insurance (Land Title) merely because Chicago Title underwrites Land Title's title insurance policies. We hold that the OIC did not have statutory, inherent, or common law authority to impose vicarious liability on Chicago Title for regulatory violations Land Title committed. We reverse the OIC judge's decision and reinstate the Administrative Law Judge's (ALJ) order granting summary judgment to Chicago Title.

FACTS

I. TITLE INSURANCE

Title insurance insures owners of real property against loss by encumbrance, defective title, or adverse claim. RCW 48.11.100. Consumers typically select title insurance in connection with a "middlem[a]n," (i.e., their real estate agent, builder, banker, etc.) who may exert great influence on the consumer's decision. Administrative Record (AR) at 470, 472. In 1988, Washington State's OIC adopted a rule to protect consumers by limiting the gifts or inducements that a title insurance company or its agent could offer to a middleman in return for steering customers into buying title insurance from specific companies. Former WAC 284-30-800.¹

Chicago Title provides title insurance nationally. In eight Washington counties, Chicago Title maintains direct operations, meaning that it researches title,² proposes the policy, underwrites the policy, offers escrow and closing services, and markets all these services to customers. In smaller counties, Chicago Title maintains no direct operations and instead only underwrites the policies generated by independent title insurance companies, also known as underwritten title companies (UTC).

In an underwritten title insurance agreement, the UTC conducts its own marketing and sales, maintains the title plant, performs the research for clients, determines the commitments

¹ Former WAC 284-30-800 was in effect during the relevant period of this case. The legislature enacted a new regulatory scheme effective in 2009, RCW 48.29.210 and WAC 284-29-210 through WAC 284-29-260. These superseding regulations still prohibit excessive inducements.

² Title search requires that title companies maintain or subscribe to a title plant, which collects all documents recorded for real property in that county and indexes them by legal description or address.

and exceptions to coverage, and collects all fees and premiums. The underwriting insurance company contracts with the UTC to assume liability for title claims arising from the UTC's policies in exchange for a percentage of the title premiums. Generally, the underwriting title insurance company does not receive documents associated with closing or information about the policy or commitment except for (1) the policy number, (2) the internal file number, (3) the effective date of policy, (4) the type of policy, (5) the premium paid, and (6) the amount of liability. UTCs may have agreements with several underwriting title insurance companies and underwriting title insurance companies may have agreements with several UTCs. This arrangement is beneficial to both small and larger insurance companies because RCW 48.29.020(3) requires that title insurers maintain sufficient capital. But small insurance companies generally lack the requisite capital and the larger title insurance companies are disinclined to maintain title plants in smaller counties, which generate less business and profit.

Chicago Title underwrites title insurance policies for 11 independent UTCs in Washington, including Land Title of Kitsap County. In 1992, Chicago Title and Land Title entered into a written contract, naming Land Title as the issuing agent and Chicago Title as the principal. The "Issuing Agency Agreement" provided:

3. Issuing Agent . . . shall have authority on behalf of Principal to sign, countersign and issue Principal's title assurances on forms supplied and approved by Principal and only on real property located in the County or Counties listed above. . . . Agent shall not be deemed or construed to be authorized to do any other act for principal not expressly authorized herein.
4. . . . Issuing Agent shall:

B. Receive and process applications for title assurances

- (1) In accordance with usual customary practices and procedures and prudent underwriting principles; and

(2) In full compliance with instructions, rules and regulations of Principal given to Issuing Agent.

AR at 519. The agreement further specified that Land Title pay Chicago Title 12 percent of the gross premium and “[c]omply with all federal and state, municipal ordinances, statutes, rules and regulations.” AR at 519. The agreement also provided, “Issuing Agent shall not . . . [u]se the name of the Principal in any advertising or printing other than to indicate the Issuing Agent is a policy issuing agent of the Principal.” AR at 520. In the agreement, the parties allocated losses by designating that Chicago Title was responsible for loss connected with any failure of the title search and Land Title was responsible for other causes of loss. The agreement retained Chicago Title’s right to examine “all accounts, books, ledgers, searches, abstracts and the records which relate to the title insurance business.” AR at 521.

Land Title employs sales personnel who market its services to potential customers in Kitsap County. Land Title makes no mention of Chicago Title in its marketing materials, which emphasize that Land Title is a local company performing title insurance and escrow and closing services. Land Title and Chicago Title have no relationship regarding Land Title’s escrow and closing service, for which Land Title retains all of its fees and receives 28 percent of its total revenue. Chicago Title does not compensate Land Title for marketing expenses and does not exercise any control over Land Title’s marketing practices or procedures.

In 2006, the OIC published a report on violations of the anti-inducement regulation. The investigation inspected 11 title insurance companies, including Chicago Title, but not Land Title. Prompted by its investigation, the OIC issued a technical assistance advisory to all Washington title insurers and title insurance agents clarifying the regulation’s provisions and informing them

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that the law authorized the OIC to assess penalties for violations. The advisory did not mention UTCs or state that underwriting insurance companies would be liable for violations the UTCs commit.

In 2007, the OIC investigated Land Title for violations of the anti-inducement regulation and found multiple violations. The OIC did not contact Chicago Title during its investigation of Land Title. After concluding its investigation, the OIC asked Chicago Title to sign an order (1) stipulating that Land Title's conduct violated the inducement regulation, (2) agreeing to pay a fine of \$114,500 for Land Title's alleged violations, (3) submitting to a compliance plan, which included specific tracking and auditing provisions, and (4) declaring that Chicago Title has "the authority to comply fully with the terms and conditions of the [Compliance] Plan." AR at 514 (no. 6). Chicago Title refused to sign the order.

II. PROCEDURE

In January 2008, the OIC filed a notice of hearing, proposing disciplinary action against Chicago Title (and not Land Title) for 13 alleged violations of the anti-inducement regulation committed solely by Land Title. The notice of hearing did not allege that Chicago Title participated or knew of the violations but indicated that Land Title acted as Chicago Title's agent. The Office of Administrative Hearings (OAH) granted Chicago Title's request to transfer the matter to an ALJ.

Chicago Title and the OIC agreed to bifurcate the proceedings into two phases. In phase I, the ALJ would consider only whether Chicago Title could be vicariously liable for Land Title's actions. Depending on the outcome of phase I, in phase II the ALJ would consider whether Land Title actually violated regulatory provisions of the insurance code. Chicago Title

moved for summary judgment on the vicarious liability issue.³ The OIC opposed Chicago Title's summary judgment motion without filing a cross motion for summary judgment.

The ALJ granted summary judgment in favor of Chicago Title's motion and issued a number of "undisputed findings of fact" and conclusions of law. AR at 279 (capitalization and boldface omitted). The ALJ ruled that, although the insurance code provisions of Washington statutes granted the OIC "broad authority" to take action against a title insurer directly for its own violations, these code provisions did not authorize imposing vicarious liability where the common law of agency did not support such imposition. AR at 291-92.

The OIC hearings unit accepted OIC's petition for review of the ALJ's ruling. After hearing oral argument, the OIC judge, ruling de novo, denied Chicago Title's motion for summary judgment. The OIC judge ruled that the ALJ's "[u]ndisputed findings of fact" were "actually disputed" by the OIC and she deleted or revised them. AR at 122. The OIC judge also deleted or revised the ALJ's conclusions of law, and rejected the ALJ's reliance on "the principles of common law agency," and instead adopted the conclusion that the insurance code determined the insurer/insurance agent relationship. Although stating it was not necessary, the OIC judge added to the findings of fact that Chicago Title was vicariously liable under a strict common law analysis, including the theories of actual authority and apparent authority. The OIC judge determined that the OIC can hold Chicago Title responsible for Land Title's regulatory violations and transferred the case back to the OAH for phase II of the proceedings.

³ On appeal, the OIC erroneously suggests that Chicago Title "stipulated" to Land Title's regulatory violations. The parties merely reserved the question of Land Title's regulatory violation for phase II of the proceedings.

Chicago Title petitioned for review and the superior court upheld the OIC judge's final decision. Chicago Title appeals.

ANALYSIS

I. STANDARD OF REVIEW

"In reviewing a superior court's final order on review of a Board decision, an appellate court applies the standards of the Administrative Procedures Act directly to the record before the agency, sitting in the same position as the superior court." *Honesty in Envtl. Analysis & Legislation (HEAL) v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 526; 979 P.2d 864 (1999). We review the OIC judge's legal determinations using the Administrative Procedure Act's "error of law" standard, which allows us to substitute our view of the law for that of the OIC. *Verizon NW, Inc. v. Emp't Sec. Dep't*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008); see RCW 34.05.570(3)(d).

We review an agency's interpretation or application of the law de novo. *HEAL*, 96 Wn. App. at 526. "We accord deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, but we are not bound by an agency's interpretation of a statute." *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). Where we review purely a question of law, however, we do not defer to the agency's interpretation. *Hunter v. Univ. of Wash.*, 101 Wn. App. 283, 292, n.3, 2 P.3d 1022 (2000), *review denied*, 142 Wn.2d 1021 (2001).

II. STATUTORY PROVISION OF AGENCY

A. Statutes Do Not Provide Vicarious Liability

The OIC argues that when read together, the insurance code statutes establish as a matter of law not only the existence of an agency relationship in the insurance context but also a scope of agency that makes the principal vicariously liable for the agent.⁴ We disagree.

Former 48.17.010 (1985) defines an "agent" and permits an agent to "effectuate" insurance contracts, if authorized by the principal, and to collect premiums on those insurance policies.⁵ Former RCW 48.17.160 (1994) describes the mandatory procedure for appointing an insurance agent, requiring filing with the commissioner and paying a fee.⁶

⁴ The OIC also argues that the legislature need not have expressly granted the OIC authority to hold insurers vicariously liable because it provided the commissioner with authority "reasonably implied from the provisions" of this code. Br. of Resp't at 11; RCW 48.02.060 (1). Although we agree that the insurance commissioner has authority to enforce provisions of the insurance code and to make reasonable rules and regulations according to rulemaking procedure, we disagree that by implication, the legislature authorized the insurance commissioner to declare one insurance company vicariously liable for another without a common law basis.

⁵ Former RCW 48.17.010 defined "agent" as:

"Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated.

⁶ Former RCW 48.17.160 provides for the appointment of agents:

(1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment process for individual within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

Relying on *Day v. St. Paul Fire & Marine Insurance Company*, 111 Wash. 49, 53, 189 P. 95 (1920), the OIC argues that by enacting the insurance code in 1911, the legislature determined the scope of agency for insurance transactions as a pure issue of law. Although the *Day* court noted that the legislature passed the insurance code “for the purpose of clearly defining the insurance company’s duties and liabilities” as a matter of law, the opinion recognizes only that the insurance code established a new method to determine who the law will consider to be an agent. *Day*, 111 Wn.2d at 54. *Day* does not address the scope of agency established between an insurance company and its appointed agent. *Day* neither states nor implies that per se vicarious liability should attach to the principal for an agent duly appointed under the statute. Washington’s insurance code is silent regarding both the scope of agency generally and vicarious liability specifically.

The OIC also argues that the legislature expanded the insurance code after the *Day* opinion, eliminating the need for an extensive, case-by-case common law analysis to establish vicarious liability. But case law does not support the conclusion that by defining the term “agent” the legislature intended to establish the scope of every relationship authorized by former RCW 48.17.010. Instead, case law supports vicarious liability only on a common law basis. *Am. Fid. & Cas. Co. v. Backstrom*, 47 Wn.2d 77, 81, 287 P.2d 124 (1955) (after determining that an individual was properly considered an agent because he conformed to the statutory definition of “insurance agent,” our Supreme Court applied common law agency principles to determine that the insurance agent’s knowledge would be imputed to the principal), *see also Miller v. United Pac. Cas. Ins. Co.*, 187 Wash. 629, 638-39, 60 P.2d 714 (1936).

No authority supports the OIC's argument that the insurance code eliminates the need for a case-by-case common law analysis to establish vicarious liability and we reject that argument.

B. Common Law Vicarious Liability

Chicago Title argues that, because it could not and did not control Land Title's marketing practices, it cannot be vicariously liable for Land Title's marketing practices under common law.

We agree.

1. Right to control

When the facts are not in dispute and not susceptible to more than one interpretation, we determine vicarious liability in a business relationship as a question of law. *Larner v. Torgerson*, 93 Wn.2d 801, 804-05, 613 P.2d 780 (1980). We consider several factors before imposing vicarious liability, but the most crucial factor is the right to control the manner, method, and means by which the work and the desired result was to be accomplished. *Hollingbery v. Dunn*, 68 Wn.2d 75, 80-81, 411 P.2d 431 (1966). When the superior business party has retained no right of control over the subordinate business party and there is no reason to infer a right of control, we will not hold the superior business party vicariously liable for the subordinate party's acts. *Larner*, 93 Wn.2d at 804-05. The significance of the principal's right to control the agent's operation pertains particularly to the "control or right of control over those activities from whence the actionable negligence flowed." *Kroshus v. Koury*, 30 Wn. App. 258, 264, 633 P.2d 909 (1981) (quoting *Jackson v. Standard Oil Co.*, 8 Wn. App. 83, 91, 505 P.2d 139 (1972), review denied, 82 Wn.2d 1001 (1973)), review denied, 96 Wn.2d 1025 (1982).

The agreement between Chicago Title and Land Title, which appointed Land Title as an issuing agent to potential insured persons, also precluded Land Title from marketing on Chicago

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Title's behalf. The OIC's identified regulatory marketing violations did not involve the insured person but involved the use of marketing practices that attempt to induce realtors and other middlemen to influence referrals for marketing purposes. Undisputed testimony from the president of Land Title included that:

[Chicago Title] does not play any role in or exercise any control over Land Title's business operations. [Chicago Title] does not provide any advice to Land Title on compliance with the Inducement Regulation. [Chicago Title] does not have any input in, or oversight of, Land Title's marketing practices or procedures.

AR at 499.

Despite maintaining that a common law analysis is superfluous, the OIC alternatively argues that Chicago Title is vicariously liable for Land Title's marketing because the pertinent parties never affirmatively disclaimed having the right to control Land Title but merely disclaimed exercising that right.⁷ OIC's argument relies on *Kamla v. Space Needle Corp.*, 147 Wn.2d 114, 119-20, 52 P.3d 472 (2002). But *Kamla* does not support the OIC's strained argument (that a party who fails to disclaim expressly the right to control, thereby acts affirmatively to establish the party's right to control). Additionally, the OIC misplaces its reliance on *Kamla* because that analysis involved direct, not vicarious, liability, which entails a different test.

The evidence shows that Land Title's alleged violations of the anti-inducement regulation involve strictly marketing issues. The evidence also shows that Chicago Title did not control any

⁷ The OIC argues that, because the written agreement preserves Chicago Title's right to inspect Land Title's books, Chicago Title must affirmatively rebut the implication that it had a right to control Land Title. But evidence that Chicago Title retained general contractual rights does not support the OIC's assertion that Chicago Title retained the specific rights at issue here, i.e., the right to control Land Title's marketing.

aspect of Land Title's marketing. Because Land Title's alleged violations of the anti-inducement regulation involve strictly marketing issues, the evidence does not support the OIC's alternative argument that the OIC judge properly found Chicago Title vicariously liable under a strict common law agency analysis. See *Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 183, 159 P.3d 10 (2007), *aff'd*, 166 Wn.2d 27, 204 P.3d 885 (2009).

2. Doctrine of apparent authority

The OIC argues that the OIC judge properly found Chicago Title vicariously liable under the theory of apparent authority⁸ because Chicago Title's compliance with the insurance code's procedure to appoint an agent objectively manifested that Land Title acted on its behalf. We disagree.

"An agent has apparent authority to act for a principal only when the *principal* makes objective manifestations of the agent's authority 'to a third person.'" *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 555, 192 P.3d 886 (2008) (quoting *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160 (1994)). The apparent authority doctrine protects third parties who justifiably rely upon the belief that another is the principal's agent. *D.L.S. v. Maybin*, 130 Wn. App. 94, 98, 121 P.3d 1210 (2005). The doctrine has three basic requirements: (1) The putative principal's actions must lead a reasonable third party to conclude that the actors are employees or agents; (2) the innocent third party must believe they are agents; and (3) the third party must rely on that

⁸ The OIC also argues that, because Chicago Title did not address apparent authority in its opening brief, it conceded that argument. But in its opening brief, Chicago Title assigned error to the OIC judge's findings of fact and conclusions of law, asserting the doctrine of apparent authority, and in its reply brief, Chicago Title responded fully to the OIC's apparent authority argument. Thus, Chicago Title has not conceded this argument. RAP 10.3(c); *Spokane v. White*, 102 Wn. App. 955, 963, 10 P.3d 1095 (2000), *review denied*, 143 Wn.2d 1011 (2001).

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mistaken belief to its detriment. *D.L.S.*, 130 Wn. App. at 98. The innocent third party's subjective belief must be objectively reasonable based on the principal's specific objective manifestation. *Ranger Ins. Co.*, 164 Wn.2d at 555 (power of attorney to post bonds on behalf of principal does not constitute an objective manifestation of authority to redirect funds).

The apparent authority doctrine is inapplicable here because that doctrine's purpose is to provide judicial recourse for innocent third parties whose reliance has harmed them, which circumstance is not present here. *See D.L.S.*, 130 Wn. App. at 98. Additionally, the OIC's apparent authority argument depends on its statutory authority argument and does not constitute a strict common law analysis. Finally, Chicago Title's filing of the required OIC form and paying the required OIC fee to make Land Title its issuing agent does not constitute a specific objective manifestation that it authorized Land Title to violate the anti-inducement regulation. *See Ranger Ins. Co.*, 164 Wn.2d at 555.

The OIC does not show a basis upon which to impose vicarious liability, neither on the doctrines of actual authority nor apparent authority. Neither does the law support the OIC's argument that the insurance code, which defines and establishes the mandatory procedure for the appointment of an insurance agent, eliminates the need for a case-by-case common law analysis. Finally, the OIC fails to explain why Land Title should not be solely accountable for its own alleged violations of anti-inducement regulations.⁹ We hold that the OIC has neither statutory

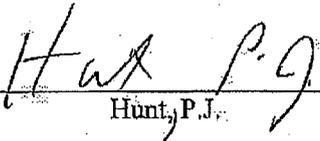
⁹ The OIC implies that, unless we hold title insurance underwriters vicariously liable for their UTCs, insurance code violations will go unregulated. We note, however, that nothing in this opinion prevents the OIC from holding the UTCs solely responsible for complying with anti-inducement regulations.

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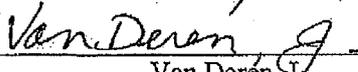
authority to impose vicarious liability on Chicago Title for Land Title's marketing nor does it show that vicarious liability is proper under the common law.¹⁰

We reverse the OIC judge's decision and reinstate the ALJ's order granting summary judgment to Chicago Title.

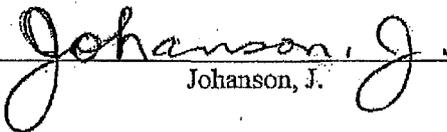
We concur:



Hunt, P.J.



Van Deren, J.



Johanson, J.

¹⁰ Because we hold that the OIC neither has statutory authority to impose vicarious liability nor shows that vicarious liability is proper under the common law, we do not reach Chicago Title's alternative argument that the OIC judge exceeded its delegated legislative authority and effectively promulgated a de facto regulation.

penalties upon Chicago Title Insurance Company (Chicago) for seventeen alleged violations committed by Land Title Company of Kitsap County, Inc. (Land Title). In the Notice of Hearing and Amended Notice of Hearing, the OIC asserts that Chicago, through its duly appointed title insurance agent, Land Title, violated WAC 284-30-800, the Illegal Inducement Regulation, and for these violations the OIC seeks to impose a fine of \$155,000 against Chicago pursuant to RCW 48.05.185.

On February 29, 2008, this matter was referred to the Office of Administrative Hearings (OAH) and the administrative hearing was held before Administrative Law Judge Cindy L. Burdue (ALJ), with the OIC's instructions to hear the case and enter Initial or Recommended Findings of Facts, Initial Conclusions of Law and Initial Order. During the course of that proceeding, the ALJ entered a First Pre-Hearing Order, and later an Amended First Pre-Hearing Order, bifurcating the issues in this case: Phase I involves *the preliminary issue of the legal responsibility of [Chicago] for the actions of Land Title ... being determined first*. Depending on the outcome of Phase I, the ALJ proposes to hear argument on, and enter an Initial or Recommended Order relative to, Phase II, which is the issue of *whether the expenditures of the Kitsap County company [Land Title] violate the law*. In accordance with this plan, on October 30, 2008, the ALJ entered Initial Findings of Facts, Initial Conclusions of Law and Initial Order Granting Summary Judgment (Initial Order) in Phase I, recommending that the undersigned enter Final Findings of Facts, Final Conclusions of Law and Final Order (Final Order) ruling that Chicago is not liable for the illegal acts of Land Title in violating the Inducement Regulation and statute. (It is noted that in Initial Finding of Fact No. 2, the ALJ states that for purposes of *this Motion* [for Summary Judgment] *only*, it is stipulated that Land Title did commit the alleged violations of the Illegal Inducement Regulation.)

On November 10, 2008, the entire hearing file was transferred to the undersigned Review Judge for review and entry of a Final Order in Phase I, which, as above, the ALJ in her First Pre-Hearing Order, states *whether Chicago is legally responsible for the actions of Land Title ... in this matter*. Therefore the Final Findings of Facts, Final Conclusions of Law and Final Order herein relate only to the aforereferenced Phase I.

On November 18, 2008, pursuant to established procedure, Wendy Galloway, Paralegal to the undersigned, wrote a letter to all parties outlining the procedure for review and indicated

that the undersigned requested presentation of oral argument from the parties for her consideration prior to entry of a Final Order in Phase I.

On November 19, 2008, the OIC filed the OIC's Brief in Support of Review of Initial Order and Declaration of Alan Michael Singer with the undersigned. Further, during that time 1) Chicago requested, and was granted by the undersigned, permission to file its Reply to the OIC's Brief in Support of Review of Initial Order on or before December 10, 2008; and 2) Chicago requested, and was granted by the undersigned, permission to file said brief by e-mail. On December 10, 2008, Chicago filed its Response to OIC's Brief In Support of Review of Initial Order. On December 10, 2008, Chicago also filed its Limited Motion to Strike Declaration of Alan Michael Singer. On January 22, 2009, the undersigned heard and granted Chicago's Limited Motion to Strike the November 19, 2008 Declaration of Alan Michael Singer (not the Declaration of Alan Michael Singer executed and filed on September 24, 2008), ruling that the statements of Alan Michael Singer therein would be considered only as argument in support of the OIC's Petition for Review of Initial Order and not as evidence. Finally, on February 5, 2009, the parties presented oral argument on review of the ALJ's Initial Order in person before the undersigned.

NATURE OF PROCEEDING

In her Initial Order Granting Summary Judgment entered October 30, 2008, the ALJ stated the issue as being *Whether Respondent [Chicago] is entitled to summary judgment on the issue of its liability for the regulatory violations committed by its issuing agent, Land Title Company [sic], under WAC 284-30-800 and/or RCW 48.30.150, because no genuine issue of material fact exists and, as a matter of law, Respondent is entitled to judgment in its favor?* In her Initial Conclusions of Law, the ALJ recommends that the undersigned Review Judge enter, among others, a Final Conclusion of Law that *no genuine issue of material fact exists as to the relationship between [Chicago] and [Land Title] and the actions of the parties within that relationship. Based on the findings and legal analysis above, the illegal acts of [Land Title] cannot be imputed to [Chicago], and that Summary Judgment is granted to [Chicago] on the issue of imputed liability for the illegal acts of [Land Title] in violating the inducement statute and regulation. The ALJ further recommends the undersigned Review Judge enter a Final Order that [Chicago's] Motion for Summary Judgment is GRANTED on the issue [of] whether it can be*

held vicariously liable for the illegal acts of the underwritten title company [Land Title] with whom it contracts.

REVIEW JUDGE'S CONSIDERATION

1. Review. This matter has properly come before the undersigned Review Judge to review the Initial Order entered by the ALJ on October 30, 2008, with the parties submitting briefs and presenting oral argument on review. In the OIC's Brief in Support of Review of Initial Order, p. 4, the OIC contended, and at the outset of this oral argument Chicago agreed, that review of the Initial Order by the undersigned Review Judge is de novo.

2. Record of Proceeding. The record of this proceeding, including the entire hearing file and a recording of the proceeding before the ALJ, was presented to the undersigned Review Judge for her review and entry of Final Findings of Facts, Final Conclusions of Law and Final Order.

3. The Insurance Commissioner's Petition for Review. In addition to the automatic review which is required to be given to all Initial Orders entered relative to appeals of OIC actions, in the proceeding herein on November 19, 2008, the OIC filed its OIC's Brief in Support of Review of Initial Order and its Declaration of Alan Michael Singer in Support of Petition for Review of Initial Order with the undersigned and on December 10, 2008, Chicago filed its Chicago Title Insurance Company's Response to OIC's Brief in Support of Review of Initial Order. On February 5, 2009, at the request of the undersigned, the parties presented oral argument in person to the undersigned.

4. Revision of Initial Order on Review: Issue Presented: in Initial Order: The OIC contemplates that the ALJ's statement of the issue may be a finding of fact and argues that as such it is not based on the evidence, and that it misapprehends the issue presented and is in error. First, the ALJ's statement is not presented as a finding of fact, but as a statement of the issue, providing the framework for the Initial Findings of Fact and Initial Conclusions of Law, as follows:

Whether [Chicago] is entitled to summary judgment on the issue of its liability for the regulatory violations committed by its issuing agent, Land Title Company, under WAC 284-30-800 and/or RCW 48.30.150, because no genuine issue of material fact exists and, as a matter of law, [Chicago] is entitled to judgment in its favor?

Second, while not particularly inaccurate, the statement of the issue could be more concise. Therefore *Issue Presented*: in the Initial Order is replaced by the following:

Can the Insurance Commissioner hold Chicago Title Insurance Company responsible for the illegal acts of Land Title Insurance Company of Kitsap County, Inc. in violating WAC 284-30-800, the Illegal Inducement Regulation?

5. Revision of Initial Order on Review: *Undisputed Findings of Fact* in Initial Order: In the ALJ's Initial Order Granting Summary Judgment, the ALJ titles all of her findings of fact as *Undisputed Findings of Fact*. While it is not entirely clear what is meant by this title, normally "undisputed findings of fact" are facts the verity of which no party disputes. However, in this Initial Order, many of the facts that are labeled by the ALJ as *Undisputed Findings of Fact* are actually disputed by the OIC in this proceeding, as summarized in the OIC's Brief in Support of Review of Initial Order and Declaration of Alan Michael Singer in Support of Petition for Review of Initial Order executed and filed November 19, 2008. For this reason, the undersigned replaces the title *Undisputed Findings of Fact* with Initial Findings of Fact, to clarify that while the facts at issue may have been disputed by the parties, the ALJ determined, by the weight of the evidence, the facts to be as stated in each of her Initial Findings of Fact.

6. Comment on Review: Admission of Evidence in Hearing before ALJ: It appears that the evidence presented by the OIC and Chicago was not actually admitted as evidence by the ALJ during the proceeding before the ALJ, and no Exhibit List was created during that proceeding. For this reason, because the undersigned has determined that the evidence presented would have been admitted if that process had been followed (see possible exceptions discussed immediately below), in the below Final Findings of Facts, the undersigned has identified the evidentiary documents by their names instead of by their exhibit numbers as is customarily done. Most significantly, this evidence includes the original and amended Notices of Hearing issued by the OIC; Chicago's Demand for Hearing; the ALJ's Order and Amended Order on First Pre-Hearing Conference, and other preliminary documents; Declaration of D. Gene Kennedy in Support of Chicago Title Insurance Company's Motion for Summary Judgment Re: Agency Liability; Declaration of Don Randolph in Support of Chicago Title Insurance Company's Motion for Summary Judgment Re: Agency Liability with Ex. A, which is the "Issuing Agency Agreement" executed by Chicago and Land Title; Declaration of Madeline Barewald in Support of Chicago Title Insurance Company's Motion for Summary Judgment Re: Agency Liability;

Declaration of Brad London in Support of Chicago Title Insurance Company's Motion for Summary Judgment RE: Agency Liability; Declaration of Alan M. Singer executed September 24, 2008 with attached Exhibits A through P (designated hereafter as Decl. of Singer; not to be confused with Declaration of Alan Michael Singer in Support of Petition for Review of Initial Order executed and filed on November 19, 2008); and Declaration of Carol Sureau.

On March 5, 2009, the OIC filed a Motion RE: Necessity to Bring a "Motion to Strike." In this Motion to Strike, the OIC advised that it had objected to admission of certain pieces of evidence during the hearing before the ALJ, that the ALJ had never ruled on the OIC's objection and that the ALJ had improperly considered this evidence. In its Motion to Strike, the OIC further argued that it was not also required to bring a motion to strike this evidence before the ALJ or thereafter. On March 16, 2009, Chicago filed Chicago Title Insurance Company's Response to OIC's Motion RE: Necessity to Bring a Motion to Strike, asserting generally that it was not raising this argument, that the briefing on the Petition for Review was closed and therefore the necessity of filing a motion to strike is not an issue before the undersigned. The undersigned advises that while indeed in order for a party to have objections to evidence presented at hearing considered by the presiding officer it is generally not also necessary under Title 34 RCW to bring a motion to strike this evidence, the briefing on review of this case is, as Chicago argues, closed. Additionally, as Chicago states, Chicago is not making the argument that such a motion to strike is required. The parties are advised that those pieces of evidence upon which the OIC objected during hearing and identified in its OIC's Petition for Review are noted and are dealt with in this Final Order if they have been considered by the undersigned to be of any evidentiary significance to the review herein.

7. The undersigned has reviewed each Initial Finding of Fact against the evidence presented at hearing before the ALJ and has set forth the Final Findings of Fact based upon the evidence presented during hearing before the ALJ, addressing each of the ALJ's *Initial Findings of Fact* number by number. Likewise, the label *Conclusions of Law* in the Initial Order is substituted with Initial Conclusions of Law, and the undersigned has reviewed each Initial Conclusion of Law based upon the Final Findings of Fact and legal authority argued by the parties, addressing each of the ALJ's Initial Conclusions of Law number by number. While the undersigned recognizes that this method results in a less than easy-to-read Final Order, it is understood that this is a more comprehensive method of review in that the reader is assured that each Initial

Finding of Fact and Initial Conclusion of Law is specifically considered and, if changed, the reason for such changes are set forth. Further, this Final Order is even less easy-to-read, as many of the Initial Findings of Fact and Initial Conclusions of Law are redundant and therefore, the Final Order contains a plethora of redundant Final Findings of Fact and Final Conclusions of Law.

As above, the undersigned recognizes that this number-by-number review is often considered to be the more comprehensive means of displaying review as it indicates specific analysis of each Initial Finding and Initial Conclusion in addition to setting forth the Final Findings of Facts and Final Conclusions of Law. For this reason, and also because of the complexity and importance of the issue herein, the undersigned has followed this number-by-number format. However, should the parties agree to request an easier-to-read format, the undersigned is willing to enter Final Findings of Facts, Final Conclusions of Law and Final Order which would certainly be consistent with the Final Findings, Final Conclusions and Final Order herein, but would simply eliminate recitation of the Initial Findings and Initial Conclusions – and their substantial redundancy – and would eliminate the undersigned's analyses of each. Said easier-to-read Final Order would not replace the document herein, and the document herein would be the subject of any appeal which might ensue, but would be attached hereto simply for ease of reference.

8. The undersigned Review Judge has reviewed the entire hearing file, including all documents and exhibits filed therein, the recording of the proceeding, the OIC's Brief in Support of Review of Initial Order and Declaration of Alan Michael Singer in Support of Petition for Review of Initial Order assigning error to the Initial Findings of Fact, Initial Conclusions of Law and Initial Order, Chicago's response to OIC's Brief in Support of Review of Initial Order Supporting the Initial Findings of Fact, Initial Conclusions of Law and Initial Order and the oral arguments of the parties on review.

FINDINGS OF FACTS

Having considered the evidence and arguments presented at the hearing before the ALJ, the documents on file herein, the Initial Findings of Fact, Initial Conclusions of Law and Initial Order, the subsequent briefs filed by both parties on review and the oral argument presented by both parties on review before the undersigned, the undersigned duly appointed Review Judge

makes the following Final Findings of Fact, first quoting the ALJ's Initial Findings of Fact number by number, and then revising the ALJ's Initial Findings of Fact number by number as appropriate.

1. *The Office of the Insurance Commissioner (OIC) alleges that the Respondent, Chicago Title Insurance Company (Chicago) is liable for violations of the inducement regulation, WAC 284-30-800, committed by Land Title Insurance Company (Land Title) with whom Chicago has an "Issuing Agency" contract. Chicago has been, for some years, the only company authorized by law to underwrite the title insurance policies issued by Land Title. (Decl. Alan Singer, and Exhibits) Respondent Chicago is a Missouri Corporation and Land Title is a Washington Corporation (Decl. of Brad London) Chicago is paid a percentage of the total fee charged by Land Title for each title policy Chicago underwrites.*

- First sentence: This Initial Finding is an incorrect statement of the OIC's allegation. The OIC has never included the fact that Chicago has an "Issuing Agency" contract with Land Title at all in its enforcement action, which was issued in the Notice of Hearing format. [Notice of Hearing; Amended Notice of Hearing.] In fact, as early as the filing of its Opposition to Chicago's Motion for Summary Judgment before the ALJ, the OIC has asserted that the fact that Chicago has an "Issuing Agency Agreement" with Land Title is irrelevant. [OIC's Opposition to Chicago's Motion for Summary Judgment, pgs. 27 and throughout; Transcript of oral argument on Chicago's Motion for Summary Judgment before ALJ, 1:18:16.] Therefore, to correct the statement of the actual allegation that the OIC is making against Chicago, as stated in its enforcement action, substitute first sentence with: The Office of the Insurance Commissioner (OIC) alleges that the Respondent, Chicago Title Insurance Company (Chicago), violated WAC 284-30-800, by and through the acts of its agent, Land Title Company of Kitsap County, Inc. (Land Title), which Chicago had legally appointed as its title insurance agent pursuant to RCW 48.17.160 to act on Chicago's behalf to solicit and effectuate Chicago's title insurance. [Notice of Hearing; Amended Notice of Hearing.]

- Second and third sentences: Adopt statements, but clarify and supplement by replacing with: Chicago is a domestic Missouri title insurance corporation which has been authorized by the OIC since 1977 as a title insurer to underwrite and sell title insurance in Washington and elsewhere. [Ex. A to Decl. of Singer; Decl. of London.] Land Title is a Washington

corporation, incorporated in 1967, which is licensed by the OIC as a title insurance agent as defined in RCW 48.17.010. [Exs. A, B to Decl. of Singer; Decl. of Kennedy.] Since March 5, 1993, Chicago, as an insurer, has filed an Appointment with the OIC as required by RCW 48.17.160, on forms prescribed by the OIC, and paid the proper Appointment fee therefore, formally appointing Land Title to act as a title insurance agent to act on Chicago's behalf in Mason, Kitsap, Clallum and Jefferson counties (although Land Title is not undertaking these activities in Clallum and Jefferson counties). [Decl. of Randolph; Ex. C to Decl. of Singer.] Pursuant to specific authority given to appointed insurance agents under RCW 48.17.010 and 48.17.160, Land Title has at all times pertinent hereto had the authority to solicit, specifically on behalf of Chicago, applications for Chicago's title insurance, without the requirement of any further authority needed from the appointing insurer. Further, as specifically allowed under RCW 48.17.010 and 48.17.160, Chicago may authorize Land Title to act on Chicago's behalf to effectuate Chicago title insurance policies and to collect premiums on insurances so applied for or effectuated (on forms prescribed by Chicago and using rates prescribed by Chicago as required by the OIC). In fact, since May 1, 1992, Chicago has additionally authorized Land Title to effectuate Chicago title insurance policies on Chicago's behalf and to collect premiums therefore. [Decl. of Randolph; Exs. C, D, E, and G of Decl. of Singer; "Issuing Agency Agreement" entered into between Chicago and Land Title May 1, 1992 and included as Ex. A to Decl. of Randolph.] At all times pertinent hereto, Land Title was not appointed as an agent to represent, including solicit or effectuate insurance policies for any other title insurance company [Exs. E, F of Decl. of Singer] and under its contract with Chicago, Land Title was prohibited from acting on behalf of any other title insurer. ["Issuing Agency Agreement."] Likewise, Chicago appointed Land Title as its exclusive agent to act on its behalf in these counties. If Land Title were not appointed to represent Chicago in these counties, Land Title would have no title insurance to market or sell to consumers. Further, because Chicago does not operate directly in these counties, the only way Chicago can solicit for and effectuate its title insurance there is through Land Title. [Exs. A-P of Decl. of Singer; "Issuing Agency Agreement."] Finally, Land Title collects the Chicago title insurance premiums, pays 12% of the gross premium for each title policy effectuated to Chicago and retains the balance for itself. [Decl. of Randolph; "Issuing Agency Agreement."] Approximately 28% of Land Title's total revenue comes from escrow services.

[Decl. of Kennedy at 5; Initial Finding 25]; all the rest of its revenue – 72% - comes from selling Chicago’s title insurance policies.

2. *Land Title is a title and escrow company that does business in at least two Washington counties, Mason and Kitsap. It is not a party to this action. Rather, for Land Title’s violations of the above-cited regulation limiting inducements, the OIC seeks to impose fines of \$155,000 on Chicago, based on the “Issuing Agent” [sic] contract; the relationship between the two companies, and the broad enforcement and regulatory authority of the OIC. For the purposes of this motion only, it is stipulated that Land Title did commit the alleged violations of the inducement regulation.*

- First and second sentences: Correct and clarify. Replace with: As found above, Land Title is licensed by the OIC as a title insurance agent. Land Title also conducts escrow services, which are not considered part of its business as an insurance agent. While not relevant, Land Title is not a party to this action.

- Third sentence: This is an incorrect statement of the basis for the OIC’s disciplinary action against Chicago: as above under “Issue Presented,” the fact of the “Issuing Agency Agreement” is not a basis for the OIC’s action against Chicago and it has never even been mentioned in the OIC’s enforcement action. (The agreement referred to is not entitled “Issuing Agent” contract; it is entitled “Issuing Agency Agreement” and will hereinafter be referred to as such.) [Notice of Hearing and Amended Notice of Hearing.] Indeed, consistently throughout its briefing and oral argument before the ALJ and in its briefing and oral argument before the undersigned on review, the OIC argues that the existence of the “Issuing Agency Agreement” is irrelevant to the issue herein. Replace with: The OIC seeks to impose fines against Chicago, based upon the illegal acts of its appointed agent, Land Title acting on Chicago’s behalf in soliciting Chicago’s title insurance.

- Fourth sentence: Adopt.

3. *The stipulated violations of the inducement law by Land Title include “wining and dining” of real estate agents, builders, and mortgage lenders with meals, golf tournaments, advertising for one real estate agent, purchases at a Board of Realtors auction; and professional football championship game tickets, in amounts over the \$25.00 limit allowed by WAC 284-30-800. [Amended Notice of Hearing.]*

- Adopt, but change *inducement law* to more properly identify the relevant rule as WAC 284-30-800, the Illegal Inducement Regulation, and add sentence: Because the Illegal Inducement Regulation provides limitations on title insurers and their agents on giving things of value in excess of \$25.00 to producers of title business, such as the above-referenced real estate agents and others who are in a position to direct the purchase of title insurance to certain title insurers over others, the act of either title insurers or their agents giving such inducements to such producers is clearly a form of solicitation for the purchase of title insurance.

4. *Land Title is known as an "underwritten title company," or "UTC." Land Title cannot issue title insurance policies on its own, without an underwriter like Chicago, who has the legal authority in Washington to underwrite the policies, as granted by the OIC. Chicago is required by law to "appoint" any UTC whose title policies it writes, and Land Title has been properly appointed by Chicago with the OIC for that purpose. (Decl. Singer and Exhibit F.)*

- First sentence: Randolph declares that Land Title is an independent title company *known in title insurance literature as "independent agents" or "underwritten title companies" ("UTCs").* [Decl. of Randolph.] While the identity of "UTCs" might be designations developed in title literatures, "UTCs" are not designations recognized in the Insurance Code, and are certainly not designations which would somehow differentiate a title insurance agent from a title insurance agent which is also called a "UTC." Otherwise stated, the label of "UTC" does not alter Land Title's status as a title insurance agent, which acts on behalf of its appointing insurer, Chicago, with all the rights and responsibilities of an insurance agent under the Insurance Code and regulations. Therefore the fact that Land Title may also hold a title industry designation of "UTC" is irrelevant to the issue herein. Replace with: Land Title is licensed as a title insurance agent by the OIC, and is formally appointed by Chicago to solicit for Chicago's title policies on Chicago's behalf. Although title insurance literature might also informally designate it as a "UTC," whether a title insurance agent is also referred to as a "UTC" is irrelevant; its nature as a title insurance agent, with the ensuing rights and responsibilities of a title insurance agent which acts on behalf of its appointing insurer(s), remains the same.

- Second sentence: Land Title cannot and does not "issue" a title insurance policy in any case, with or without an underwriter like Chicago. It is Chicago, as the insurer, which issues

its own Chicago title insurance policies in every situation; Chicago may choose to appoint a title insurance agent to act on its behalf, but it is never Land Title, the agent, which "issues" the policy. Correct sentence by replacing with: In those counties where it wishes to sell Chicago title policies, Chicago may appoint a title insurance agent, such as Land Title, to act on Chicago's behalf to solicit for itself directly and/or to solicit and effectuate issuance of Chicago title policies. However, it is Chicago, as the insurer, which is the entity authorized by the OIC to write and issue Chicago title policies and to serve as the underwriter of those title policies.

- Third sentence: Statement not supported by the evidence. Chicago does not "write" Land Title's title policies; Chicago "writes" Chicago's title policies. Land Title works on Chicago's behalf to simply effectuate, i.e. help, Chicago in the solicitation for and sales of Chicago title policies which are underwritten by Chicago. Also, Land Title has not been appointed by Chicago "with the OIC for that purpose." Replace with: Chicago, as an insurer, is required by law to legally appoint any entity which it authorizes to act on its behalf. This requires that Chicago file a formal Appointment form with the OIC, formally appointing Land Title, an insurance agent, to act as a title insurance agent representing Chicago. Chicago complied with this requirement beginning on March 5, 1993 and continuing during all pertinent times hereto and continuing currently. [Exs. A-P to Decl. of Singer.] Under the Insurance Code, agents which are legally appointed by insurers may solicit applications for insurance on the insurer's behalf and, if authorized so to do, the appointed agent may effectuate insurance contracts. Agents may also collect premiums on insurances so applied for or effectuated. As found above, in the case of Chicago's appointment of Land Title as an insurance agent, in addition to having the right to solicit applications for insurance on Chicago's behalf solely by virtue of its appointment, Land Title has also since 1993 been authorized by Chicago, as provided for under the Insurance Code, to effectuate Chicago's title policies [Decl. of Randolph: "Issuing Agency Agreement"] and to collect premiums for the Chicago title policies from purchasers (as required by the OIC, on forms prescribed by Chicago and premium rates as prescribed by Chicago). (Issuing Agency Agreement.)

5. *Chicago also conducts its own insurance and escrow business in eight Washington counties, and maintains or subscribes to title plants in these counties as required by law. In these geographic areas, Chicago has its own employees and agents, and maintains its own*

branch offices. In the counties where it does direct business, Chicago conducts marketing to sell its services.

- Adopt, but add citation to evidence: (Decl. of Randolph; Decl. of London.)

6. *Chicago conducts no marketing activities in Kitsap and Mason counties, however. Chicago relies entirely on the efforts of Land Title to market the title insurance policies in these geographic areas. (Decl. London) Land Title is the only title company appointed by Chicago to sell its title insurance policies in Kitsap, Mason, Clallam, and Jefferson Counties. (Decl. Singer, Ex. E) However, Land Title operates and has offices only in Kitsap and Mason counties. (Decl. Kennedy)*

- Either unclear or incorrect statement and if read one way then not supported by the evidence. To clarify/correct, replace with: Chicago conducts no direct marketing activities in Kitsap, Mason, Clallam and Jefferson counties. (Decl. of London.) Chicago relies solely on the efforts of Land Title. (Decl. of London; Decl. of Kennedy.) as its exclusive appointed insurance agent, to act, on behalf of Chicago, to solicit for and effectuate Chicago title policies in these counties and to collect Chicago's established premiums for these title policies (although Land Title does not actually operate in Clallam and Jefferson counties). (Ex. E to Decl. of Singer.)

7. *A minority share of Land Title stock (45%) is owned by Security Union Title Insurance Company (Security Union), which is a subsidiary of Chicago Title and Trust Company (CT Trust). CT Trust is a subsidiary of Fidelity National Title Group, Inc., which is, in turn, a subsidiary of Fidelity National Financial, Inc. Chicago is also a subsidiary of CT Trust. Thus, Land Title and Chicago are each subsidiaries of or partly owned by separate companies who share the same parent company, Fidelity National Financial, Inc. [Ex. 5, Decl. of Barewald.]*

- Adopt, although relevancy is questionable.

8. *Between 33 and 44% of the board members of Land Title, since 2002, work or have worked for the shared parent company, Fidelity National Financial, Inc., or one of its subsidiaries. [Ex. 9, Decl. of Singer, Ex. D, E] Other than the shared parent company identity, Chicago has no corporate affiliation with Land Title.*

- First sentence: Adopt, although relevancy is questionable.
- Second sentence: Delete. Insufficient evidence presented to support this finding.

9. *In Washington, there are a number of UTC's [sic] or "independent title companies" that provide title insurance, typically in counties where national companies do not sell this directly. (Decl. Randolph) Chicago contracts with eleven UTC's [sic] in Washington state, to underwrite the risk that the title search was not done properly by the UTC, and hence, Chicago assumes liability to the ultimate consumer for any loss caused by the bad title search. The UTC's [sic] involved own or subscribe to a title plant in the counties where they operate, by law.*

- First sentence: Not supported by the evidence: "UTCs" do not "provide title insurance." "UTCs" are a designation found in title literature which has been applied to some title insurance agents. These title insurance agents, like Land Title, help their appointing insurers to provide that insurer's title insurance by, acting on the insurer's behalf, soliciting and effectuating the appointing insurer's title insurance. This sentence appears to recognize "UTCs" as something different than title insurance agents. Land Title is a title insurance agent under the Insurance Code, and as such, its actions in solicitation and effectuation of insurance policies on behalf of its insurer, Chicago, are governed by the Insurance Code; whether Chicago or Land Title choose to call Land Title a "UTC" or any other name. Replace with: In Washington, there are a number of title insurance agents which also are called in title insurance literature, "UTCs"; these "UTCs," such as Land Title, are title insurance agents appointed by a title insurer(s), such as Chicago, to solicit for and effectuate title insurance policies issued and underwritten by the title insurer, mainly in counties where national title insurers do not solicit and effectuate their title policies directly. [Decl. of Randolph; Exs. A-P of Decl. of Singer.]

- Second sentence: Unclear. UTCs do not "underwrite the risk that the title search was not done properly by the UTC." If duly appointed as insurance agents, they are authorized by the OIC only to solicit for and in the Chicago/Land Title situation effectuate and collect premiums for, the insurer's title insurance. In addition, in the Chicago/Land Title situation, Land Title performs the title search and, based on its findings, is authorized by Chicago – again on behalf of Chicago – to determine whether to effectuate a Chicago title policy in each specific case. Therefore replace with: In Washington, title literature has informally designated certain entities, such as Land Title, as "UTCs" or "independent title companies." Whether they are designated as "UTCs" or not, these entities, like Land Title, are only recognized by the Insurance code – and only authorized to represent title insurers – if they

are licensed as title insurance agents by the OIC and are duly appointed by title insurer(s) to act on behalf of the title insurer to solicit for and, if authorized by the insurer, effectuate title policies on the insurer's behalf and collect premiums therefor. This arrangement occurs typically in counties, such as Mason and Kitsap counties, where title insurers do not solicit for and effectuate their title insurance policies directly, and Chicago has appointed some eleven of these entities to represent it in various counties throughout Washington state. [Decl. of Randolph.] As with any appointed insurance agent, whether the agent is designated a "UTC" or not, it derives its authority from being licensed by the OIC as a title insurance agent and then being appointed by a title insurer to act on the insurer's behalf; thereby Chicago has so appointed Land Title to solicit for Chicago's title insurance and is further authorized by Chicago, as permitted by the OIC, to effectuate Chicago's title insurance policies and to collect the premiums therefor, all on behalf of Chicago. In the situation at issue herein, Land Title also conducts the title search and, on behalf of Chicago, determines whether to effectuate a Chicago title policy in each specific case. If the title search was bad and there is a defect in title, then Chicago, as the insurer and underwriter of the title policy, must assume liability to the purchaser/policyholder for any loss as a result.

- Third sentence: Clarify, by replacing with: Additionally, Land Title conducts title searches in specific counties, where, as required by the OIC, it owns or subscribes to title plants in those counties where it operates. [Decl. of Randolph.]

10. *Chicago has no involvement in the title search with these contracted UTC's [sic], including Land Title. (Decl. Randolph) The UTC's [sic], including Land Title, market their own services, without the involvement or financial contribution of Chicago; conduct the title searches using their own title plant; issue preliminary commitments for title insurance; address exceptions to the title identified in the preliminary commitment; and issue the title policies, all without Chicago's participation. (Decl. Randolph.)*

- First sentence: Adopt, although relevancy is questionable.
- Second and following sentences: Evidence does not support this finding: Replace with:
- UTCs, including Land Title, may market their own services, such as escrow services which are not part of Land Title's duties as an appointed insurance agent of Chicago, without the involvement or financial contribution of Chicago. As with other UTCs similarly situated to Land Title, as the only appointed agent of Chicago in the relevant counties and on behalf

of the only insurer it is authorized to represent. Land Title also, all on behalf of Chicago, solicits for Chicago's title insurance, issues preliminary commitments for Chicago's title insurance, addresses exceptions to the title identified in the preliminary commitment; and effectuates the issuance of Chicago's title policies, all without Chicago's participation. [Decl. of Randolph; Exs. A-P of Decl. of Singer.] Whether or not Chicago chooses to be involved or otherwise participate in these activities which are conducted on its behalf does not affect the relationship of Chicago as the appointing insurer and Land Title as its appointed agent. In addition, as is typical of many insurer-agent relationships, for each Chicago title policy which Land Title effectuates, Land Title is required to pay 12% of the gross premium charged for each Chicago Title policy to Chicago and retains the balance for itself, thereby receiving financial remuneration from Chicago. [Decl. of Randolph; "Issuing Agency Agreement.]"

11. *Chicago receives specific information from Land Title when it is called upon to insure a title policy: a policy number; the UTC's internal file number; the effective date of the policy; the type of policy; the premium paid; and the amount of liability. (Decl. Randolph) Unless the need arises, Chicago does not receive a copy of the preliminary commitment or any of the documents associated with the closing. (Decl. Randolph) The only function Chicago undertakes with Land Title is to insure the risk of later-discovered title imperfections.*

- First and second sentences: Adopt, although relevance is questionable except as to show the agency relationship between Chicago and Land Title.
- Third sentence: Clarify summary of the evidence by replacing with: Unless the need arises, Chicago does not receive a copy of the preliminary commitment or any of the documents associated with the closing. [Decl. of Randolph.] Other than receiving this specific information, Chicago has chosen to normally exercise little control or supervision over Land Title in the solicitation and effectuation of Chicago title insurance conducted by Land Title on Chicago's behalf. Instead, Chicago has chosen to allow Land Title as its appointed insurance agent to act on Chicago's behalf somewhat independently, even though as the appointing insurer Chicago could have exercised more control over the solicitation and effectuation activities of Land Title acting on Chicago's behalf. In fact, the only function Chicago has chosen to undertake in the insurance transaction in these counties is to insure the risk of later-discovered title imperfections (which it must do, as the insurer) and to receive

the pertinent details of each Chicago policy sold, and to examine certain specified information on a regular basis or if it chooses to do so. However, the fact that Chicago chose to be uninvolved in all of these other aspects of the insurance transaction being conducted by Land Title on Chicago's behalf does not relieve Chicago for responsibility for Land Title's solicitation or other activities conducted on Chicago's behalf.

12. *The "Issuing Agent" [sic] contract between Chicago and Land Title spells out specifically the relationship between the two companies. (Decl. Randolph, Ex. A) Chicago is the "principal," and Land Title is the "issuing agent" in the contract. The contract requires Land Title to use Chicago to underwrite its title insurance, although an addendum allows Old Republic Insurance to underwrite for Land Title as well. However, Land Title has used only Chicago for this function for some years and Old Republic has never accomplished the legal requirements to be able to underwrite for Land Title. (Decl. Singer, and Ex. F) Pursuant to the contract, Land Title pays Chicago 12% of the fee charged for each title insurance policy written. (Decl. Randolph, Ex. A)*

- First and second sentences: Incorrect finding, not supported by the evidence. Replace with: The fact that Chicago and Land Title have a private "Issuing Agency Agreement" between them is not relevant to a determination of the relationship between the parties. The OIC's disciplinary action taken against Chicago which is the subject of this appeal is an administrative, regulatory action, not a civil or criminal action. By virtue of Chicago's appointment of Land Title to act as its agent, it is the Insurance Code which determines the relationship of Chicago as insurer/principal and Land Title as appointed agent/agent. The Insurance Code defines the parties to a title insurance transaction including what entity may act on behalf of the insurer and what types of activities that entity may perform. A private contract between the insurer and the appointed insurance agent does not alter the rights and responsibilities set forth in the Insurance Code.

- Third and fourth sentences: Adopt.

- Fifth sentence: Clarify by replacing with: Pursuant to the "Issuing Agency Agreement," and as is fairly common in insurer-agent transactions, Land Title collects the premium for the title insurance, in the amounts set by Chicago, and then pays a percentage of the gross premium charged for each title policy - here it is 12% by agreement - over to Chicago. [Decl. of Randolph: "Issuing Agency Agreement."]

13. *The Issuing Agent [sic] contract gives Land Title no authority to advertise or market for Chicago, and the contract specifically forbids Land Title from using Chicago's name in any advertising or printing, except to indicate that Chicago is the underwriter for the title insurance policies. (Decl. Randolph, Ex. A) Land Title employs its own sales personnel to market its services to potential customers in Kitsap County. (Decl. Kennedy) The marketing materials used by Land Title do not mention its relationship to Chicago. (Decl. Kennedy, Ex. A-E) However, the website of Land Title does have a hyperlink to "National Website" which takes the user to Chicago's website. (Decl. Singer, Ex. H) Otherwise, the Land Title website makes no mention of its underwriter or any connection to Chicago.*

- First sentence: Finding not supported by the evidence. Replace with: As Chicago's duly appointed agent under the Insurance Code, Land Title is given the specific right, without also being required to have specific authorization from the appointing insurer elsewhere, to solicit on behalf of Chicago. Further, as specifically allowed under the Insurance Code if the appointing insurer authorizes the appointed agent, Land Title was in fact given the authority to effectuate Chicago's title policies and also to collect the premiums therefor (in the amounts prescribed by Chicago and as Chicago has had to file with the OIC) in the "Issuing Agency Agreement." While not a requirement, it is noted that a review of the situation between these parties and the "Issuing Agency Agreement" shows that, as Chicago's exclusive agent and as the only insurer for whom Land Title can solicit and effectuate title policies, the private "Issuing Agency Agreement" does in fact give Land Title the right to solicit for Chicago's title insurance – by having the right to name Chicago in its advertising and printing, among other activities. Without Chicago, Land Title would have no title insurance to sell and without Land Title, Chicago, because it has chosen not to solicit directly in these counties, Chicago would have no one to solicit for its title policies.

- Second through fifth sentences: Adopt, although not relevant to the issue herein.

- Add sixth sentence: Therefore, while the marketing materials used by Land Title may not always indicate its relationship to Chicago [Decl. of Kennedy], under the terms of the "Issuing Agency Agreement" Land Title may use the name of Chicago in its advertising and printing. ["Issuing Agency Agreement".] Further, since Chicago is the only insurer which Land Title is appointed to solicit for (Finding No. 12 above) - and is allowed to represent under its "Issuing Agency Agreement" - Land Title is clearly advertising for Chicago's title

insurance. In fact, only about 28% of Land Title's total revenue comes from escrow services [Decl. of Kennedy at 5; Initial Finding of Fact 25]; all the rest of its revenue, 72% - comes from selling Chicago's title insurance policies. Further, while the Land Title website may not mention its underwriter or any connection to Chicago, it does include a hyperlink to "National Website" which takes the user to Chicago's website. [Decl. of Singer, Exs. A-P.] Such activities clearly constitute solicitation by Land Title for Chicago's title insurance. All solicitation of title insurance by Land Title was done on behalf of Chicago, as Land Title's only appointing insurer.

14. *Chicago does not pay any of the business expenses of Land Title, nor pay for any of its services.*

- Delete as misleading. Replace with: It cannot be found that Chicago does not pay any of the business expenses of Land Title, nor pay for any of its services; under the terms of the "Issuing Agency Agreement," Land Title collects the premiums for each Chicago title policy if effectuates, then sends just 12% of the gross premium for each policy to Chicago. [Decl. of Randolph; Issuing Agency Agreement.]

15. *In the contract, Chicago retains the right to examine the records of Land Title "which relate to the title insurance business carried on by Land Title for Chicago," including accounts, books, ledgers, searches, abstracts, and other related records." (Decl. Randolph, Ex. A) The contract also requires that Land Title preserve for ten years the documents upon which "title assurances and underwriting decisions were made, including searches, worksheets, maps, and affidavits." (Decl. Randolph, Ex. A) Although permitted by the contract, Chicago has not reviewed any of the records of Land Title during the period at issue here.*

- First two sentences: Adopt. Although not necessary for this analysis, this shows the great control Chicago had over Land Title (whether or not it was exercised).
- Third sentence: Delete. This sentence is irrelevant to the issue herein: if Chicago has not chosen to review any of the records created relative to applications for Chicago title insurance that fact does not affect Chicago's status as the appointing insurer. Revise by replacing with: Therefore Chicago had the right during the period at issue herein to review the records created preliminary to sales of Chicago's title policies and at other times, solely by virtue of its position as the appointing insurer of Land Title. While irrelevant to the issue herein, Chicago was also permitted under the "Issuing Agency Agreement" to review those

records and to exercise other significant controls over Land Title. However, Chicago chose not to review any of these records or conduct many of the other activities of control it could have exercised over Land Title, either as its appointing insurer or in the "Issuing Agency Agreement" during the period at issue here. [Decl. of Randolph; "Issuing Agency Agreement."]

16. *Land Title is required by the contract to comply with all laws and regulations, and to notify Chicago of any alleged violations or complaints about Land Title's compliance with such laws and regulations. The OIC did not notify or include Chicago in its investigation of Land Title for the inducement violations at issue, but Land Title notified Chicago of the investigation and its results, as called for in the contract.*

- Adopt, although of questionable relevance to the issue herein. Add sentence: Simply because in the "Issuing Agency Agreement" Land Title has committed to comply with all laws and regulation and to notify Chicago of any alleged violations or complaints about Land Title's compliance with them does not affect Chicago's status as the appointing insurer and Land Title its appointed agent. Although not required in the analysis herein, in fact this provision supports the principal/agent relationship created under the Insurance Code, evidencing the principal's concern that its agent comply with applicable laws and regulations (which are imposed upon Land Title by the Insurance Code based upon its status as an insurance agent) and requiring that its agent notify the principal of any significant occurrences with regard to the agent's compliance.

17. *In the contract, loss is allocated between the two companies, with Chicago liable to the customers of Land Title for any failures of the title search, and Land Title liable for everything else. (Decl. Randolph, Ex. A) The contract requires Land Title to indemnify Chicago against loss from Land Title's actions of fraud, conspiracy, or failure to comply with all Federal and State laws. (Decl. Randolph, Ex. A Sec. 9(B)(8)).*

- First sentence: Incorrect recitation of the actual wording of the "Issuing Agency Agreement." Replace with: The insurance customers are those of Chicago, which sells, through Land Title, Chicago title policies to those customers. In the "Issuing Agency Agreement," loss is allocated between Chicago and Land Title, with the insurer being liable, as the insurer, to its policyholders for any failures of the title search, and Land Title being "responsible to [Chicago] for all loss, cost or damage. ... caused by ... 9.B(1) Failure of

Issuing Agent [Land Title] to comply with the ... rules, regulations or instructions given to Issuing Agent [Land Title] by Principal [Chicago] and nearly all of Land Title's other activities and also for (8) Allegations, against either [Chicago] or [Land Title] by reason of the activities of [Land Title] ... or failure to comply with any Federal or State Law or regulation [Decl. of Randolph; "Issuing Agency Agreement at 9(B)(1)-(8)."] Therefore, while not necessary to the analysis of the issue herein, the wording of the "Issuing Agency Agreement" clearly indicates that Chicago – exercising control over its agent - requires that Land Title comply with instructions given by Chicago to Land Title, and applicable laws, or face liability to Chicago for that failure. Further, as indicated, Chicago provides for the possibility that allegations might be made against Chicago for the acts of Land Title in violating federal or state laws or regulations including the Illegal Inducement Regulation. ["Issuing Agency Agreement at 9.B(8)."]

- Second sentence: Adopt, although relevance is questionable, and add: However, the fact that Chicago may be attempting in its "Issuing Agency Agreement" to somehow evade responsibility to the OIC or others for the acts of Land Title by requiring that Land Title indemnify Chicago against loss from Land Title's fraud, conspiracy or "failure to comply with Federal or State Law or regulation," including the Illegal Inducement Regulation, is irrelevant.

18. *Land Title's authority under the contract is limited to accepting and processing applications for title insurance in accordance with prudent underwriting practices, and issuing the title insurance policies underwritten by Chicago; Land Title is required to use forms provided by Chicago for these functions.*

- First sentence: Delete as not supported by the evidence presented. In earlier findings, the ALJ finds that Chicago conducts no activities at all in solicitation of its own title insurance and now she finds that Land Title does not solicit for Chicago's title insurance either. Someone has to solicit for Chicago's title insurance, and it has been found above that in fact Land Title does have the authority under the Insurance Code (and indeed under the "Issuing Agency Agreement" as well) to solicit for Chicago's insurance. Also, Land Title does not "issue" the title policies; rather, Chicago issues its own title policies but has appointed Land Title to issue those title policies on Chicago's behalf. Replace with: Land Title is authorized by the Insurance Code, as the appointed agent of Chicago, to solicit on behalf of Chicago for

Chicago's title insurance. Additionally, Land Title is specifically authorized by Chicago to not only solicit for, but also to effectuate title policies on behalf of Chicago and collect the premiums therefor. [Decl. of Randolph: "Issuing Agency Agreement."]

- Second sentence: Adopt, although relevant only to show that Chicago exercises control over Land Title in requiring Land Title to use Chicago's forms in effectuating Chicago's title policies.

19. *The contract specifically provides that Land Title, "...shall not be deemed or construed to be authorized to do any other act for principal not expressly authorized herein." (Decl. Randolph, Ex. A)*

- First sentence: Adopt, although this finding is not particularly relevant, and change citation to [Decl. of Randolph: "Issuing Agency Agreement".]

20. *Chicago has no right to control the actions of Land Title other than as specified in the contract, directly relating to Land Title's title search activity. Further, there is no evidence that Chicago did control the actions of Land Title, especially the marketing practices of Land Title. The President of Land Title denies that Chicago controlled or could control its actions in any area other than the issuing of title insurance.*

- First sentence: This finding is entirely erroneous, not supported by the evidence and misconstrues the evidence necessary to consider when determining a principal-agent relationship and ensuing responsibility of the principal for acts of its agent. Again, as found above, the insurer-agent relationship was created by the voluntary acts of Chicago and Land Title in Chicago appointing Land Title as its insurance agent with the OIC, with the resulting ability of Chicago to control virtually all of the actions of Land Title concerning Chicago's insurance. Further, while not particularly relevant, this finding is clearly not even supported by the wording of the "Issuing Agency Agreement". Even if it did govern therein, Chicago clearly retains the right to control many of Land Title's activities including terminating Land Title as its agent. See Finding 17 above. Replace with: Chicago, as the appointing insurer, had the right to control the actions of Land Title, as its appointed insurance agent, in all activities conducted by Land Title on behalf of Chicago, most specifically, solicitation and effectuation of Chicago title policies including Land Title's compliance with the Illegal Inducement Regulation in its solicitations. See Finding 17 above. Moreover, while not necessary to find herein, even under an analysis of common law agency and under the

“Issuing Agency Agreement”. Chicago had a clear right to control the actions of Land Title in solicitation and effectuating of Chicago’s title insurance. [“Issuing Agency Agreement.”] Further, Chicago could have terminated Land Title’s agreement appointment at any time.

- Second sentence: Irrelevant statement. Replace with: The evidence shows that Chicago may have chosen not to oversee or otherwise control Land Title’s acts, conducted on behalf of Chicago, in solicitation of Chicago’s title insurance either as the appointing insurer or as a common law principal. However, the fact that Chicago may have chosen to look the other way and not participate or control its agent’s activities in this area does not relieve Chicago from being accountable for the acts of its appointed agent.

- Third sentence: Delete. Not supported by the evidence, and conclusory. As mentioned in preliminary comments above, it is noted that the OIC moved to strike all statements in the Kennedy Declaration and others based upon cited statutory and case law, before the ALJ [OIC’s Response Brief to Chicago’s Motion for Summary Judgment, pg. 13] but, as discussed above, the ALJ’s Initial Order fails to show that she considered this motion. The statements which were the subject of the OIC’s motion to strike are now reflected as findings in Findings in this sentence and in parts of Findings 21, 23 and 24. While there is, indeed, no initial decision on the OIC’s motion to strike and therefore no initial decision to review, in this situation it is of no consequence for the reason that this third sentence, and the parts of the later findings, are to be given no weight: it has been found above that the relationship between Chicago and Land Title as appointing insurer and appointed agent, along with their statutory rights and responsibilities, does not support this statement. (Additionally, although not particularly relevant except to lend support to the fact that Chicago as the insurer had control over Land Title, in the “Issuing Agency Agreement” Chicago could also have controlled many of Land Title’s acts on Chicago’s behalf.)

21. *The OIC has presented no evidence that Chicago pays for any of the expenses of Land Title, or is involved in its marketing or other business conduct. There is no evidence to counter the declarations offered by Chicago which show it does not have any control or right to control the operational conduct or decisions of Land Title.*

- First sentence re expenses: Erroneous finding not based on the evidence. Replace with: As found in Finding 14 above, it cannot be found that Chicago does not pay any of the business expenses of Land Title, nor pay for any of its services; under the terms of the

"Issuing Agency Agreement." Land Title collects the premiums for each title policy it effectuates, then sends just 12% of the gross premium for each policy to Chicago. [Decl. of Randolph; Issuing Agency Agreement.]

- First sentence re Chicago's involvement in Land Title's "marketing or other business conduct:" Delete as redundant and an incorrect statement of the clear weight of the evidence. See Findings 17 and 20 above.
- Second sentence: Delete as redundant and an incorrect statement of the clear weight of the evidence. See Findings 17 and 20 above.

22. *Extensive discovery has been undertaken in this matter, with large numbers of interrogatories answered by Chicago. (See Exhibits, Decl. Singer) Further, the OIC has authority to demand records from Chicago and Land Title, so there should be no evidence exclusively in the hands of Chicago or Land Title, to which the OIC has not had full access. A pre-hearing conference was held in this matter March 31, 2008, with discovery on-going since that time. No motions have been made to compel discovery of documents or other evidence about the involvement of Chicago in the business of Land Title.*

- Adopt, although relevance of this finding is questionable.

23. *The uncontested evidence shows that Chicago has no control, input in, or oversight of Land Title's business or marketing practices or procedures. Chicago does not provide any advice to Land Title about compliance with the laws, including the inducement laws. (Decl. Kennedy.)*

- First sentence: Delete. This finding is redundant and is an incorrect statement of the clear weight of the evidence. Replace with: As found above, Chicago, as the appointing insurer, had at all pertinent times, the right to control Land Title, its appointed agent, in all activities conducted on behalf of Chicago. These activities include, as found above, all solicitation and effectuation of Chicago title insurance policies. This right to control the activities of Land Title in soliciting on its behalf specifically includes Chicago's right to control Land Title's compliance with the Illegal Inducement Regulation and statute, a well known problem which had been occurring for some time in the title industry and had been addressed many times by the OIC in its efforts to advise title insurers and their agents for whom they were responsible, of the need for strict compliance with that regulation. [Decl. of Tompkins, with Exs.] The fact that Chicago and Land Title entered into a private "Issuing

Agency Agreement” which appears to attempt to transfer responsibility from Chicago to Land Title for compliance with all applicable statutes and regulations, and many other activities, does not relieve Chicago of its responsibility for the acts of Land Title’s and certainly for Land Title’s violations of the Illegal Inducement Regulation and statute.

- Second sentence: Adopt, although relevance is questionable.

24. *Land Title does not market “on behalf” of Chicago, but only for itself. Chicago does not pay Land Title’s expenses, nor play any role or exercise any control over Land Title’s business practices. Chicago does not provide any advice to Land Title regarding compliance with the inducement laws. Chicago has no oversight of any of the marketing practices or procedures of Land Title. (Decl. Kennedy).*

- First sentence: Not based upon a correct statement of the weight of the evidence. Replace with: As set forth in the Insurance Code, as Chicago’s appointed insurance agent, Land Title markets for Chicago’s title insurance on behalf of Chicago.

- Second sentence: Redundant and is an incorrect statement of the clear weight of the evidence. See Findings 14 and 17 above.

- Third and fourth sentences: Replace with: While Chicago chose not to provide advice to Land Title regarding compliance with the Illegal Inducement Regulation and chose not to conduct any oversight of any of Land Title’s marketing practices or procedures, and in fact Chicago appears to perhaps have attempted to evade its responsibility to the OIC and others by shifting responsibility for compliance to Land Title in its “Issuing Agency Agreement,” this does not relieve Chicago of its responsibility for compliance with the Illegal Inducement Regulation whether through its direct acts or through the acts of its agent, Land Title. Further, although this was not required as a precondition to enforcement action against Chicago, Chicago and all title insurers operating in Washington were clearly apprised by the OIC of the problem of widespread violations of the Illegal Inducement Regulation and of insurers’ liability for their appointed agents’ violations of the Illegal Inducement Regulation. Title insurers were also informed that this area was of great priority and importance to the OIC. See Findings 26-30 below. In 1989, the OIC mailed a communication concerning the problem directly to Chicago. [Decl. of Tompkins, w/ Exs.] Further, in 2006, an OIC investigation and report found that Chicago was one of four title insurers operating in

Washington involved in widespread violations of the Illegal Inducement Regulation. [Decl. of Tompkins, w/ Exs.] See Findings 26 – 30 below.

25. *In a typical year, about 28% of Land Title's revenue comes from the provision of escrow services, which are independent of its relationship with Chicago. Land Title keeps 100% of its earnings from escrow services. (Decl. Kennedy)*

- Adopt, although relevancy of this finding is questionable.

26. *The OIC undertook a study of the title insurance business in Washington in 2006, and found widespread violations of the inducement laws by the major companies operating in Washington. Chicago was a violator, although the OIC's report notes that Chicago made "attempts" to comply with the law. (Decl. Tompkins, and Ex. A) The investigation and report focused on four major companies providing title insurance in Washington, including Chicago. Land Title was not one of the title companies investigated or mentioned in the report.*

- First three sentences: Adopt.
- Fourth sentence: Delete. Not relevant. Having not had its agent named or investigated in an investigation report does not relieve Chicago from responsibility for this agent.

27. *Because the violations of the inducement law were so widespread, the OIC opted not to take individual action against any of the offenders. Instead, it took remedial action, including the issuance of the report and a "Technical Assistance Advisory" on November 21, 2006. The Advisory was issued to all "Washington insurers and their title insurance agents." The stated purpose of the Advisory was to "clarify requirements for title insurers and their agents" of the requirements of the inducement and rebating laws. (Decl. Tompkins, Ex. B)*

- Adopt, and add: Thereby, although it was not a precondition to the OIC taking enforcement action against title insurers for violations of the Illegal Inducement Regulation by their agents, the OIC attempted to ensure that both title insurers and their agents were fully aware of the Illegal Inducement Regulation and the liability of title insurers for violations by their agents. [Decl. of Tompkins, Ex. B.]

28. *The Advisory does not state that the underwriting insurance companies (insurers) will be liable for the violations of separately owned and operated underwritten title companies (UTC's), by virtue of the contracts between the two companies for underwriting services by the underwriting insurance company. No mention is made of the UTC's, and the relationships between these underwritten title companies and the insurers, in the Advisory letter.*

- First sentence: Delete. Sentence incorrectly assumes that a "UTC" or "underwritten title company," which label is not even recognized under the Insurance Code, is to be treated differently than any other title insurance agent. Once again, Land Title is a duly appointed insurance agent of Chicago, and thereby authorized to solicit and effectuate insurance contracts on Chicago's behalf. Per Findings 24 and 27 above, said Advisory was issued simply to assist all Washington insurers and their title insurance agents. Replace with the following: The Advisory was issued simply to assist title insurers and their agents with compliance with the illegal inducement laws and further advised title insurers and their agents that title insurers would be liable for violations of the inducement laws committed by their agents. [Decl. of Tompkins, w/ Exs.] The fact that Chicago and Land Title might choose to refer to Land Title as a "UTC" or any other chosen designation makes no difference: Land Title is an appointed insurance agent of Chicago and, as advised in the OIC's communications with Chicago and other title insurers, title insurers would be held responsible for the acts of their agents in violating the Illegal Inducement Regulation. Chicago cannot possibly understand itself not to be a title insurer, or Land Title not to be Chicago's appointed title insurance agent. [Decl. of Tompkins, incl. Technical Assistance Advisory attached as Ex. B thereto.] The existence of private contracts between title insurers and their agents, and/or the parties' designation of a title insurance agent as a "UTC," does not change the identity of the "UTC" as an appointed title insurance agent acting on behalf of the appointing title insurance company, nor does the designation of "UTC" affect the liability of title insurers for their agents' violations of the Illegal Inducement Regulation and statute, or of any other statutes and regulations found in the Insurance Code.

29. *In 1989, the OIC also sent a letter to Chicago in Tacoma, Washington, stating specifically that the letter was to be given to "each of your branch offices and to each of your agents." The letter further elaborated that, "Title insurers are liable for any activity conducted by their agents regarding this regulation whether the title insurers have knowledge of the activity or not." The regulation being referred to is the inducement regulation, limiting the amount that can be spent on "items of value" given to middle-persons such as builders and real estate agents/brokers, as inducements for their business. (Decl. Singer, Ex. M.) This letter makes no mention of the UTC's that Chicago might be using for title business in Washington.*

- First two sentences: Adopt, and add sentence: Therefore, in 1989 Chicago was directly

advised by the OIC that title insurers are liable for any acts of their agents relative to compliance with the Illegal Inducement Regulation whether the title insurer has knowledge of the activity or not. [Ex. M to Decl. of Singer.] Even so, in 2006 the OIC investigation and report [Decl. of Tompkins, w/ Exs.] found that Chicago was one of four title insurers found to be committing widespread violations of the Illegal Inducement Regulation. [Decl. of Tompkins, w/ Exs.]

- Third sentence: substitute “middle-persons” with accepted designation and clarify sentence, by replacing sentence with: The regulation being referred to is the Illegal Inducement Regulation, which limits the amount that a title insurer or title insurance agent can spend on “items of value” given to potential producers of title insurance business such as builders and real estate agents/brokers, as inducements for referring title insurance business to those title insurers. [Ex. M to Decl. of Singer.]

- Fourth sentence: Delete. Once again, this sentence indicates an incorrect understanding of the Insurance Code and regulations, and makes an assumption that for some reason the label of “UTC” or “underwritten title company” privately assigned to Land Title changes the insurer-agent relationship. This is not a correct assumption: even if warning by speeches and correspondence were a precondition to the OIC’s enforcement action, in the 1989 letter which OIC sent to Chicago in Tacoma, Washington, there is no need to differentiate between Chicago’s branch offices, Chicago’s agents and “UTCs.”

- Replace with: Contrary to the assertions of Chicago in this proceeding, there are no such different entities as “UTCs” or “underwritten title companies.” Land Title and other similar entities exist as they were created by their voluntary compliance with the Insurance Code: since March 5, 1993, and because it chooses not to solicit and effectuate Chicago title policies directly in Mason, Kitsap, Jefferson and Clallam counties, Chicago has chosen to appoint Land Title as a title insurance agent to act on Chicago’s behalf to solicit and effectuate Chicago title policies in those counties. Because Chicago has appointed Land Title to act on its behalf in solicitation of Chicago’s title insurance in these counties, Chicago is responsible to the OIC as if Chicago had itself committed the subject violations of the Illegal Inducement Regulation, no matter what other label Chicago or Land Title, or others, or the private “Issuing Agency Agreement” may assign to Land Title.

30. *The OIC also addressed the Washington Land Title Association in September, 1989,*

about the on-going violations of the inducement laws, to put the title companies and agents present on notice that further violations would not be tolerated. (Decl. Singer, Ex. M) Chicago is not a member of that organization.

- First sentence: Adopt.
- Second sentence: Delete, as whether or not Chicago was a member of the Washington Land Title Association is irrelevant. Replace with: The OIC's efforts, through letter to Chicago, by extensive investigation of Chicago and ensuing report of Chicago's violations of the Illegal Inducement Regulation, Technical Assistance Advisory, and by presentation before Washington Land Title Association were voluntary efforts by the OIC to further inform title insurers and agents -- including Chicago -- of the Illegal Inducement Regulation and the consequences of their or their agents' violations of that Regulation. Performance of these efforts by the OIC was not a precondition to enforcement action against title insurers or their agents. [Decl. of Tompkins, w/ Exs.] Even so, Chicago had been aware of the Illegal Inducement Regulation and its liability for its agents' violation of the Regulation, for many years before the time period at issue herein. [Decl. of Tompkins, w/ Exs.]

31. In August 2005, Chicago issued a letter to the OIC accepting liability up to \$200,000 for any "fraudulent or dishonest acts by Land Title," specifying this was to meet the requirements of RCW 48.29.155, and was limited, "only in connection with those escrows for which [Land Title] issues a title insurance commitment or policy of Chicago." (Decl. Singer, Ex. I)

- Adopt.

32. After the 2007 investigation of Land Title was completed, the OIC sent a proposed Consent Decree to Chicago to sign, agreeing that Chicago would pay a fine, and monitor and control the future behavior of Land Title in regard to the inducement regulation. Because Chicago and Land Title agree that Chicago has no control over Land Title's actions or business conduct, and never has had, Chicago declined to enter into the proposed Consent Decree, believing it would be legally unable to fulfill the terms of that agreement.

- First sentence: Adopt.
- Second sentence: Delete. There is insufficient evidence in the record to support this finding.

33. Add new finding: It has been found in the Final Findings of Fact above that, based on the weight of the evidence presented, in order to market its title insurance policies in Mason,

Kitsap, Jefferson and Clallam counties where Chicago does not market directly, in 1993 Chicago formally appointed Land Title as its exclusive agent to act on Chicago's behalf to market Chicago's policies and Land Title, in turn, committed to act as an agent only for Chicago. It has also been found above that pursuant to the Insurance Code, appointed agents are authorized to solicit insurance on behalf of the appointing insurer, which includes compliance with the Illegal Inducement Regulation because the giving of inducements to producers of title insurance is a form of solicitation for the purchase of insurance. It has also been found above that Land Title did perform all solicitation, on behalf of Chicago, for Chicago's title insurance in the pertinent counties and in fact was authorized by the OIC to solicit only on behalf of Chicago in those counties. Finally, it has been found that because Land Title was at all times acting on behalf of Chicago in soliciting for Chicago's title insurance, including the giving of illegal inducements in violation of the Illegal Inducement Regulation, the violations should be treated as if committed by Chicago itself. Therefore it is reasonable to find that Chicago can be held responsible to the OIC for Land Title's violations of the Illegal Inducement Regulation. Specifically, insofar as is relevant herein, the OIC may take action against Chicago, and hold Chicago responsible for, the illegal acts of Land Title in violation of the Illegal Inducement Regulation and statute. For this reason, the ALJ's Initial Order Granting Summary Judgment to Chicago should be set aside and the parties should be instructed to proceed to Phase II of this proceeding.

CONCLUSIONS OF LAW

1. *The Office of Administrative Hearings and the undersigned Administrative Law Judge have jurisdiction over the parties and subject matter herein pursuant to RCW 48.04.010(5), Chapter 34.05 RCW, and Chapter 34.12 RCW. The provisions of Chapter 48 RCW, the Insurance Code, are applicable here.*

- Adopt, but clarify and update by replacing with Following Receipt of Demand for Hearing from Chicago, on request of Chicago and using discretion pursuant to RCW 48.04.010(5), the OIC referred this matter to the Office of Administrative Hearings, where Administrative Law Judge Cindy L. Burdue (ALJ) was assigned. The Office of Administrative Hearings and the assigned ALJ had jurisdiction over the parties and subject matter herein pursuant to RCW 48.04.010(5), Chapter 34.05 RCW and Chapter 34.12 RCW

and regulations applicable thereto. The ALJ properly conducted prehearing activities, presided over the hearing and entered Initial Findings of Facts, Initial Conclusions of Law and Initial Order (Initial Order). Pursuant to Chapter 34.05 RCW and regulations applicable thereto, said Initial Order, along with the transcript of the proceedings and the entire hearing file, was transferred to the undersigned Review Judge for review and entry of Final Findings of Facts, Final Conclusions of Law and Final Order (Final Order). As stated above, on November 19, 2008, the OIC filed OIC's Brief in Support of Review of Initial Order and Declaration of Alan Michael Singer with the undersigned; on December 10, 2008, Chicago filed its Reply to the OIC's Brief in Support of Review of Initial Order; and at the request of the undersigned, on February 5, 2009, the parties presented oral argument on review before the undersigned, presenting detailed argument as to whether the Initial Order Granting Summary Judgment should be upheld or set aside. Further, at the outset of the parties' oral argument on review before the undersigned the parties agreed that the undersigned's review of the Initial Findings of Facts, Conclusions of Law and Initial Order should be de novo; said review is indeed de novo as provided for as provided for in RCW 34.05.464, WAC 284-02-080.

2. *Summary judgment may be granted if the written record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as matter of law. WAC 10-08-135. The evidence presented, and all reasonable inferences from the facts, must be viewed in the light most favorable to the nonmoving party. Herron v. King Broadcasting, 112 Wn.2d 762, 776 P.2d 98 (1989). Where reasonable minds could reach but one conclusion from the admissible facts and evidence, summary judgment should be granted. White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997).*

- Adopt.

3. *The initial burden of showing the absence of material fact rests with the moving party. Young v. Key Pharmaceuticals, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Only if the moving party meets this initial showing will the inquiry shift to the non-moving party. Herron v. King Broadcasting, 112 Wn.2d 762, 776 P.2d 98 (1989). In that case, the non-moving party must "counter with specific factual allegations revealing a genuine issue of fact. . ." Int'l. Union of Bricklayers v. Jaska, 752 F.2d 1401, 1405 (9th Cir. 1985).*

- Adopt.

4. *The existence of a principal-agent relationship is a question of fact unless the facts are undisputed. O'Brien v. Hades, 122 Wn. App 279, 93 P.3d 930 (2004). Where there is no dispute as to the facts, and no genuine issue of material fact exists, the question of agency is a matter of law that may be decided on summary judgment. Airborne Freight v. Str. Paul Marine Insurance Co., 491 F. Supp.2d 989 (W.D. WA 2007).*

- Delete. This Conclusion relies on case law describing the principles of common law agency. This Conclusion ignores the overriding means of creating a principal-agent relationship in the insurance industry, namely, the existence of a statutory designation of the insurer-insurance agent relationship set forth in the Insurance Code. Replace with the following: RCW 48.17.160(1) provides: (1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefore as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. (2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has expired or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

Further, RCW 48.17.010 provides: "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated.

Land Title has been licensed by the OIC as an insurance agent for many years. Further, per Finding No. 4, on March 5, 1993 Chicago voluntarily and properly filed an Appointment form with the OIC, as prescribed and furnished by the OIC, legally appointing Land Title as its appointed title insurance agent. Pursuant to RCW 48.17.010, by virtue of Chicago's appointment of Land Title as its appointed agent, Land Title was specifically authorized by Chicago to solicit applications for insurance on [Chicago's] behalf. It has been further found above that, as not only Chicago's appointed agent but Chicago's exclusive agent in these counties, and being only appointed to solicit on behalf of Chicago, Land Title did, in fact and at all times pertinent hereto, solicit on behalf of Chicago including committing the acts which the parties herein have stipulated for purposes of this motion to be violations of the Illegal Inducement Regulation and statute.

5. *The burden of proving that an agency relationship exists falls on the party asserting that relationship. Id.*

- Adopt.

6. *Insurance Code, Chapter 48 RCW:* Title 48 RCW constitutes the Insurance Code.

Several definitions in the Code may be useful in the analysis which follows.

RCW 48.01.020 states, "All insurance and insurance transactions in this State, or affecting subjects located wholly or in part or to be performed within the state, and persons having to do therewith are governed by this code."

RCW 48.01.050 defines "insurer" as every person engaged in the business of making contracts of insurance. (Omitting exceptions that do not apply here)

RCW 48.17.010 defines "agent" as any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated.

Chapter 48.29 RCW pertains specifically to title insurers. The provisions of this statute are not in controversy here.

RCW 48.11.100 defines title insurance. Title insurance is insurance of owners of property or other having an interest in real property, against loss by incumbrance [sic] or defective titles, or adverse claim to title, and associated services.

- Entire Conclusion 6: Delete. Not a Conclusion of Law.

7. *The Inducement statutes and regulation at issue: RCW 48.30.150 is a statute prohibiting or limiting inducements paid or given for the purpose of soliciting insurance business, and it states:*

No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty--

five dollars.

*This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.*¹

- Delete. Not a Conclusion of Law.

8. *Unfair practices applicable to title insurers and their agents. The regulation at issue is WAC 284-30-800, which states, in part:*

(1) RCW 48.30.130 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. . .

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twenty-five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

¹ RCW 48.29.210 is a similar statute, making reference directly to title insurers and title agents and their employees, representatives, or agents, and forbidding the giving of any direct or indirect kick backs, fees, or other thing of value as an inducement, payment or reward for title insurance business; the statute also prohibits these persons from giving such things of value to a "person in a position to refer or influence the referral of title insurance business to either the title company, title insurance agent, or both."

- Delete. RCW 48.29.210 did not become effective until June 12, 2008; therefore because the illegal acts were done between December 1, 2006 and March 31, 2007 [Notice of Hearing; Amended Notice of Hearing] this statute is irrelevant.

(4) This section does not affect the relationship of a title insurer to its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in thestatutes, RCW 48.30.130 and 48.30.150.

- Delete. Not a Conclusion of Law.

9. **The parties' positions:** *The OIC urges that traditional principles of agency law do not apply in this case. Rather, the inducement statute and regulation, along with the broad regulatory powers of the OIC, are sufficient to authorize the OIC to hold Chicago liable for the illegal actions of Land Title. In the alternative, the OIC urges that Chicago can be held liable for the actions of its agent, Land Title, even applying traditional agency principles, on the theory of apparent authority. The issue whether Chicago had any "control" over Land Title is not relevant to the analysis, according to the OIC.*

- First sentence: Adopt, although not a Conclusion of Law.
- Second sentence: Delete. This sentence is not a correct statement of the OIC's position: a reading of the OIC's briefs filed both before the ALJ and before the undersigned on review indicates that the OIC is not arguing that *the inducement statute and regulation, along with the broad regulatory powers of the OIC, are sufficient to authorize the OIC to hold Chicago liable for the illegal actions of Land Title.* Rather, the OIC has argued in its briefs before the ALJ and before the undersigned that the traditional, or common law, principles of agency law do not apply in this case because, specifically in the insurance industry, the Legislature, in RCW 48.17.160, has set forth a statutory means of creating principal-agent relationships. Therefore replace with: The OIC argues that traditional, or common law, principles of agency law do not apply in this case. Rather, the OIC argues that many years ago, in enacting RCW 48.17.160, the Legislature created a specific statutory means of creating principal-agent relationships between insurance companies and their agents, and the Legislature also defined the specific activities which the agent may perform on behalf of the insurer once the principal-agent relationship is created. (The Legislature also provided for specific means to notify the insurer and agent of the perfection of the principal-agent relationship and specific means of terminating the principal-agent relationship.) All insurers, whether title insurers or other types of insurers, must comply with these specific statutory requirements in order to create the principal-agent relationship and thereby authorize the agent to act on the insurer's behalf.

- Third sentence: Adopt.
- Fourth sentence: Adopt.

10. *To the contrary, Chicago argues that traditional agency law principles apply, and that under these principles Chicago is not liable for the actions of Land Title. Chicago argues that the primary hallmark of an agency relationship is the principal's right to control the actions of the agent, and as that right is absent here, Chicago is not liable for the actions of Land Title. Those actions cannot be imputed, and Chicago is not "vicariously liable" for the illegal acts of Land Title, according to Chicago Title.*

- Adopt, although not a Conclusion of Law.

11. *After careful review of the law and thorough review of the memoranda and Exhibits submitted by each party, I conclude that there is no genuine issue of material fact in dispute as to the parties' relationship or the parties' actions within that relationship, and as a matter of law, Chicago is entitled to summary judgment. The OIC has not shown it has the legal authority to hold Chicago liable for the illegal conduct of Land Title, an underwritten title company agent which Chicago contracted with for the purpose of issuing title policies. Of note, the violation of any provision of the Insurance Code is a gross misdemeanor. RCW 48.01.080.*

- First sentence: Delete. Conclusion is not based upon either correct Findings of Facts or a correct application of the correct Facts to the correct laws. Replace with: The undersigned has carefully reviewed the briefs of the parties filed with the ALJ, the evidence presented by the parties at hearing before the ALJ, the transcript of the hearing before the ALJ, the briefs and oral arguments of the parties before the undersigned on review and the entire hearing file. The undersigned concludes that, based upon Finding of Fact No. 4 above, and pursuant to RCW 48.17.160, on March 5, 1993, and continuing during all times pertinent hereto, Chicago voluntarily chose to appoint Land Title as its exclusive agent to act on Chicago's behalf soliciting Chicago policies in those four counties where Chicago does not solicit directly.

Specifically, pursuant to the requirements set forth in RCW 48.17.060 and 48.17.010, as cited in Conclusion 4 above, Chicago properly complied with the legal requirements set forth in RCW 48.17.060 by filing the required written Notice of Appointment with the OIC on forms prescribed and furnished by the OIC, paid the filing fee therefore, received the filed Notice of Appointment back from the OIC and retained said perfected appointment at all

times pertinent hereto. Thereafter, RCW 48.17.010 provides that "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf [and] [if authorized to do so, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated. Therefore, at the time Chicago appointed Land Title as its agent, pursuant to the facts found above and pursuant to RCW 48.17.060 and 48.17.010, as a matter of law a principal-agent relationship was created between Chicago and Land Title and continuing at all times pertinent hereto. As Chicago's agent, Land Title was specifically authorized by RCW 48.17.010 to solicit applications for insurance on [Chicago's] behalf and, as found in Finding No. 4 above, solicitation for insurance includes making payments to producers of title business as contemplated by the Illegal Inducement Regulation, WAC 284-30-800. Further as found above, by virtue of this principal-agent relationship, Land Title was authorized to solicit for Chicago's insurance on behalf of Chicago, and did in fact solicit for Chicago's insurance on behalf of Chicago, including making gifts of things of value to producers of title business as contemplated by the Illegal Inducement Regulation, WAC 284-30-800.

• Second sentence: Delete. This sentence is not based upon correct findings of facts. As found in Finding of Fact No. 4 above, there is no distinction between a title insurance agent and a "UTC" or other label which might be attached to Land Title or any other insurance agent. Further, as found in Finding of Fact No. 4 above, Chicago did not "contract with Land Title for the purpose of issuing title policies." Chicago was acting as the insurer and Land Title was acting as an appointed agent on behalf of that insurer. In addition, this sentence fails to recognize RCW 48.17.060 and 48.17.010 which creates the principal-agent relationship in this area and defines the activities which an agent is authorized to undertake and fails to recognize the fact that said statutes make it clear that the agent's actions are taken "on behalf of the insurer." Replace with: Based on the Conclusion directly above, there exists a clear principal-agent relationship between Chicago and Land Title created by statute; it is not necessary to apply a common law analysis to determine the existence of a principal-agent relationship between an insurer and insurance agent. By virtue of RCW 48.17.060 and 48.17.010 and by the acts of Chicago in complying with the requirements of RCW 48.17.060 in appointing Land Title to act on behalf of Chicago to solicit for Chicago's title insurance. Because, as found above, Land Title was soliciting on Chicago's behalf, as set forth in RCW

48.17.010, the acts of Land Title in violating the Illegal Inducement Regulation and statute, which are acts of solicitation, are properly considered to be the acts of Chicago. Decades, a century, of well established case law in the insurance area repeatedly confirm that a principal-agent is created between the insurer and its appointed agent, and the means of statutorily creating the principal-agent/insurer-agent relationship are as set forth in the Insurance Code, that the relationship is defined by statute and need not be analyzed based on common law, and, finally, that appointing insurers are responsible for the act of their insurance agents. See the plethora of cases cited in the OIC's briefs, significantly *Paulson v. Western Life Ins. Co.*, 292 Or. 38, 636 P.2d 935 (1980) which construes a similar Oregon insurer-agent statute and was adopted by the Washington Supreme Court in *National Federation of Retired Persons v. Insurance Commissioner*, 120 Wn.2d 101, 838 P.2d 680 (1992) and even where the insurer is ignorant of the violation e.g. *Ellis v. William Penn Life Assurance Co.*, 124 Wn.2d 1, 873 P.2d 19985 (1994); *American Fidelity and Casualty Company v. Backstrom*, 47 Wn.2d 77, 287 P.2d 124 (1955); *Miller v. United Pacific Casualty Company*, 187 Wn. 629, 60 P.2d 714 (1936). Therefore, it is hereby concluded that the OIC has shown that it has the legal authority to hold Chicago responsible for the acts of Land Title in violating the Illegal Inducement Regulation and statute.

- Third sentence: Delete. This conclusion is irrelevant.

12. *Principal-Agent Status between Chicago and Land Title, by statute and contract: The entities' characterization of their relationship is not controlling as to the nature of their relationship as an agency. The fact of a contract between the entities which identifies these parties as "agent" and "principal" is not determinative of their status vis-à-vis each other. Even industry or popular usage does not determine that an "agency relationship" exists. See, Restatement of Law (Third) Agency §§1.01, 1.02 (2006).*

- First sentence: Adopt.
- Second sentence: Delete, as conclusion is overly broad and appears to relate to an analysis of common law agency laws which are inapplicable here.
- Third sentence: Delete, as conclusion is unclear and appears to relate to an analysis of common law agency laws which are inapplicable here.
- Second and third sentences: Correct, replacing with: While it is somewhat relevant and helpful, the characterization which two parties may give to their relationship is not finally

controlling as to the actual nature of their relationship as principal and agent. (It should be noted, however, that if one were to apply the common law theory of agency instead of the correct statutory creation of agency herein, given the wording of the "Issuing Agency Agreement" and the actual behavior of Chicago and Land Title as exclusive agent and exclusive appointing insurer, all as set forth in the Findings above, it is most likely that Conclusions of Law would determine that the traditional common law of agency analysis would also support a determination that a principal-agent relationship exists between Chicago and Land Title.")

13. *In general, an "agent," under traditional agency principles, is a person authorized to act for another and under that party's control. The relationship may arise through employment, contract, or by apparent authority. It has long been the law that an agent can bind a principal while acting within the scope of the agency. See, Restatement (Third) Agency (2006).*

- First and second sentences: Delete. Irrelevant, as common law principles of the principal-agent relationship are irrelevant to the proper determination of the issue herein and, further, the principal-agent relationship can be created between appointing insurer-appointed insurance agent by statute. Replace with: A principle-agent relationship may be created either by the Insurance Code in the appointing insurer-appointed insurance agent situation, or by the dictates of traditional common law. Here, it is concluded that a principal-agent relationship was created by the Insurance Code.

- Third sentence: Adopt, but supplement by replacing with: Decades of well established insurance and other case law have determined that an agent can bind a principal while acting within the scope of the agency, whether the principal-agent relationship has been created by statute or the common law of agency. Per Findings above, Land Title clearly had the authority specifically given to it by RCW 48.17.010 to solicit applications for insurance on [Chicago's] behalf.

14. *Here, an agency relationship is suggested by the contract between Chicago and Land Title. These entities executed a contract which uses the term "Issuing Agent" for Land Title and "Principal" for Chicago, to describe their relationship to each other. The substance of that contract (as discussed below) creates the relationship if it exists, not the mere labels of "principal" and "agent."*

- Entire Conclusion: Because common law principles of principal and agent do not apply

herein, this Conclusion is irrelevant. Replace with: In this matter, as concluded above, an agency relationship was created statutorily between Chicago and Land Title by virtue of Chicago's compliance with RCW 48.17.060 and 48.17.010 and Land Title's acceptance of that appointment, and both parties' maintenance of that agency appointment since 1993; the parties' designation of the appointed agent, Land Title, as a "UTC" makes no difference under the Insurance Code. (It should be noted, however, while not relevant herein because this issue is determined under statutory agency analyses, because OIC argues as an alternative that Land Title was also an agent of Chicago under common law, an agency relationship is indeed suggested by the contract between Chicago and Land Title.) These entities executed a contract which uses the term "Issuing Agent" for Land Title and "Principal" for Chicago to describe their relationship to each other, but in addition the actual substance of that contract together with the activities of Land Title in soliciting and effectuating contracts on behalf of Chicago as found above, do indeed, appear to also create a common law agency relationship between Chicago and Land Title. Additionally, in the "Issuing Agency Agreement" which gives Chicago significantly more control than found by the ALJ, and under analyses of both strict common law agency and also – although not necessary – the theory of apparent authority.)

15. *Land Title is designated as an "agent" of Chicago under the Insurance Code. RCW 48.17.010 defines "agent" as:*

"Agent" means any person² appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated.

Land Title is a "person," as is Chicago, under the Insurance Code. (See FN 1)

- Delete. Not a Conclusion of Law.

16. *The Insurance Code, however, does not specifically define the "agency relationship" or the parties' rights or responsibilities vis-à-vis each other. That is left to the parties to determine, to the extent their agreement is not in conflict with the Insurance Code or the OIC's regulations.*

- First sentence: Delete. This sentence is an incorrect interpretation of the applicable Insurance Code and decades of applicable principal-agent case in the appointing insurer-

² "Person" is defined as any individual, company, insurer, association, organization . . . partnership, business trust, or corporation. RCW 48.01.070.

Delete. Not a Conclusion of Law.

appointed insurance agent area. As found and concluded above, RCW 48.17.060 and 48.17.010 clearly define the procedures for creating a principal-agent relationship between insurer and the agents they appoint to act on their behalf.

- Second sentence: Delete. This sentence is an incorrect interpretation of the Insurance Code and the decades of applicable principal-agent case law in the insurer-insurance agent area. The Insurance Code does not leave to the parties the right to determine whether they are engaged in a principal-agent relationship or not, or what kind of relationship, rights and responsibilities they have as parties in a principal-agent relationship as insurer and appointed agent.

- Replace entire Conclusion with: The Insurance Code, at RCW 48.17.010 and 48.17.060, specifically defines the requirements and procedures for insurers and insurance agents in order for them to create a principal-agent relationship as insurer-appointed insurance agent. Thereafter, decades of applicable case law analyzes the principal-agent relationship and dictates the rights and responsibilities of an insurer in its relationship with its appointed agent - and most significantly dictates that an insurer is liable for the acts of the insurer's appointed insurance agent, which agent is, pursuant to RCW 48.17.010, specifically acting on the insurer's behalf. A title insurer and its appointed agent may not enter into an agreement, which Chicago appears to have attempted (albeit unsuccessfully as, as found above, even in the "Issuing Agency Agreement" Chicago retains control over Land Title) in conflict with the Insurance Code or regulations: i.e Chicago may not enter into a private "Issuing Agency Agreement" with Land Title which attempts to somehow restrict Chicago's right to supervise the activities of its legally appointed insurance agent, which agent has been specifically authorized by RCW 48.17.160 and 48.17.010 to conduct solicitation for Chicago on Chicago's behalf, and Chicago may not simply look the other way concerning acts of its legally appointed agent specifically authorized by RCW 48.17.160 and 48.17.010 to conduct solicitation for Chicago on Chicago's behalf, and thereby succeed in escaping its liability to the OIC and others for the acts of solicitation conducted by its appointed agent, Land Title, acting on Chicago's behalf. Further, "solicitation" for purposes of RCW 48.17.160 is given an extremely broad interpretation. In the landmark *National Federation of Retired Persons v. Insurance Commissioner*, 120 Wn.2d 101,110-111,838 P.2d 680 (1992), the Washington Supreme Court held that "solicitation" in the insurance industry includes the solicitation for

the return of "cold lead" cards from consumers for later sale to insurance agents, even when no insurance company was identified. The giving of things of value to producers of title insurance business, with which the Illegal Inducement Regulation is concerned, clearly constitutes a form of "solicitation" which appointed agents are authorized to conduct, on behalf of their appointing insurers, pursuant to RCW 48.17.010. Therefore, Land Title was an appointed agent operating within the scope of its authority given to it by Chicago in appointing it as its agent pursuant to RCW 48.17.010 and 48.17.160.

17. *The Legislature could have included in the Insurance Code a clear description of the agency relationship, setting forth the rights and obligations of the principal and agent as between title insurer and title company. The Code is reasonably more concerned with third parties (the public) than the principals' and agents' rights and obligations to each other. As neither the OIC nor Chicago has identified a statute or regulation that clearly defines the relationship between the principal (CTIC) and agent (LT), the traditional agency law principles apply.*

- Entire Conclusion. Delete. This Conclusion is an incorrect interpretation and application of the Insurance Code, ignores RCW 48.17.160 and 48.17.010 in creating a specific principal-agent relationship between insurers and their appointed insurance agents.

18. *CTIC's lack of control in the relationship defeats the "agency relationship." The relationship between CTIC and LT, to meet the definition of an "agency" relationship in the common law, and as adopted by Washington courts, must have several elements. The Restatement of Law (Third) Agency, §1.01 (2006), defines agency as a relationship in this way:*

Agency is the fiduciary relationship that arises when one person (a "principal") manifests assent to another person (an "agent") that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents to act.

- Delete. As above, the common law definitions of a principal-agent relationship are irrelevant here. The principal-agent relationship between Chicago and Land Title is created by the Insurance Code at RCW 48.17.010 and 48.17.060.

19. *That definition is not in conflict with the definition of "agent" in the Insurance Code. The Restatement and Washington law on the subject go further than the Code in setting out the elements of an agency relationship.*

- Delete. Irrelevant conclusion, as, per Conclusion No. 16 and others above, the common

law definitions of a principal-agent do not apply.

20. *In Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 153 P.3d 10 (2007), the court stated that "right to control [by the principal over the agent] is indispensable to vicarious liability." (Citations omitted). In *Omni*, the issue was whether an insurance company, *Omni*, could be held liable for the illegal acts of its agent, a collection company hired by *Omni*, for violations of the Washington Consumer Protection Act. *Omni* took no part in the collection practices at issue and had no right to control the methods or means used by its agent to collect monies for *Omni* on subrogated claims.

- *Stephens v. Omni Ins. Co.*, 138 Wn.App. 151, 153 P.3d 10 (1007), review accepted, 180 P.3d 1289 (2008) is unresolved as it is still on appeal to the Washington Supreme Court. *Omni* held that a debt collection firm to which insurers assigned subrogation claims was not the insurers' agent and that its unfair collection practices therefore could not be imputed to the insurers. This case, while also unresolved currently, is clearly distinguishable from the facts herein: the collection agency was not an appointed insurance agent of the insurer as is Land Title, and was therefore not subject to RCW 48.17.010 and 48.17.160. For this reason, and various others concerning its contract and activities, the situation in *Omni* cannot remotely be compared to the situation herein.

21. *The Omni court refused to impute the agent's bad acts in violation of the Consumer Protection Act to the principal, on the basis that the principal had nothing whatever to do with the collection company's business practices or behavior. Nor did the court impose any "obligation" on the principal to monitor or know the behavior of the agent vis-à-vis the Consumer Protection Act, based on the public interest or the contract between the agent and principal.*

- Delete. See Conclusion 20 above.

22. *Omni is squarely on point here. Certainly, the State's Consumer Protection Act is equally as important as the Insurance Code in terms of protecting the public interest. The Legislative statement of purpose for the Consumer Protection Act is a strongly stated public interest ideal, as is the Legislative purpose of the Insurance Code.*³

³ Cf. RCW 48.01.030: "Public Interest: The business of insurance is one affected by the public interest, requiring all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. ..."

The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. To this end this act shall be liberally construed that its beneficial purposes may be served.

RCW 19.86.920; See also, Hangman Ridge, 105 Wn.2d at 778, 719 P.2d 531 (1986).

- Delete. See Conclusion 20 above.

23. *Despite the strong public-interest of the Consumer Protection law, and the regulatory nature of that Act, the Omni court would not impute the illegal acts of the agent to the principal where the principal had no right to control the means and methods of agent's business practices.*

- Delete. See Conclusion 20 above.

24. *The principle of agency law which was applied in Omni applies equally in this matter. CTIC had no right to control, and did not in fact control, any of the actions of LT in conducting marketing of title insurance. Whether CTIC benefitted from the bad acts at issue is not the question, and does not change the application of the general legal principles.*

- Delete. See Conclusion 20 above. Also, this Initial Conclusion applies the wrong theory of agency law, the common law theory, and applies a completely distinguishable case, in support of this Conclusion. See Conclusion No. 16 and others above. Also, as found in Findings of Facts above, Chicago had wide sweeping control over Land Title as the appointing insurer under RCW 48.17.060 and 48.17.010. (It is noted that Chicago also had much more control over Land Title in the "Issuing Agency Agreement" than it claims, apparently in an attempt to escape liability for the acts of its agent on its behalf even under the inapplicable common law of agency than it chose to exercise.) Replace with: As found in Findings of Facts above, Chicago had the right to control, but chose not to control, all of the actions of Land Title in the marketing and solicitation of Chicago's title insurance on behalf of Chicago under either 1) the proper analysis of insurer-appointed agent under RCW 48.17.060 and 48.17.010 or under, although it is not relevant here, 2) the common law agency analysis. Chicago cannot not escape liability for the acts of its appointed agent, which agent was clearly as authorized by statute (and was even allowed under the "Issuing

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- Delete. Not a Conclusion of Law.

Agency Agreement' even if the inapplicable common law of agency were to apply) soliciting for Chicago insurance on Chicago's behalf, by claiming to have had no control and/or have exercised no control and/or was unaware of its agent's acts on its behalf.

25. *In the contract, CTIC manifested an assent to have LT act as its agent for the purpose of writing the title insurance policies and binding CTIC to the risk of a bad title search. LT likewise manifested its assent, via the contract, to act on behalf of CTIC in issuing the title insurance policies. Thus, CTIC and LT entered into a traditional agency relationship, which specifically limited the control by the principal to those items specifically set out in the contract. No specific authority was granted for CTIC to control the general business of LT, including how it conducted its marketing.*

- Entire Conclusion: Delete. As set forth in Findings of Fact above, the evidence does not support this Conclusion under either the applicable statutory creation of principal-agent or under the inapplicable common law theory of principal-agent. Further, this Conclusion applies the theory of common law agency, albeit incorrectly as it ignores both the correct Findings of Facts above and ignores the common law theory of apparent authority, instead of the proper statutory agency analyses. Further, this Conclusion would enable insurers to simply undue the affect, and public policy behind, the principal-agent relationship created under the Insurance Code. Replace with: Per RCW 48.17.160 and 48.17.010, Land Title was specifically appointed by Chicago as an agent to act on behalf of Chicago in soliciting for Chicago's title insurance, among other activities.

26. *The agency relationship created is therefore not "universal," but is for limited purposes, as specified in the contract. The terms of the contract are not in dispute and the contract speaks for itself. The parties to the contract, LT and CTIC, have submitted undisputed evidence to show how they proceeded, in fact, under that contract.*

- Entire Conclusion: Delete. Conclusion applies the incorrect common law theory of agency instead of the correct statutory creation of agency in the insurance arena, applies incorrect findings of fact and incorrectly assumes that, even under the common law theory of agency, the principal and agent can privately limit the principal's liability for acts of its agent. Replace with: Under a determination of the existence of the principal-agent relationship under the proper statutory analysis set forth in the Insurance Code (or the inapplicable common law analysis of agency including apparent authority), a secret, private

contract between principal and agent cannot limit the liability of the principal for acts of its agent. Pursuant to the Finding of Fact above, Land Title conducted all activities involving solicitation and effectuation of Chicago's title policies, on behalf of Chicago; and Chicago chose to be uninvolved. Simply because Chicago chose to be uninvolved in its agent's activities does not exonerate Chicago from liability under the Insurance Code (or under the inapplicable common law theory of agency).

27. *Of note, there is no evidence that CTIC knew of the misbehavior by LT. That issue is not in dispute, as the OIC has not brought forth any evidence that shows this to be an issue in dispute. The undisputed facts are that CTIC had no participation in, or information about, the marketing or business dealings of LT which would have informed it that LT was violating the inducement law. CTIC did not participate in the marketing or other business dealings of LT and had only limited rights to do so, under the contract.*

- Delete. It is irrelevant whether or not Chicago chose to exercise control over the solicitation activities conducted by Land Title on its behalf, or whether Chicago knew about Land Title's solicitation activities on its behalf. See Conclusions 24 and 26 above. This Conclusion involves a clearly incorrect interpretation of RCW 48.17.160 and 48.17.010 and, indeed even of the inapplicable common law of agency including the theory of apparent authority. Per Conclusion No. 26 above, Chicago cannot escape liability for the acts of its appointed agent in soliciting for Chicago's insurance on behalf of Chicago simply because it chose to not become involved in overseeing these acts and chose to remain uninformed of these acts. Further, an assumption of a finding of fact – which fact is stated for the first time in this Conclusion rather than properly in a finding of fact – that Chicago was simply unaware of Land Title's violations of the Illegal Inducement Regulation is not credible.

28. *In sum, the agency relationship is defeated by the fact that CTIC did not have the right to control the marketing actions or business procedures of LT, and therefore, the OIC cannot impute the illegal acts of LT to CTIC.*

- Entire conclusion: Delete. See Conclusion 24 and others above. Further, there is insufficient evidence to support this Conclusion. Further, per Conclusion 24 and 26 and others above, this Conclusion involves an application of the wrong legal theory of principal-agent relationship. Replace with: Land Title is a duly appointed insurance agent of Chicago, which relationship was created by their voluntary acts under RCW 48.17.160 and 48.17.010.

with the specific statutory right therein to solicit for Chicago title insurance policies on behalf of Chicago. For these reasons, the OIC may hold Chicago responsible for the acts of Land Title in violating the illegal inducement statutes and regulation.

29. *CTIC is not obligated by law to monitor its UTC agent's compliance with law: There is nothing in the contract which obligates CTIC to monitor the behavior of LT at risk of having LT's illegal actions imputed to CTIC. Neither has there been any showing in the law of such a requirement.*

- Entire Conclusion: Delete. Per Findings above, and concluded here, "UTC," "underwritten title company" or other such designations may be used within the title agency but make no difference under the Insurance Code: "UTCs" which are appointed insurance agents have the rights and responsibilities – and the principal-agent relationship with their appointing insurer – as if they were not informally designated as "UTCs" or other terms. Also, the wording of the "Issuing Agency Agreement" is irrelevant in applying the correct statutory analysis in determining the existence of a principal-agent relationship.

30. *Whether CTIC could have reviewed LT's financial records under the contract is not the point: the provision allowing such review was not interpreted by either of the parties to the contract to obligate CTIC to monitor how LT spent its monies, or whether it violated the law by spending too much for inducements.*

- Delete: Conclusion is a dramatic misinterpretation of the applicable statutes contained in the Insurance Code, cited above, and of applicable case law. (Further, although inapplicable as the common law theory of agency does not apply to the situation herein, as above, it has been found that Chicago had significant right to control Land Title but chose not to do so.)

31. *The OIC does not have authority to impute bad acts of a title policy "issuing agent" to a title insurer where no provision exists for this in the law: The OIC attempts to show that its authority for this specific action against CTIC is within the "broad authority" the Commissioner has under the Code. The "broad authority," while clearly very broad, must still be exercised within the parameters of the Insurance Code or the OIC's regulations.*

- Entire Conclusion: Delete. As found above, this is a misstatement of the OIC's position.

32. *The cases cited by the OIC indicate that the courts give deference to the OIC's interpretation of the Code when a provision of that Code or an OIC regulation is at issue. Here, there is no provision of the Code or regulation which directly addresses the issue, and none*

which directly gives the OIC authority to hold a title insurer liable for the illegal acts of UTC agents.

- First sentence: Adopt.
- Second sentence: Delete. Incorrect interpretation of insurance statutes and regulations. See Findings of Fact and Conclusions of Law above.

33. *There is no question that the Code and regulations amply authorize the OIC to take action against a title insurer directly for its own violations, or directly against the title company for its violations. CTIC readily concedes this to be the law. Absent in the Insurance Code and regulations cited by OIC is the authority for OIC to hold the insurer liable for the illegal acts of another company, with whom it contracted for limited purposes, specifically to underwrite title policies. The "broad authority" of the OIC stops short of being quite that broad; it must have an underpinning of law. I cannot find authority for the OIC's actions in the "penumbra" of the Insurance Code, although this is what the OIC seems to urge.*

- Entire Conclusion: Delete. This is a misstatement of the OIC's position. Further, per Conclusions of Law above, this is an application of the wrong theory of principal-agent law (common law) and entirely ignores the specific statutory authority as provided for in the Insurance Code and as argued by the OIC.

34. *I understand the OIC's policy arguments. While these are attractive from a public policy standpoint and would be expeditious, these arguments cannot legally prevail. The OIC, despite its broad regulatory authority, must have some statutory or specific regulatory authority to take action against an insurer under the Code. Advisory letters and other communications with the insurer, some 20 years ago, cannot substitute for the necessary statutory or specific regulatory authority required for the OIC's current actions. The 2006 Advisory letter, the 2006 OIC report, and the 10 to 20 year old communications to the insurer are not law.*

- Entire Conclusion: Delete. Per Conclusion 34 above and others, this is a misstatement of the OIC's position. Further, per Conclusions above, this is an application of the wrong theory of law (common law theory) and entirely ignores the specific statutory authority provided for in the Insurance Code and as argued by the OIC.

35. *Whether, as a policy matter, CTIC should have more control over the acts of the UTC's with whom it contracts, or should be obligated by law to undertake a more active role in monitoring its agents for compliance with the inducement laws, is not the issue. Such*

responsibility or obligation on the principal is not the status of the law.

- Delete. As concluded above, this is an application of the wrong theory of law, entirely ignores the correct theory of law and also is an incorrect interpretation of even the incorrect theory of law (the common law theory).

36. *Accordingly, no genuine issue of material fact exists as to the relationship between CTIC and LT, and the actions of the parties within that relationship. Based on the findings and legal analysis above, the illegal acts of LT cannot be imputed to CTIC.*

- Delete. As concluded above, this Conclusion is based upon the wrong theory of law and ignores the correct theory of law. Replace with: Based upon the above Findings of Facts and Conclusions of Law, Chicago is not entitled to summary judgment as a matter of law. Based on the above Findings of Facts and Conclusions of Law, Chicago, as the appointing insurer of Land Title, granting Land Title specific statutory authority to conduct solicitation of title insurance pursuant to RCW 48.17.160 and 48.17.010, specifically, under RCW 48.17.010 as an appointed agent acting on behalf of Chicago, OIC may impute the acts of Land Title in this area to Chicago. Therefore, the OIC may hold Chicago liable for the acts of Land Title for Land Title's alleged violations of the Illegal Inducement Regulations and statutes in its solicitation, on behalf of Chicago, of Chicago's title insurance.

37. *Summary judgment is granted to CTIC on the issue of imputed liability for the illegal acts of LT in violating the inducement statute and regulation.*

- Delete. This is not a Conclusion of Law. However, this statement of decision is based upon Initial Findings of Facts which were based on insufficient evidence and also simply misinterpreted; failure to apply the correct statutory analysis of insurer-agent liability; misapplication of the theory of common law agency and misapplication of facts to that theory even if it did apply. Replace with: Based upon the above Final Findings of Fact and Final Conclusions of Law, Chicago is not entitled as a matter of law to summary judgment herein. Chicago's Motion for Summary Judgment on the issue of imputed liability for the allegedly illegal acts of Land Title in violating the Illegal Inducement Regulations and statutes is denied.

ORDER

IT IS HEREBY ORDERED that the ALJ's Initial Order Granting Chicago Title Insurance Company's Motion for Summary Judgment is not adopted. Chicago Title Insurance Company's Motion for Summary Judgment is **DENIED** on the issue of whether it can be held responsible for the allegedly illegal acts of Land Title of Kitsap County, Inc., which it has legally appointed as its exclusive title insurance agent in the relevant counties since March 5, 1993. It is determined herein that the OIC can hold Chicago Title Insurance Company responsible for the illegal acts of its legally appointed insurance agent, Land Title, in violating WAC 284-30-800, the Illegal Inducement Regulation and statute. The OIC may take action against Chicago for the illegal acts of Land Title in the manner it has done in its Notice of Hearing and Amended Notice of Hearing herein. This being the decision of the undersigned Review Judge,

IT IS FURTHER ORDERED that the hearing file should be transferred back to the Office of Administrative Hearings for commencement of Phase II of this proceeding as detailed above.

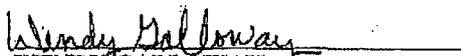
THIS ORDER IS ENTERED at Tumwater, Washington, this 24th day of April, 2009, pursuant to Title 48 RCW and particularly RCW 48.17.010, 48.17.160, 48.17.010 and 48.17.160, Title 34 RCW and regulations applicable thereto.


PATRICIA D. PETERSEN
Review Judge

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom and procedure, a true copy of this document, Final Findings of Facts, Conclusions of Law and Order on Chicago Title Insurance Company's Motion for Summary Judgment (Phase I of Hearing), to all interested parties at their respective addresses listed on page one of this document.

DATED this 24th day of April, 2009.


WENDY GALLOWAY

RCW 34.05.461
Entry of orders.

(1) Except as provided in subsection (2) of this section:

(a) If the presiding officer is the agency head or one or more members of the agency head, the presiding officer may enter an initial order if further review is available within the agency, or a final order if further review is not available;

(b) If the presiding officer is a person designated by the agency to make the final decision and enter the final order, the presiding officer shall enter a final order; and

(c) If the presiding officer is one or more administrative law judges, the presiding officer shall enter an initial order.

(2) With respect to agencies exempt from chapter 34.12 RCW or an institution of higher education, the presiding officer shall transmit a full and complete record of the proceedings, including such comments upon demeanor of witnesses as the presiding officer deems relevant, to each agency official who is to enter a final or initial order after considering the record and evidence so transmitted.

(3) Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(4) Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

(5) Where it bears on the issues presented, the agency's experience, technical competency, and specialized knowledge may be used in the evaluation of evidence.

(6) If a person serving or designated to serve as presiding officer becomes unavailable for any reason before entry of the order, a substitute presiding officer shall be appointed as provided in RCW 34.05.425. The substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(7) The presiding officer may allow the parties a designated time after conclusion of the hearing for the submission of memos, briefs, or proposed findings.

(8)(a) Except as otherwise provided in (b) of this subsection, initial or final orders shall be served in writing within ninety days after conclusion of the hearing or after submission of memos, briefs, or proposed findings in accordance with subsection (7) of this section unless this period is waived or extended for good cause shown.

(b) This subsection does not apply to the final order of the shorelines hearings board on appeal under RCW 90.58.180(3).

(9) The presiding officer shall cause copies of the order to be served on each party and the agency.

[1995 c 347 § 312; 1989 c 175 § 19; 1988 c 288 § 418.]

Notes:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.464
Review of initial orders.

(1) As authorized by law, an agency may by rule provide that initial orders in specified classes of cases may become final without further agency action unless, within a specified period, (a) the agency head upon its own motion determines that the initial order should be reviewed, or (b) a party to the proceedings files a petition for administrative review of the initial order. Upon occurrence of either event, notice shall be given to all parties to the proceeding.

(2) As authorized by law, an agency head may appoint a person to review initial orders and to prepare and enter final agency orders.

(3) RCW 34.05.425 and 34.05.455 apply to any person reviewing an initial order on behalf of an agency as part of the decision process, and to persons communicating with them, to the same extent that it is applicable to presiding officers.

(4) The officer reviewing the initial order (including the agency head reviewing an initial order) is, for the purposes of this chapter, termed the reviewing officer. The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the reviewing officer upon notice to all the parties. In reviewing findings of fact by presiding officers, the reviewing officers shall give due regard to the presiding officer's opportunity to observe the witnesses.

(5) The reviewing officer shall personally consider the whole record or such portions of it as may be cited by the parties.

(6) The reviewing officer shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(7) The reviewing officer shall enter a final order disposing of the proceeding or remand the matter for further proceedings, with instructions to the presiding officer who entered the initial order. Upon remanding a matter, the reviewing officer shall order such temporary relief as is authorized and appropriate.

(8) A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

(9) The reviewing officer shall cause copies of the final order or order remanding the matter for further proceedings to be served upon each party.

[1989 c 175 § 20; 1988 c 288 § 419.]

Notes:

Effective date – 1989 c 175: See note following RCW 34.05.010.

RCW 34.05.574

Type of relief.

(1) In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

(2) The sole remedy available to a person who is wrongfully denied licensure based upon a failure to pass an examination administered by a state agency, or under its auspices, is the right to retake the examination free of the defect or defects the court may have found in the examination or the examination procedure.

(3) The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.

(4) If the court sets aside or modifies agency action or remands the matter to the agency for further proceedings, the court may make any interlocutory order it finds necessary to preserve the interests of the parties and the public, pending further proceedings or agency action.

[1989 c 175 § 28; 1988 c 288 § 517.]

Notes:

Effective date – 1989 c 175: See note following RCW 34.05.010.

Rebating: RCW 48.30.140.

"Twisting" prohibited: RCW 48.30.180.

Unfair practices: Chapter 48.30 RCW.

48.17.005 Rule making. (Effective July 1, 2009.) The commissioner may adopt rules to implement and administer this chapter. [2007 c 117 § 35.]

48.17.010 "Agent" defined. (Effective until July 1, 2009.) "Agent" means any person appointed by an insurer to solicit applications for insurance on its behalf. If authorized so to do, an agent may effectuate insurance contracts. An agent may collect premiums on insurances so applied for or effectuated. [1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § 17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.010 Definitions. (Effective July 1, 2009.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession, or an adjuster of marine losses, or a salaried employee of an insurer or of a managing general agent, is not deemed to be an "adjuster" for the purpose of this chapter.

(a) "Independent adjuster" means an adjuster representing the interests of the insurer.

(b) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business, and is licensed to act as an insurance producer.

(4) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW, or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150.

(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. "Insurance producer" does not include title insurance agent as defined in subsection (15) of this section.

(6) "Insurer" has the same meaning as in RCW 48.01.050, and includes a health care service contractor as defined in RCW 48.44.010 and a health maintenance organization as defined in RCW 48.46.020.

(7) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer or

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title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer.

(8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(9) "NAIC" means national association of insurance commissioners.

(10) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(14) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

(15) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

(16) "Uniform business entity application" means the current version of the NAIC uniform application for business entity insurance license or registration for resident and non-resident business entities.

(17) "Uniform application" means the current version of the NAIC uniform application for individual insurance producers for resident and nonresident insurance producer licensing. [2007 c 117 § 1; 1985 c 264 § 7; 1981 c 339 § 9; 1947 c 79 § 17.01; Rem. Supp. 1947 § 45.17.01.]

48.17.020 "Broker" defined. (Effective until July 1, 2009.) "Broker" means any person who, on behalf of the insured, for compensation as an independent contractor, for commission, or fee, and not being an agent of the insurer, solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance thereof, or in any manner aids therein, for insureds or prospective insureds other than himself. [1947 c 79 § 17.02; Rem. Supp. 1947 § 45.17.02.]

48.17.030 "Solicitor" defined. (Effective until July 1, 2009.) "Solicitor" means an individual authorized by an agent or broker to solicit applications for insurance as a representative of such agent or broker and to collect premiums in

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(a) Applicants for licenses under RCW 48.17.170(1) (g), (h), and (i), at the discretion of the commissioner;

(b) Applicants who within the two-year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for, or who have successfully completed a course of study recognized as a mark of distinction by the insurance industry, and who are deemed by the commissioner to be fully qualified and competent;

(c) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full-time salaried employee of an insurer or of a managing general agent to adjust, investigate, or report claims arising under insurance contracts;

(d) Applicants deemed by the commissioner to be qualified by past experience to deal in ocean marine and related coverages.

(3) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(4) The commissioner may, at any time, require any licensed insurance producer or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violating this title, or has so conducted affairs under an insurance license as to cause the commissioner to reasonably desire further evidence of the licensee's qualifications. [2007 c 117 § 8; 1990 1st ex.s. c 3 § 2; 1977 ex.s. c 182 § 3; 1967 c 150 § 16; 1965 ex.s. c 70 § 19; 1963 c 195 § 17; 1955 c 303 § 10; 1949 c 190 § 23; 1947 c 79 § 17.11; Rem. Supp. 1949 § 45.17.11.]

48.17.120 Scope of examinations. (Effective until July 1, 2009.) (1) Each such examination shall be of sufficient scope and difficulty to test the applicant's knowledge relative to the kinds of insurance which may be dealt with under the license applied for, and of the duties and responsibilities of, and laws of this state applicable to, such a licensee, and so as reasonably to assure that a passing score indicates that the applicant is qualified from the standpoint of knowledge and education.

(2) Examination as to ocean marine and related coverages may be waived by the commissioner as to any applicant deemed by the commissioner to be qualified by past experience to deal in such insurances.

(3) The commissioner shall prepare, or approve, and make available to insurers, general agents, brokers, agents, and applicants a printed manual specifying in general terms the subjects which may be covered in any examination for a particular license. [1989 c 323 § 6; 1981 c 111 § 2; 1967 c 150 § 17; 1955 c 303 § 11; 1947 c 79 § 17.12; Rem. Supp. 1947 § 45.17.12.]

Effective date—1989 c 323: See note following RCW 48.17.055.

48.17.125 Examination questions—Confidentiality—Penalties. (Effective until July 1, 2009.) It is unlawful for any unauthorized person to remove, reproduce, duplicate, or

distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance agents, brokers, solicitors, or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080 and 48.17.560. [1989 c 323 § 1.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.125 Examination questions—Confidentiality—Penalties. (Effective July 1, 2009.) It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question(s) used by the state of Washington to determine the qualifications and competence of insurance producers or adjusters required by Title 48 RCW to be licensed. This section shall not prohibit an insurance education provider from creating and using sample test questions in courses approved pursuant to RCW 48.17.150.

Any person violating this section shall be subject to penalties as provided by RCW 48.01.080, 48.17.530, and 48.17.560. [2007 c 117 § 9; 1989 c 323 § 1.]

Effective date—1989 c 323: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 323 § 8.]

48.17.130 Examinations—Form, time of, fee. (Effective until July 1, 2009.) (1) The answers of the applicant to any such examination shall be written by the applicant under the examining authority's supervision, and any such written examination may be supplemented by oral examination at the discretion of the examining authority.

(2) Examinations shall be given at such times and places within this state as the examining authority deems necessary reasonably to serve the convenience of both the examining authority and applicants.

(3) The examining authority may require a waiting period of reasonable duration before giving a new examination to an applicant who has failed to pass a previous similar examination.

(4) For each examination taken, the commissioner shall collect in advance the fee provided in RCW 48.14.010. In the event the commissioner contracts with an independent testing service for examination development and administration, the examination fee may be collected directly by such testing service. [1981 c 111 § 3; 1967 c 150 § 18; 1947 c 79 § 17.13; Rem. Supp. 1947 § 45.17.13.]

48.17.150 Agent's and broker's qualifications—Continuing education requirements. (Effective until July 1, 2009.) (1) To qualify for an agent's or broker's license, an applicant must otherwise comply with this code and must:

(a) Be at least eighteen years of age, if an individual;

(b) Be a bona fide resident of and actually reside in this state, or if a corporation, be other than an insurer and main-

tain a lawfully established place of business in this state, except as provided in RCW 48.17.330;

(c) Be empowered to be an agent or broker under its members' agreement, if a firm, or by its articles of incorporation, if a corporation;

(d) Complete the minimum educational requirements for the issuance of an agent's license for the kinds of insurance specified in RCW 48.17.210 as may be required by regulation issued by the commissioner;

(e) Successfully pass any examination as required under RCW 48.17.110;

(f) Be a trustworthy person;

(g)(i) If for an agent's license, be appointed as its agent by one or more authorized insurers, subject to issuance of the license;

(ii) The commissioner may by regulation establish requirements, including notification formats, in addition to or in lieu of the requirements of (g)(i) of this subsection to allow an agent to act as a representative of and place insurance with an insurer without first notifying the commissioner of the appointment for a period of time up to but not exceeding thirty days from the date the first insurance application is executed by the agent; and

(h) If for broker's license, have had at least two years experience either as an agent, solicitor, adjuster, general agent, broker, or as an employee of insurers or representatives of insurers, and special education or training of sufficient duration and extent reasonably to satisfy the commissioner that the applicant possesses the competence necessary to fulfill the responsibilities of broker.

(2) The commissioner shall by regulation establish minimum continuing education requirements for the renewal or reissuance of a license to an agent or a broker.

(a) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(b) The continuing education requirements must be appropriate to the license for the kinds of insurance specified in RCW 48.17.210.

(c) The continuing education requirements may be waived by the commissioner for good cause shown.

(3) If the commissioner finds that the applicant is qualified and that the license fee has been paid, the license shall be issued. Otherwise, the commissioner shall refuse to issue the license. [2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.150 Continuing education courses and requirements. (Effective July 1, 2009.) (1) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

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(2) The continuing education requirements must be appropriate to the license for the lines of authority specified in RCW 48.17.170 or by rule.

(3) The continuing education requirements may be waived by the commissioner for good cause shown. [2007 c 117 § 10; 2005 c 223 § 7; 1994 c 131 § 4; 1988 c 248 § 9; 1979 ex.s. c 269 § 7; 1971 ex.s. c 292 § 47; 1967 c 150 § 19; 1961 c 194 § 4; 1947 c 79 § .17.15; Rem. Supp. 1947 § 45.17.15.]

Effective date, implementation—1979 ex.s. c 269: See note following RCW 48.14.010.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

48.17.153 Agents selling federal flood insurance policies—Training requirements. (1) All Washington state licensed insurance agents who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the flood insurance reform act of 2004, and basic flood education as outlined at 70 C.F.R. Sec. 52117, or such later requirements as are published by the federal emergency management agency.

(2) Licensed insurers shall demonstrate to the commissioner, upon request, that their licensed and appointed agents who sell federal flood insurance policies have complied with the minimum federal flood insurance training requirements. [2006 c 25 § 15.]

48.17.160 Appointment of agents—Revocation—Expiration—Renewal. (Effective until July 1, 2009.) (1) Each insurer on appointing an agent in this state shall file written notice thereof with the commissioner on forms as prescribed and furnished by the commissioner, and shall pay the filing fee therefor as provided in RCW 48.14.010. The commissioner shall return the appointment of agent form to the insurer for distribution to the agent. The commissioner may adopt regulations establishing alternative appointment procedures for individuals within licensed firms, corporations, or sole proprietorships who are empowered to exercise the authority conferred by the firm, corporate, or sole proprietorship license.

(2) Each appointment shall be effective until the agent's license expires or is revoked, the appointment has expired, or written notice of termination of the appointment is filed with the commissioner, whichever occurs first.

(3) When the appointment is revoked by the insurer, written notice of such revocation shall be given to the agent and a copy of the notice of revocation shall be mailed to the commissioner.

(4) Revocation of an appointment by the insurer shall be deemed to be effective as of the date designated in the notice as being the effective date if the notice is actually received by the agent prior to such designated date; otherwise, as of the earlier of the following dates:

(a) The date such notice of revocation was received by the agent.

(b) The date such notice, if mailed to the agent at his last address of record with the insurer, in due course should have been received by the agent.

(5) Appointments expire if not timely renewed. Each insurer shall pay the renewal fee set forth for each agent holding an appointment on the renewal date assigned the agents of

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RCW 48.17.160

Appointment of agents — Approval — Termination — Fees.

(1) An insurance producer or title insurance agent shall not act as an agent of an insurer unless the insurance producer or title insurance agent becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer or title insurance agent as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted, whichever is earlier.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the insurance producer or title insurance agent is eligible for appointment. If the insurance producer or title insurance agent is determined to be ineligible for appointment, the commissioner shall notify the insurer within ten days of the determination.

(4) An insurer shall pay an appointment fee, in the amount and method of payment set forth in RCW 48.14.010, for each insurance producer or title insurance agent appointed by the insurer.

(5) Contingent upon payment of the appointment renewal fee as set forth in RCW 48.14.010, an appointment shall be effective until terminated by the insurer, insurance producer, or title insurance agent and notice has been given to the commissioner as required by RCW 48.17.595.

[2009 c 162 § 18; 2007 c 117 § 11; 1994 c 131 § 5; 1990 1st ex.s. c 3 § 3; 1979 ex.s. c 269 § 2; 1967 c 150 § 20; 1959 c 225 § 6; 1955 c 303 § 13; 1947 c 79 § 17.16; Rem. Supp. 1947 § 45.17.16.]

Notes:

Effective date – 2009 c 162: See note following RCW 48.03.020.

Effective date, implementation – 1979 ex.s. c 269: See note following RCW 48.14.010.

RCW 48.29.210

Business inducements — Prohibited practices.

(1) A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give any fee, kickback, or other thing of value to any person as an inducement, payment, or reward for placing business, referring business, or causing title insurance business to be given to either the title insurer, or title insurance agent, or both.

(2) A title insurer, title insurance agent, or employee, agent, or other representative of a title insurer or title insurance agent shall not, directly or indirectly, give anything of value to any person in a position to refer or influence the referral of title insurance business to either the title insurance company or title insurance agent, or both, except as permitted under rules adopted by the commissioner.

[2008 c 110 § 3.]

RCW 48.30.010

Unfair practices in general — Remedies and penalties.

(1) No person engaged in the business of insurance shall engage in unfair methods of competition or in unfair or deceptive acts or practices in the conduct of such business as such methods, acts, or practices are defined pursuant to subsection (2) of this section.

(2) In addition to such unfair methods and unfair or deceptive acts or practices as are expressly defined and prohibited by this code, the commissioner may from time to time by regulation promulgated pursuant to chapter 34.05 RCW, define other methods of competition and other acts and practices in the conduct of such business reasonably found by the commissioner to be unfair or deceptive after a review of all comments received during the notice and comment rule-making period.

(3)(a) In defining other methods of competition and other acts and practices in the conduct of such business to be unfair or deceptive, and after reviewing all comments and documents received during the notice and comment rule-making period, the commissioner shall identify his or her reasons for defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive and shall include a statement outlining these reasons as part of the adopted rule.

(b) The commissioner shall include a detailed description of facts upon which he or she relied and of facts upon which he or she failed to rely, in defining the method of competition or other act or practice in the conduct of insurance to be unfair or deceptive, in the concise explanatory statement prepared under RCW 34.05.325(6).

(c) Upon appeal the superior court shall review the findings of fact upon which the regulation is based de novo on the record.

(4) No such regulation shall be made effective prior to the expiration of thirty days after the date of the order by which it is promulgated.

(5) If the commissioner has cause to believe that any person is violating any such regulation, the commissioner may order such person to cease and desist therefrom. The commissioner shall deliver such order to such person direct or mail it to the person by registered mail with return receipt requested. If the person violates the order after expiration of ten days after the cease and desist order has been received by him or her, he or she may be fined by the commissioner a sum not to exceed two hundred and fifty dollars for each violation committed thereafter.

(6) If any such regulation is violated, the commissioner may take such other or additional action as is permitted under the insurance code for violation of a regulation.

(7) An insurer engaged in the business of insurance may not unreasonably deny a claim for coverage or payment of benefits to any first party claimant. "First party claimant" has the same meaning as in RCW 48.30.015.

[2007 c 498 § 2 (Referendum Measure No. 67, approved November 6, 2007); 1997 c 409 § 107; 1985 c 264 § 13; 1973 1st ex.s. c 152 § 6; 1965 ex.s. c 70 § 24; 1947 c 79 § .30.01; Rem. Supp. 1947 § 46.30.01.]

Notes:

Short title -- 2007 c.498: See note following RCW 48.30.015.

Part headings -- Severability -- 1997 c 409: See notes following RCW 43.22.051.

Severability -- 1973 1st ex.s. c 152: See note following RCW 48.05.140.

such record or minutes. [1947 c 79 § .30.13; Rem. Supp. 1947 § 45.30.13.]

48.30.140 Rebating. (Effective until July 1, 2009.) (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270. [1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

48.30.140 Rebating. (Effective July 1, 2009.) (1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, insurance producer, or title insurance agent shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed insurance producer, or title insurance agent for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance producer, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the insurance producer's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, insurance producers,

or title insurance agents whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to an insurance producer as provided in RCW 48.17.270. [2008 c 217 § 35; 1994 c 203 § 3; 1990 1st ex.s. c 3 § 8; 1985 c 264 § 14; 1975-'76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

Severability—Effective date—2008 c 217: See notes following RCW 48.03.020.

48.30.150 Illegal inducements. (Effective until July 1, 2009.) No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold. [1990 1st ex.s. c 3 § 9; 1975-'76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

48.30.150 Illegal inducements. (Effective July 1, 2009.) No insurer, insurance producer, title insurance agent, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose

reserves or the quality of an insurer, in a manner to suggest that such figures or comments are impressive or that the report demonstrates the company to be particularly strong financially or of high quality relative to other companies, when such is not the case, creates a false impression and is deceptive.

[Statutory Authority: RCW 48.02.060, 88-24-053 (Order R 88-12), § 284-30-660, filed 12/7/88.]

WAC 284-30-700 Restrictions as to denial and termination of homeowners insurance affected by day-care operations. (1) Beginning August 1, 1985, pursuant to RCW 48.30.010, it shall be an unfair practice for any insurer transacting homeowners insurance to deny homeowners insurance to an applicant therefor, or to terminate any homeowners insurance policy covering a dwelling located in this state, whether by cancellation or nonrenewal, for the principal reason that an insured under such policy is engaged in the operation of a day care facility, pursuant to chapter 74.15 RCW, at the insured location.

(2) This rule does not prevent an insurer from excluding or limiting coverage with respect to liability or property losses arising out of business pursuits of an insured, specifically including those related to the operation of day care facilities.

[Statutory Authority: RCW 48.02.060, 85-17-018 (Order R 85-3), § 284-30-700, filed 8/12/85.]

WAC 284-30-750 Brokers' fees to be disclosed. It shall be an unfair practice for any broker providing services in connection with the procurement of insurance to charge a fee in excess of the usual commission which would be paid to an agent without having advised the insured or prospective insured, in writing, in advance of the rendering of services, that there will be a charge and its amount or the basis on which such charge will be determined.

[Statutory Authority: RCW 48.02.060, 48.44.050 and 48.46.200, 87-09-071 (Order R 87-5), § 284-30-750, filed 4/21/87.]

WAC 284-30-800 Unfair practices applicable to title insurers and their agents. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twenty-five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing

or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and sub-dividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.30.140; 48.30.150, 48.01.030 and 48.30.010(2), 90-20-104 (Order R 90-11), § 284-30-800, filed 10/2/90, effective 11/2/90. Statutory Authority: RCW 48.02.060 (3)(a), 88-11-056 (Order R 88-6), § 284-30-800, filed 5/17/88.]

ENVIRONMENTAL CLAIMS

WAC 284-30-900 Purpose. (1) There are many insurance coverage disputes involving Washington insureds who face potential liability for their roles at polluted sites in this state. State and federal mandates exist for cleaning up the environment in order to address the adverse effects of hazardous substances on human health and safety and the environment in general. It is in the public interest to reduce the costs incurred in connection with environmental claims and to expedite the resolution of such claims. The state of Washington has a substantial public interest in the timely, efficient, and appropriate resolution of environmental claims involving the liability of insureds at polluted sites in this state. This interest is based on practices favoring good faith and fair dealing in insurance matters and on the state's broader health and safety interest in a clean environment.

(2) Insureds and insurers alike face claims complicated by factual issues concerning events that occurred in the distant past. Many sites with environmental damage involve long-term operations with multiple owners; therefore, issues related to lost policies which may provide insurance coverage in the environmental claims context provide uniquely challenging problems of both lost evidence and witnesses.

(3) Cooperation between insureds and insurers in fairly and expeditiously resolving legitimate disputes and in reducing or eliminating nonmeritorious claims is in the public interest. Facilitating cooperation in resolving legitimate lost policy disputes in environmental claims will reduce unnecessary litigation, thereby freeing more resources for environmental cleanup. Insureds and insurers are encouraged to participate in a mediation program in order to achieve a mutually acceptable, expeditious resolution of environmental claims without resort to costly and lengthy litigation.

(4) This regulation is adopted to provide minimum standards for the conduct of insureds and insurers for presenting and resolving environmental claims with the goal of facilitat-

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

IN THE MATTER OF:

Chicago Title Insurance Company,
An Authorized Insurer,

Respondent.

Docket No. 2008-INS-0002

Infraction No. D07-308

FIRST PRE-HEARING ORDER

Pursuant to proper notice to all parties, a telephonic pre-hearing conference was held on March 31, 2008, at 9:45 a.m., before Cindy L. Burdue, Administrative Law Judge. Parties present: the Office of the Insurance Commissioner, represented by Marcia Stickler, Attorney at Law, and Chicago Title Insurance Company (Respondent), represented by Kimberly Osenbaugh, Attorney at Law, K&L Gates; with David Neu, Attorney at Law, and Kevin Chiarello, Compliance Officer and Vice-President.

The following matters were discussed and agreed upon; where matters were not discussed, the undersigned has entered the following rulings on the issues:

BIFURCATION OF HEARING

The hearing will be bifurcated, with the preliminary issue of the legal responsibility of Respondent for the actions of Land Title Company of Kitsap County, Inc., being determined first.

Depending on the outcome of that issue, whether Respondent is liable for the actions of Land Title Company of Kitsap County, Inc., a second hearing will be held to determine whether the expenditures of the Kitsap County company violate the law, specifically WAC 284-30-800 and various provisions of RCW 48.04 and RCW 48.05.

SCHEDULE FOR PHASE I OF THE HEARING PROCESS:

1. **Discovery Cut Off:** for the issue of legal responsibility/agency is set for May 15, 2008.
2. **The Motions calendar** is set as follows:
 - a. All motions and briefs related to the issue of the legal liability of Chicago Title Company for the actions of the Land Title Company of Kitsap County, Inc., will be filed

WASHINGTON INSURANCE LICENSING INFORMATION SYSTEM

COMPANY APPOINTMENT LIST

4/18/2008

CHICAGO TITLE
INSURANCE COMPANY

COMPANY NUMBER : 258

DATE AUTHORIZED : 03/18/1977

MAILING ADDRESS
601 RIVERSIDE AVE
JACKSONVILLE FL 32204

Insurance Lines
Title Status
 Active

COMPANY APPT. EXPIRY DATE : 03/18/2009

NAME	WAOIC #	APPT. LINES	EFF DATE	EXP. DATE	CAN. DATE
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BUSINESS ENTITY APPOINTMENTS

ALLIANCE TITLE & ESCROW CORPORATION 725 6TH ST CLARKSTON WA 99403	131780	Title	05/22/1997	03/18/2009	
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AMERITITLE INC 101 W FIFTH AVE POB 617 ELLENSBURG WA 98926	137771	Title	09/01/1998	03/18/2009	
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CHICAGO TITLE COMPANY OF WASHINGTON 770 NE MIDWAY BLVD POB 1050 OAK HARBOR WA 98277	19852	Title	01/29/1992	03/18/2009	
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COAST TITLE & ESCROW INC 522 W WISHKAH POB 287 ABERDEEN WA 98520	8492	Title	06/12/2007	03/18/2009	
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FIDELITY TITLE COMPANY POB 1682 YAKIMA WA 98907	13067	Title	03/26/1981	03/18/2009	
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LAND TITLE COMPANY OF KITSAP COUNTY INC POB 2737 SILVERDALE WA 98383	23081	Title	03/05/1993	03/18/2009	
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LAND TITLE COMPANY OF KITSAP COUNTY INC POB 327 SHELTON WA 98584	23082	Title	03/05/1993	03/18/2009	
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NAME	WAOIC #	APPT. LINES	EFF DATE	EXP. DATE	CAN. DATE
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BUSINESS ENTITY APPOINTMENTS

LAND TITLE OF WALLA WALLA COUNTY INC 33 E MAIN ST WALLA WALLA WA 99362	69280	Title	04/30/2004	03/18/2009	
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LSI TITLE AGENCY INC 2550 N REDHILL AVE SANTA ANA CA 92705	237228	Title	01/31/2005	03/18/2009	
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SKAMANIA COUNTY TITLE COMPANY 41 RUSSELL ST PO BOX 277 STEVENSON WA 98648	113040	Title	05/14/2007	03/18/2009	
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SPOKANE COUNTY TITLE COMPANY 1010 N NORMANDIE STE 100 SPOKANE WA 99201	37472	Title	06/27/2007	03/18/2009	
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TITLE GUARANTY COMPANY OF LEWIS COUNTY POB 1304 CHEHALIS WA 98532	39725	Title	06/12/2007	03/18/2009	
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ISSUING AGENCY AGREEMENT

CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation,

hereinafter referred to as "Principal" and

LAND TITLE COMPANY OF KITSAP COUNTY, INC.

hereinafter referred to as "Issuing Agent", in consideration of the mutual promises made herein, hereby agree as follows:

1. Appointment of Issuing Agent. Principal hereby appoints Issuing Agent to issue its title insurances in the following County or Counties: KITSAP, CLALLAM, JEFFERSON and MASON State of WASHINGTON with the right of Principal to appoint other issuing agents in the same or other Counties in said state.
2. Term of Agreement. This Agreement is made for a term of 1 year from February 1, 1992 which shall be the effective date hereof, and shall be automatically extended at each expiration date unless either party gives written notice to the other party of its election not to extend at least 90 days prior to the end of said original term or any additional term.
3. Authority of Issuing Agent. Issuing Agent, by its employees and/or officers as denoted in this Agreement or any amendment thereto, (hereinafter "Authorized Signatories"), shall have authority on behalf of Principal to sign, countersign and issue Principal's title insurances on forms supplied and approved by Principal and only on real property located in the County or Counties listed above, and in such other Counties as may be designated in writing by Principal, as long as said "Authorized Signatories" remain employed by Issuing Agent and, where necessary, properly licensed during the period of time that this Agreement remains in full force and effect. Issuing Agent shall not be deemed or construed to be authorized to do any other act for principal not expressly authorized herein.
4. Acts of Issuing Agent. Issuing Agent shall:
 - A. Issue only title insurances of Principal, and of no other title insurance company;
 - B. Receive and process applications for title insurances:
 - (1) In accordance with usual customary practices and procedures and prudent underwriting principles; and
 - (2) In full compliance with instructions, rules and regulations of Principal given to Issuing Agent.
 - C. Base determination of the insurability of any title so involved upon:
 - (1) An examination of an abstract or chain of title, showing all relevant and necessary public record matters, prepared by (a) Issuing Agent, (b) a qualified attorney retained by Issuing Agent, or (c) any other qualified abstractor appointed by Issuing Agent whose work is accepted by prudent local examiners, or
 - (2) An examination from Issuing Agent's title plant, supplemented to the extent necessary by an abstract meeting the requirements set forth in Paragraph (1) above, or a search of the relevant public records; and
 - (3) Such further prudent off record investigation as may be required by the coverage of the title insurances being issued.
 - D. During the term of this Agreement, and for a period of no less than ten (10) years thereafter Issuing Agent, its heirs, successors and assigns shall preserve for examination by Principal all files and supporting documents on which title insurances and underwriting decisions were made including, but not limited to, searches, work sheets, maps, and affidavits.
 - E.
 - (1) Pay Principal 12 % of the gross premiums. Regarding any title insurance order which involves reinsurance or coinsurance, then, pay Principal the amount, as provided in paragraph 5. Below. Issuing Agent shall forward said payments to Principal at its Home Office on such dates as may be established by Principal, along with full and complete copies of all premium bearing title insurances issued during said period. In the event there is an underpayment by reason of Issuing Agent's miscalculation of the amounts owed Principal, Issuing Agent shall pay the shortage with the next month's submission. In the event of an overpayment, Principal shall issue a credit to Issuing Agent which shall be applied to the next monthly payment due to Principal.
 - (2) On all title orders in excess of One Million Dollars (\$1,000,000.00) referred to Issuing Agent by Principal the percentage of the premiums to be submitted to Principal shall be negotiated when such order is placed, when authorized by law.
 - (3) Forward to Principal all deposits, securities or Letters of Credit over the aggregate amounts of Ten Thousand Dollars (\$10,000.00) which were taken as security for the performance of an indemnity agreement.
 - F. Comply with all federal and state, municipal ordinances, statutes, rules and regulations.
 - G. Conduct all its business in a safe and prudent manner.
 - H. Safely keep the forms referred to in Paragraph 3, above, in its exclusive possession and be liable to Principal for all loss or damage suffered by principal by reason of wrongful or negligent use of such forms.
 - I. Return all abstract forms to Principal on demand.
 - J. Segregate and safely keep in a separately designated account all monies entrusted to Issuing Agent by Principal and others, including, but not limited to, fiduciary funds, indemnity deposits and Principal's share of all premiums due hereunder. Said funds shall be used for no other purpose than for which entrusted to Issuing Agent. With respect to said funds, Issuing Agent shall perform and carry out all instructions given to Issuing Agent which relate to the issuance of Principal's title insurances or to the liability of Principal thereunder.
 - K. Promptly forward to Principal:
 - (1) All documents received by Issuing Agent in which Principal is a party to any administrative or judicial proceeding; and
 - (2) All written complaints or inquiries involving title insurances made to or by any insurance department or regulatory agency.
 - L. Upon request of Principal, establish a loss reserve account for claims arising out of the issuance of Principal's title insurances, or any other acts of Issuing Agent, for which Issuing Agent may be liable, and in such amounts as Principal would normally establish for its own claims. Within ten (10) days of demand by Principal, Issuing Agent hereby agrees to forward any such loss reserve funds to Principal.
 - M. Forward annually to Principal a copy of Issuing Agent's balance sheet and profit and loss statement.

- N. Maintain at its own expense:
 - (1) Blanket Fidelity Bond in the principal sum of at least \$ 250,000. in a form and issued by a company acceptable to Principal;
 - (2) Issuing Agent's error and omissions liability insurance in the principal sum of at least \$ 1,000,000. in a form and issued by a company acceptable to Principal, with a deductible of no more than \$ 100,000. and
 - (3) Issuing Agent shall annually furnish Principal with true copies together with current premium receipts for said bonds and insurance.
- D. Upon request of Principal, Issuing Agent agrees to notify its fidelity bond or errors and omissions insurance carrier of any claim for which Issuing Agent may be liable to Principal.
- P. Become and remain a member in good standing of the State Land Title Association in any state where the Issuing Agent conducts business, or in the event that Issuing Agent is an attorney, Issuing Agent shall remain a member in good standing with the Bar Association of any state where the Issuing Agent conducts its principal place of business.
- 5. Reinsurance/Co-Insurance:
 - (A.) Issuing Agent shall be responsible for reinsurance or coinsurance fees on any title insurance:
 - 1. Over Twenty Million Dollars or such other amounts as may be determined from time to time by Principal, or
 - 2. Such lesser limits as may be set by customer.
 - (B.) Compensation to Principal shall be computed on the basis of the net amount of gross premium after deducting the cost of such reinsurance or coinsurance.
 - (C.) Principal expressly reserves the right to select any and all reinsurers and co-insurers unless the customer requires otherwise in writing.
- 6. Prohibited Acts of Issuing Agent. Issuing Agent shall not, without prior written consent of Principal:
 - A. Accept service of process on behalf of Principal, unless required by law, in which event Issuing Agent shall promptly forward all documents served on Issuing Agent to Principal.
 - B. Incur debts in the name of Principal.
 - C. Issue:
 - (1) Any title assurance in a liability amount in excess of ~~250,000.00~~ \$500,000.00 or
 - (2) Any title assurance in a liability amount in excess of \$200,000.00 where coverage is to be afforded on a risk basis with respect to lien, for services, labor or materials; or
 - (3) Any title assurance, regardless of liability amount, where a known dispute as to title exists, or extra hazardous risks are involved and where such dispute or risks are not to be excepted. However, Principal will consider approving the issuance of a title assurance without such exception or with affirmative coverage upon receipt of all relevant information, supporting documents, and a statement of the question or risk involved. In lieu of prior written approval, Principal agrees to consider oral approval if it deems the risk acceptable, subject to Issuing Agent thereafter submitting the information as set forth above, and thereafter secure written confirmation of such oral approval.
 - D. Alter any title assurance form furnished by Principal.
 - E. Issue any title assurance for an amount less than the market value of the real property, or the estate or interest insured, or for less than the amount of the indebtedness in the case of a lender's policy.
 - F. Issue any title assurances affecting oil, gas, mineral or other hydro-carbon or thermal interest, separate and apart from the Fee or Leasehold estate in the land.
 - G. Use the name of the Principal in any advertising or printing other than to indicate the Issuing Agent is a policy issuing agent of the Principal.
 - H. Charge a premium other than one approved by the Principal, exclusive of any special work charges.
- 7. Additional Premium. Only Principal shall be entitled to any additional premium charged by either Principal or Issuing Agent for Extra Hazardous Risks.
- 8. Acts of Principal. Principal shall:
 - A. Furnish to Issuing Agent, without cost, the then currently approved forms of title assurances which Issuing Agent is authorized to issue hereunder.
 - B. Decide all questions of risk submitted by Issuing Agent.
 - C. Secure reinsurance and co-insurance when necessary.
 - D. Appoint in writing validating officers to countersign Principal's forms issued by Issuing Agent.
 - E. Provide Issuing Agent with its Agency manual, underwriting manual, underwriting memos, and underwriting rules and regulations which may now or hereinafter be promulgated.
- 9. Allocation of Losses. Principal and Issuing Agent shall be responsible for and promptly pay losses as follows:
 - A. Principal shall be responsible for loss, cost or damage, including attorney's fees, caused by:
 - (1) All off record matters, provided insurability is determined in compliance with paragraph 4, C., above.
 - (2) A proposed Extra Hazardous Risk submitted to Principal and the assumption of the risk has been approved on the basis of all available facts submitted and representations made by Issuing Agent, provided Issuing Agent accurately submits all available information relevant to said risk.
 - B. Issuing Agent shall be responsible to Principal for all loss, cost or damage, including attorney's fees, caused by:
 - (1) Failure of Issuing Agent to comply with the terms and conditions of this Agreement or with the rules, regulations or instructions given to Issuing Agent by Principal.
 - (2) The issuance of title assurances which contain errors or omissions, caused by Issuing Agent's abstracting, examination of title, including but not limited to examination of surveys, or failure of any title assurance to accurately reflect the correct description of the real property involved or record title thereto, so long as said error in description is discoverable by an accurate search of the public records.
 - (3) The issuance of title assurances which contain errors or omissions, that were disclosed by the applicant, the examiner's report, or which were known to Issuing Agent, or in the exercise of due diligence should have been known to Issuing Agent.
 - (4) A title assurance insuring a mechanic's lien risk within Issuing Agent's authority, or an extra hazardous risk not approved in writing by Principal.
 - (5) The error or closing operations of Issuing Agent, including but not limited to the preparation of documents, deeds and other conveying instruments, or any loss under an Insured Closing Letter, issued by Principal on behalf of Issuing Agent.
 - (6) Fraud, dishonesty or default committed by Issuing Agent, or its employee(s), officer(s), director(s) or agent(s).
 - (7) Any act, or failure to act, of Issuing Agent, or its employee(s), officer(s), or attorney(s) which results in Principal being liable for bad faith, unfair claim practice or punitive damages.
 - (8) Allegations, against either Principal or Issuing Agent, by reason of the activities of the Issuing Agent, its agents, servants and employees, of fraud, conspiracy, or failure to comply with any Federal or State Law or regulation, including securities laws.
 - C. Recovery of loss under a claim will first be applied to Principal's loss, then the balance, if any, to Issuing Agent's loss.

10. **Claims.**
- A. Issuing Agent shall notify Principal in writing of any claim or threatened claim under any title insurance issued hereunder within thirty-five (35) calendar days from first notice, except claims Issuing Agent is fully liable for and pays within thirty (30) calendar days.
 - B. Issuing Agent agrees that Principal shall be fully authorized and empowered in its absolute discretion, to defend, settle, compromise or dispose of any claim for which any party to this Agreement may be liable. Unless specifically authorized in writing, Issuing Agent shall have no right to defend, deny, settle, compromise or dispose of any claim against Principal. Issuing Agent agrees to cooperate with Principal in the handling of any claim made under or in connection with any title insurance issued hereunder, and to assist in the settlement or disposition of any such claim whenever requested by Principal, all at no charge or cost to Principal. Regarding any claim or threatened claim, Issuing Agent agrees to keep Principal fully advised and promptly forward to Principal all relevant communications, reports, statements, pleadings and other writings or instruments. Issuing Agent shall remit to Principal, within ten (10) days after demand, any funds required to settle, compromise or satisfy any claim for which the Issuing Agent is responsible hereunder.
 - C. Issuing Agent shall keep a record of all claims showing the disposition of each claim, which shall be made available to Principal upon its request.
 - D. Notice required in this paragraph will be given to Chicago Title Insurance Company, Claims Department, 111 West Washington Street, Chicago, Illinois 60602, or such other place as Principal may designate in writing.
11. **Right of Examination.** During the term of this Agreement, and any extensions thereof, and also including the times contemplated in paragraphs 4.D and 19., herein, Issuing Agent agrees that at any reasonable time or times, it will permit examination by Principal of all accounts, books, ledgers, searches, abstracts and other records which relate to the title insurance business carried on by Issuing Agent for the Principal.
12. **Assignment.**
- A. Except as hereinafter provided, neither Issuing Agent nor Principal shall have any right to assign this Agreement without the written consent of the other party. No such written consent shall be required in the event that Principal shall change its name, or shall merge or consolidate with one or more title insurance underwriters or with any other party with or without change of name, and in such event this Agreement shall continue in effect between Issuing Agent and the successor of Principal.
 - B. Any other assignment or attempted assignment of this Agreement, in whole or in part, whether such assignment be by operation of law, voluntary or involuntary, shall automatically cause a termination of the agency created by this Agreement unless there shall be a written consent or ratification to such assignment. An assignment by operation of law shall include either of the parties filing a petition in bankruptcy or insolvency or for reorganization under the bankruptcy laws of the United States, or the insolvency laws of any state, or voluntarily taking advantage of any such law, or act by answer or otherwise, or shall be dissolved or shall make an assignment for the benefit of the creditors; or, if involuntary proceedings are instituted against either party under any such bankruptcy law or insolvency act, or for the dissolution of the legal entity, or if receiver or trustee shall be appointed for all or a portion of the property of either party.
 - C. This Agreement may be terminated, at the sole option of Principal, upon ten (10) days written notice, in the event that the Issuing Agent is a corporation and there is a change in the controlling interest in said corporation. A change in the controlling interest shall be deemed to occur when an owner of more than fifty percent (50%) of the capital stock of said corporation ceases to own more than fifty percent (50%) of said stock, or a sale of substantially all of Issuing Agent's assets.
13. **Termination by Change of Circumstance.** If the current annual tax, gross premium tax or State Income Tax rate shall be increased, or should a tax or assessment in addition, substitution, or in lieu thereof be imposed on principal, either by constitutional amendment, legislative act or otherwise, and should said tax or assessment be higher than the tax as presently paid by Principal, Issuing Agent and Principal shall in good faith renegotiate the percentage of the gross premiums paid to Principal hereunder as an underwriting fee. In the event that the parties cannot after good faith negotiations come to any agreement, then the Principal shall have the option to terminate this Agreement by giving ninety (90) days written notice to Issuing Agent.
14. **Default.**
- A. Should either party fail to observe the terms of this Agreement or in any manner fail, refuse or neglect to perform its obligations in accordance with the terms of this Agreement, this Agreement may be terminated, at the option of the party not in default, upon ten (10) days written notice.
 - B. Upon termination or cancellation of this Agreement, Issuing Agent shall promptly furnish to Principal, a complete accounting of any and all unpaid premiums owing either of the parties hereto and return to Principal all files relating to premium-bearing title insurance forms issued or about to be issued, on behalf of Principal, all unused forms, blanks and supplies and all manuals and memos furnished by Principal to Issuing Agent.
 - C. A failure of any party to declare a termination of this Agreement by reason of default, or a failure of either party to take action under this Agreement for a default of any of the provisions hereof, shall not be construed to be a waiver of such default or any subsequent default of the same, or other provisions hereunder, and either party may at any time assert its right to terminate and act upon any such default.
 - D. In the event that a shortage in the accounts described in paragraph 4.J., hereof is hereafter revealed or, there is an assurance contemplated by paragraph 9.B.(5) hereof, then, Principal may cancel and terminate this Agreement immediately upon written notice to the Issuing Agent, and further, Principal may declare immediately due any debts or accounts, together with interest, owed by Issuing Agent to Principal. Principal shall have a lien on all property of the Issuing Agent as security for the repayment to Principal of any such debt or accounts or any losses, or claims Principal may be subjected to by reason of the Issuing Agent's inability or refusal to account for any funds entrusted to him, and on demand by Principal, Issuing Agent shall forthwith make good any shortages of funds or convey to Principal, or its nominee, as security therefor, all property of Issuing Agent, and Principal shall be entitled to immediate possession of any and all such property, including, without limiting the generality of the foregoing, any title plant in which the Issuing Agent may have an interest or right of possession, whether by reason of stock ownership or otherwise.
 - E. Any right of termination set out in this Agreement shall be in addition to any remedy provided by law.
15. **Termination Upon Excess of Loss.** In the event Principal sustains a loss or losses during any given twelve (12) month period which exceed the amount of premium income paid by Issuing Agent to Principal during said twelve (12) month period, Principal shall have the right, at its option, to terminate this Agreement on sixty (60) days written notice to Issuing Agent.
16. **Attorney's Fee.** If either party shall institute an action against the other party for breach of this Agreement, the unsuccessful party shall pay court costs and reasonable attorney's fees to the successful party.
17. **Unenforceable Provisions.** If any one or more of the terms of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason, each and all of the remaining terms of the Agreement shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law.

18. **Successors.** This agreement is binding upon and shall inure to the benefit of the parties hereto, their permitted successors, personal representatives, heirs and assigns, subject to the provisions of Paragraph 12 above.
19. **Surviving Obligation.** In the event this Agreement is terminated pursuant to any of the terms hereof, or by mutual agreement of the parties hereto, the obligations to make any payments, provide notification as to claims and to provide access to records and files shall continue beyond the date of termination of this Agreement.
20. **Headings.** The subject headings of the paragraphs and subparagraphs of this Agreement are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.
21. **Notices.** All notices permitted or required to be given under this Agreement, except for notices of claim covered in paragraph 16, shall be in writing and may be personally delivered to the office of the parties hereto or mailed to the office of the parties hereto by Registered United States Mail or by Certified United States Mail, postage prepaid, return receipt requested, addressed as shown below. The effective date of notice shall be three (3) business days after personal delivery or receipt of notice by mail. Said notices shall be addressed as follows:

To Principal:

CHICAGO TITLE INSURANCE COMPANY
 411 West Washington Street
 Chicago, Illinois 60602
 Attention: The President

To Issuing Agent:

LAND TITLE COMPANY OF KITSAP COUNTY INC
 400 Warren Avenue
 Bremerton, WA 98310

Either party may by written notice to the other, as aforesaid, change the address to which notices are to be sent.

22. **Definition of Terms.** The following terms when used in this Agreement are defined as follows:
 - A. **Loss.** As used herein, loss shall mean sums paid, or to be paid, in cash or otherwise, to settle or compromise all claims under any of Principal's title insurance(s) issued by Issuing Agent. Loss shall include, but not be limited to, expenses, costs and attorneys fees actually paid or incurred in connection with the investigation, negotiation, litigation or settlement of such claim or obligation which ultimately requires payment of any sum by Principal. Loss, as defined herein, shall be reduced by the value of any recoveries realized.
 - B. **Off Record Matters.** Off Record Matters shall mean those items which could not be ascertained from diligent search and examination of the public records or from information contained in the Issuing Agent's file. Included herein are the identity, competency and powers of the parties to the transactions reflected in the chain of title, including forgery of record documents and fraud in the execution of such record documents. Specifically excluded from the term "Off Record matters" are allegations against either Principal or Issuing Agent, derived from the activities of the Issuing Agent, its agents, trustees and fiduciary services, if any, its servants and employees, including but not be limited to, fraud, conspiracy, or the failure to comply with any Federal or State law or regulation, including securities laws.
 - C. **Premium.** Premium shall mean the amount payable or paid in accordance with Principal's schedule of rates in effect or as otherwise approved by Principal in writing for the issuance of this assurance.
 - D. **Risks.** Risks shall mean those items insured against as stated on the face page of Principal's title assurance form.
 - E. **Extra Hazardous Risks.** Extra Hazardous Risks as used herein shall mean all title and off record risks, other than those defined in Paragraph 22B above which results in a liability not normally assumed in policies, and includes those extra hazardous risks which may now or hereafter be identified in Principal's agency manual.
 - F. **Title Assurances.** Title assurances shall mean commitments, binders, guarantees, endorsements and title insurance policies of Principal.
 - G. **Default.** The failure to observe any term of this agreement shall constitute a default.

IN WITNESS WHEREOF, the parties have executed this Agreement this 20th day of April, 1992

Principal:

CHICAGO TITLE INSURANCE COMPANY

By: *[Signature]*

This Agreement is not binding upon Principal until countersigned by an authorized officer.

By: *[Signature]* VP
 Authorized Officer

Issuing Agent:

LAND TITLE COMPANY OF KITSAP COUNTY

Authorized Signatories on "Title Assurances"

By: *[Signature]*

By: *[Signature]*

ADDENDUM "A"
to
ISSUING AGENCY AGREEMENT
DATED MAY , 1992
between
CHICAGO TITLE INSURANCE COMPANY, A Missouri Corporation
and
LAND TITLE COMPANY OF KITSAP COUNTY INC.
a Washington Corporation

1. Paragraph 4 (A) is amended by adding the following language:

Principal hereby grants the right to issue assurances of other qualified Title Insurance Companies which orders are either referred or in cases where principal declines to underwrite a specific transaction.

2. Notwithstanding the provisions of Paragraph 9b (2 and 3) issuing agent's loss cap shall be limited to the first \$5,000 (five thousand dollars) per loss.

3. Except as amended here, all the terms and conditions of the Issuing Agency Agreement, Addendum "A", First and Second Amendments to Issuing Agency Agreement, shall be and remain the same as set forth therein.

Dated: May 1, 1992

LAND TITLE COMPANY
OF KITSAP COUNTY INC.,
a Washington Corporation

CHICAGO TITLE INSURANCE COMPANY
a Missouri Corporation

BY: [Signature]

BY: [Signature]

BY: [Signature]

BY: [Signature]

**An Investigation into the Use of
Incentives and Inducements by Title
Insurance Companies**

October 2006

Washington State
Office of the
Insurance Commissioner

Mike Kreidler - State Insurance Commissioner

www.insurance.wa.gov

00084

Office of the Insurance Commissioner

An Investigation into the Use of Incentives and
Inducements by Title Insurance Companies

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Title Insurance

From the consumer's point of view, title insurance differs greatly from other, more familiar kinds of insurance. For one thing, while automobile and homeowner insurance policies protect you from an event that may occur in the future, title insurance offers protection from claims that might have occurred in the past.

Most simply, title insurance is protection that you purchase against a loss arising from problems connected to the real estate that you are buying. The list of potential problems is long and varied. For instance, a forged signature on a transfer document, unpaid real estate taxes or other liens will cloud the title on a piece of property or a building. But regardless of whether there is a problem in the past or not, the bottom line is that, if you're buying real estate in Washington and using a commercial lender to finance the purchase, the lender will require you to purchase title insurance.

Yet, for even the savviest of insurance consumers, the purchase of a title insurance policy is just one more expensive step in the dizzying, convoluted and often confusing flurry of paperwork and signings that culminate in the closing of a home purchase. Consumers who normally shop around for their insurance and carefully compare prices, typically emerge from the closing on their new home holding an insurance policy that they know virtually nothing about.

Background

The title insurance market in Washington consists of a dozen carriers, ranging in size from regional companies to national affiliates. The market itself, while varying from region to region within the state, is dominated by four groups of affiliated companies who, combined, sell about 97 percent of the title insurance policies sold in Washington.

Title companies, in marked contrast to property, casualty, life and other traditional insurance carriers, do not market their products directly to the consumers who pay for them. Instead, the title insurance industry operates on what is termed a "reverse competition" model. Reverse competition means that title companies solicit business from the other major players in the home sale scenario – real estate agents and agencies, banks, lenders, builders, developers and others. Call them middlemen or go-betweens.

Reverse competition, as the term suggests, isn't a model that benefits consumers through market-driven forces. In fact, consumers are bypassed completely as title companies spend nearly all of their marketing budgets "winning and dining" real estate agents, banks, lenders, builders, developers and others in an effort to convince these middlemen to steer their home-buying clients to their companies for their title insurance needs. These incentives, which some might call inducements, are strictly limited and regulated by state law through the Office of the Insurance Commissioner.

The law – \$25 in a 12-month period

Washington law, RCW 48.30.140 and 48.30.150 (see Appendix A), and regulations clearly prohibit title companies from providing anything of value in excess of \$25 in a 12-month period to any person as an inducement, payment or reward for placing or causing title insurance business to be given to the company. There is nothing

confusing about the requirement: title companies are prohibited from providing anything of value in excess of \$25 per person in a year.

Faced with reports of abuses in the industry, the Office of the Insurance Commissioner adopted a rule in 1988 and amended it in 1990 (see Appendixes B & C) in an attempt to curb illegal inducements. Despite these efforts, the industry seems to have become adept at skirting the law by creating new schemes and methods for providing inducements in order to obtain title insurance business.

The Colorado connection

During the summer of 2004, the Colorado Department of Insurance was in the midst of an investigation into marketing abuses within the title insurance market there when it uncovered a questionable scheme involving a number of large, national title insurance companies. Colorado authorities successfully lobbied the National Association of Insurance Commissioners to coordinate a multi-state survey of companies participating in this questionable practice. Here in Washington, the Office of the Insurance Commissioner joined the inquiry after it was determined that several of the companies under investigation were authorized to conduct business here.

Basically, the scheme involved title companies "purchasing" reinsurance policies from companies variously owned by builders, real-estate agents and lenders. Reinsurance is the practice of an insurance company spreading or transferring some of its insurance risk to a secondary insurer. Under the scheme uncovered in Colorado, the title companies would "purchase" reinsurance from builder-owned companies in return for title insurance business steered to the title company by the builder-owned entities.

Although reinsurance is an accepted business practice in the insurance industry, in this case, the reinsurance scheme did not meet even a basic, straight-face standard for several reasons:

- First, the reinsurance was not needed from a financial perspective, as the premiums paid for the reinsurance greatly exceeded the amount of risk being transferred.
- Secondly, the investigation disclosed that title companies paid premiums worth millions of dollars to the so-called reinsurance companies, yet the reinsurers never paid a single penny on a claim against the policies.

Washington policyholders reimbursed

While the investigation included title companies conducting business in Washington, investigators only found one such reinsurance arrangement here, and it only involved a handful of policies. Washington did, however, participate in the Colorado-led national settlement that made 592 policyholders eligible for more than \$22,000 in reimbursements. (See Appendix D for details.)

As a result of the multi-state investigation, individual states, including Washington, launched their own investigations into questionable practices by title insurance companies. Other states included Colorado, New York and California. All of this activity ultimately drew the attention of the U.S. Congress, and in February of this year, U.S. Rep. Michael Oxley of Ohio requested an investigation of title companies

by the federal Government Accountability Office. A preliminary report was issued in April 26, 2006, (<http://www.gao.gov/new.items/d06569t.pdf>), and Congress held a hearing on the issue soon after.

The Washington state investigation

Washington's independent investigation was launched by the Office of the Insurance Commissioner after the agency continued to receive complaints and inquiries about title companies providing incentives and inducements to obtain business, despite state law and regulation to the contrary. It appeared this activity was on the rise, both in frequency and scope.

Executive summary

The 10-month investigation disclosed that the use of inducements and incentives by title companies to obtain title insurance business in Washington appeared to be widespread and pervasive. While some companies made no apparent effort to comply with state law and regulations, others were found to be at least attempting to comply with statutory requirements while nevertheless committing violations. The bottom-line conclusion is that violations occur throughout this industry, ranging from egregious breaches to relatively minor transgressions.

While there might not appear to be a clear connection between these illegal practices and a negative impact on consumers, the investigation clearly determined that this industry is rife with practices gone haywire. It is undeniable that these practices cost money, and it's clear that the consumer, who ultimately pays for the coverage, is the only source of money for these illegal expenses.

Based on the findings of the investigation, the Office of the Insurance Commissioner has developed recommendations and an enforcement plan to ensure that Washington's insurance-consuming public is protected from this illegal and inappropriate conduct, while fostering real competition to benefit consumers.

The investigation

In order to keep the investigation at a manageable size, the Office of the Insurance Commissioner targeted the major title companies operating in the greater Seattle metropolitan area comprised of King, Pierce and Snohomish counties. The investigation encompassed the branches of title companies in the target counties as well as title insurance agents. The primary investigative tool was a demand for company documents and records for an 18-month period that began on Jan. 1, 2004. (See Appendix E) The documentation included:

- Title company employee expense reports
- General ledgers

The investigation was initiated in August 2005 and concluded in June 2006.

A preliminary review of the information revealed that a disproportionate amount of the companies' annual expense for incentives and inducements was expended during the holiday season in the month of December 2004. Based on this finding, investigators made a secondary request for records from the companies, covering the month of December 2005. In part, this request was intended to determine if

the companies had modified their behavior after being put on notice that they were under investigation by the Office of the Insurance Commissioner.

Companies investigated

The following companies (with their principal geographical market for purposes of the investigation) comprised the agency's investigation:

Chicago Title Insurance Co. (King, Pierce & Snohomish counties)

Commonwealth Land Title Insurance Co.* (King, Pierce & Snohomish counties)

Commonwealth Land Title of Puget Sound* (King, Pierce & Snohomish counties)

Fidelity National Title Co. of Washington (King, Pierce, Snohomish & Clark counties)

First American Title Insurance Co. (King, Pierce & Snohomish counties)

Old Republic Title Ltd. (King & Snohomish counties)

Pacific Northwest Title Co. of Washington (King, Pierce & Snohomish counties)

Rainier Title Co. (Pierce County)

Stewart Title Co. of Seattle (King County)

Ticor Title Co. of Washington (Pierce County)

Transnation Title Insurance Co.* (King, Pierce & Snohomish counties)

**These three affiliated companies are grouped and treated as one – the LandAmerica Companies – for the purpose of this investigation since they intermingle use of their marketing resources to sell policies on behalf of all three companies.*

Materials reviewed

The agency's demand for records resulted in both hard copies and electronic versions of expense reports and general ledgers from the investigated companies. These records formed the basis for the agency's investigation.

Findings

The agency's extensive analysis of these records disclosed a clear pattern of inducements and incentives. Although details and form varied from company to company, it became apparent that the inducements and incentives represented similar patterns of behavior for all the companies. Generally speaking, all of the companies investigated used some or all of the following schemes in varying degrees to influence these middlemen (real estate agents, banks, lenders, builders, developers and others) who were in a position to steer title insurance business to them. (Some of these inducements are within requirements as singular events, but when totaled up in repeated instances over the course of a 12-month period, the violations were apparent.)

Co-advertising – In this scenario, the title company ostensibly pays for an advertisement in a publication, on a billboard or some other media. Most typically, this involves a real estate magazine that advertises homes for sale. The problem, however, is that the amount the title company pays is far in excess of the amount of space allotted to the title company's advertisement. In effect, the title company is underwriting a significant portion of the real estate agent's advertising costs in the publication.

Broker opens – These events are open houses intended to help familiarize real estate agents with specific properties that are being listed for sale. The listing real estate agent hosts the event which includes food and drinks, but the costs are paid by the title company which receives nothing of value in return from the arrangement other than the prospect of future title insurance customers.

Food and drinks – Title companies provide food at breakfast, lunch and dinner meetings with their associated middlemen, usually in the associate's offices. This incentive can range from a simple bag of donuts for a morning meeting, to an elaborately catered meal.

Educational classes – Real estate agents are required to take continuing education classes to maintain their licensing. Title companies will provide these classes, paying for the speaker, facility, food and drinks. Some title companies will charge participants for the class (although the fees rarely reflect the full cost), while others will provide the class at no charge.

Gifts – Title companies provide a wide range of gifts to these middlemen (those in a position to steer title insurance customers to them). These gifts range from nominal \$5 coffee gift cards to much more expensive gifts and gift cards.

Golf – Rounds of golf were a commonly found incentive paid by title companies. These ranged from inexpensive municipal-type courses to more expensive, exclusive clubs.

Golf sponsorships, etc. – Title companies provide sponsorships at golf tournaments held for the middlemen and go-betweens. These sponsorships include gifts, prizes and supplies that cover a broad range in expense.

Party hosts – Title companies routinely host and pay for parties of all descriptions, at their own offices, the go-betweens' offices or restaurants and other facilities.

Ski buses – Title companies provide ski outings for their middlemen, including bus transportation, lift tickets, food and drinks. In some instances, the title company charged participants a nominal fee, but it rarely reflected the entire cost to the title company.

Shopping buses – Here the title company provides a bus, with food and drinks, to take middlemen on shopping forays.

Sporting events – Title companies provide complimentary tickets for the middlemen and go-betweens to attend major sporting events in the Seattle area, including Seahawks, Mariners, Huskies and Sonics games. These tickets can range from bleacher seats to the more exclusive luxury boxes and preferential seating.

Meals – Title companies picking up the tab for breakfasts, lunches and dinners, also known as “wining and dining,” is far and away the most prevalently used incentive and inducement. These inducements range from inexpensive lunches costing just a few dollars per individual to expensive dining experiences costing thousands of dollars.

Professional organizations – Title companies pay for the monthly luncheon meetings of the Seattle King County Realtors Association.

Donations – Title companies often contribute food, gifts, money and auction items for middlemen at their charity events.

Summarized findings by company

This section offers representative summaries of each company’s violations, and a subjective evaluation of the company’s apparent efforts to comply with state laws and regulations, specifically, those that prohibit a company from providing anything of value in excess of \$25 in a 12-month period as an inducement, payment or reward for placing or causing title insurance business to be given to the company.

Chicago Title Insurance Co.

A review of this company’s records revealed that the company does pay some heed to the \$25 limit. Yet, investigators found that the company repeatedly violated the limit on many occasions. The company often participated in co-advertising campaigns, paying the production costs and postage for flyers more than 150 times during the 18-month period. Those costs individually ranged from \$100 to more than \$4,300 each.

The company made extensive use of sporting tickets, including one Seahawk game for which it paid nearly \$2,400 for 26 seats. Some of these events included the use of chartered buses for transportation.

The company spent thousands of dollars paying for food at hundreds of middlemen meetings and broker opens. The company sponsored golf tournaments, spending in excess of \$3,000.

The company also hosted receptions and hospitality suites at conventions on three occasions, spending a total of more than \$13,000.

The company ranks somewhere in the middle of the pack when its violation record is compared to other companies.

The LandAmerica Companies

(Commonwealth Land Title Insurance Co., Commonwealth Land Title of Puget Sound, and Transnation Title Insurance Company)

When it comes to marketing inducements and incentives to middlemen and go-betweens, the LandAmerica Companies share expenses.

These companies participated in the same schemes found throughout the industry. The companies made extensive use of co-advertising, gift cards, providing food and drinks at broker opens and meetings, paying for meals and giving away sporting event tickets.

The companies also paid more than \$25,000 to a charter boat company during the 18-month period for services rendered to these middlemen and go-betweens.

The companies paid for many meals, occasionally exceeding the \$25 per person limit.

Although there was ample evidence that the company violated rules and exceeded the statutory limit, the violations and their frequency were not as extensive as some of the worst offenders.

Fidelity National Title Co. of Washington

This company's behavior varied greatly from county to county. In King and Snohomish counties, Fidelity's behavior was very similar to other companies that violated the rule, but didn't approach the frequency and degree shown by some of the worst abusers. Pierce County, however, was another story.

In all three counties, the company made extensive use of gift cards, gift certificates, broker opens, prizes, food, meals, golf sponsorships and individual rounds, sporting event tickets and parties.

In Pierce County, however, the company appeared to be competing with First American and Tigor in giveaways, exceeding the \$25 limit often and by big margins. The company paid for scores of broker opens, in excess of \$100 more than 100 times, and upward of \$300, \$400 and \$500 in many more instances, including one instance where the costs were nearly \$1,500.

Meals accounted for many violations by Fidelity, including a dozen restaurant tabs ranging in costs from more than \$300 to nearly \$900.

Other violations included paying \$580 for one real estate agent's tickets to a Mariners game. Fidelity also paid \$560 in awards for one agency's top producers. It also hosted a ski bus, shopping bus and fishing trip.

While the company's King and Snohomish operations tended to operate closer to the intent of the law, albeit still in violation, the Pierce County offenses were similar in breadth and scope to those of the worst offenders identified during the investigation.

First American Title Insurance Co.

First American offers a prime example of how illegal inducements can help a company attain superior market share. First American, the worst offender in the investigation, has consistently been in the top two for market share since 1998, significantly ahead of the rest of the pack. While some of the companies whose records were examined during this investigation appeared to be making an effort to comply with the \$25 rule, First American clearly ignored its obligation to the law. Some of the companies on the lower end of the scale committed in the neighborhood of 100 violations during the 18-month period under review. First American easily surpassed those numbers on a monthly basis.

Co-advertising is a primary tool for First American, and the company routinely paid more than \$20,000 per month on this category of inducement, not including picking up the production costs and postage for flyers advertising real estate sales.

The company also spent \$5,000 per month to co-advertise with one of its builder customers on billboards in the Pierce County area – the money paying for the inclusion of First American's name and logo on billboard. The name and logo are of such a size as to be barely readable from the street.

The investigation also disclosed that First American paid more than \$23,000 for such co-advertising with a single King County real estate agent.

Other violations included gift certificates, golf sponsorships, broker opens, food and drink at meetings, and routinely catered meals that cost hundreds of dollars.

Tickets to sporting events were another incentive that the company used to a great extent. It spent more than \$11,000 hosting two Sonics nights. The company paid \$2,000 for a real estate agent's season tickets to the University of Washington football games. The company spent \$7,000 to sponsor, provide food, drinks and parking for a "symposium" aboard a boat during the Seafair hydroplane races.

Other violations included sponsoring meetings, broker opens, ski buses and shopping trips.

All told, the company averaged in excess of \$120,000 per month funding these activities and giveaways.

Old Republic Title, Ltd.

This company's records indicate that for the most part it made an effort, and succeeded in large part, in complying with the \$25 limit. Three violations involved gift certificates and door prizes ranging up to \$290. It also provided food and drink in excess of the \$25 for broker opens, meetings and meals. One of its sales representatives paid more than \$6,000 for "cocktails" during the 18-month period under review. The company also spent in excess of \$3,000 hosting two Super Bowl parties.

Pacific Northwest Title Co. of Washington

The investigation disclosed that this company attempts to comply with the law, but as has been discovered with other companies, intentions don't necessarily translate into actions. A review of Pacific Northwest's records revealed that the company exceeded the \$25 law on a significant number of occasions during the 18-month period. Most of these violations involved gift certificates, raffle prizes, and supplying food at broker opens and meetings. The company also spent more than \$900 for a boat cruise for six real estate agents, and sponsored a shopping junket and a bus to a Mariners game.

The company participated in co-advertising, but on a much smaller scale than some of the other companies involved in the investigation.

The company's records indicated that it spends about \$36,000 per month on giveaways, representing about 2 percent of its gross income.

Rainier Title Co.

When compared to the other title companies operating in Pierce County, Rainier Title Co. had the best track record and the least number of violations.

The company did, however, exhibit many of the same behaviors and participated in many of the same schemes that the investigation discovered are prevalent throughout the industry.

The company spent money on food for broker opens, gift cards, gift certificates, meals, golf tournaments and continuing education classes. With some exceptions, most of the violations were nominal transgressions of the \$25 law. The company did pay for a boat cruise, Yakima wine tour and a night at the races. The company also bought tickets to a limited number of sporting events and a jazz festival.

Stewart Title Co. of Seattle

This is another company that demonstrated at least an intent to comply with the \$25 limitation in the usual array of inducements, including meals, classes, meetings and broker opens. It didn't always succeed, as evidenced by its paying in excess of \$100 for gift certificates. The company spent money on food, drinks, prizes and sponsorships at golf tournaments, including one instance where it paid \$800 for a steel band to entertain participants. The company also participated in co-advertising and sponsored a bus trip to Leavenworth.

Ticor Title Co. of Washington

Ticor is one of the major offenders in the Pierce County market. Although much of the activity was within the \$25 law, the company also exceeded that limitation, often in a big way. On ten occasions, it hosted meals that cost in excess of \$1,000, including one instance where the restaurant tab was more than \$3,300. The company regularly paid for food and drinks for broker opens, meetings, educational classes and other events. It paid one catering company nearly \$30,000 during the 18-month period that the investigation covered. The company also made frequent use of bus outings to ski slopes, shopping centers and sporting events, as well as a boat outing that cost more than \$4,600. The company supplied food, drinks, sponsorships and prizes for golf tournaments, including nearly \$2,300 worth of cigars.

It also paid for co-advertising and gift certificates that violated the \$25 law.

Conclusions

The Office of the Insurance Commissioner's review of title company records in King, Pierce and Snohomish counties clearly established that there are pervasive and widespread problems related to violations of laws governing incentives and inducements in the title insurance industry. Investigators found a common disregard for the laws governing the amount of money that can be expended to influence the placement of title insurance business with a title company. Investigators found that the degree of disregard ranged from blatant to embarrassed chagrin.

It is encouraging that some of the investigated companies recognized their complicity, even if their behavior failed to meet the letter of the law. Indeed, a significant amount of the illegal behavior, especially involving food and meetings, didn't breach the \$25 limit by much in individual instances, but these violations occurred multiple times during the course of the 18-month period under review.

At the same time, however, the investigation also provided ample evidence that some of the major offenders view the law as little more than a nuisance standing between them and their ability to have business steered to them from their middlemen, go-betweens and associates in the real estate business.

Support for that conclusion arrived in the mail following the agency's second request for records covering December 2005. This follow-up request was made after a preliminary examination of the records showed that the companies were spending a disproportionate amount of their annual expense for incentives and inducements during the year-end holiday season. Investigators were curious to learn whether the companies had modified their spending behavior after being put on notice some months earlier that they were under investigation by the agency. The records from December 2005 showed virtually no difference from the previous December's spending patterns. Clearly, companies were not concerned that their likely use of illegal incentives and inducements was under review by the Insurance Commissioner.

Recommendations

Given the truly astonishing numbers of violations, and the companies' willingness to flaunt or simply ignore what they apparently perceive as a trivial law, the agency has developed a set of recommendations intended to help the industry recognize that it has a problem. Rather than commencing what surely would turn out to be an expensive enforcement effort to punish title companies for past wrongdoing, the Office of the Insurance Commissioner will share some responsibility for what clearly has evolved into an unacceptable present state of affairs. The agency prefers to follow a different course to accomplish a number of goals that will promote future compliance.

First, the agency will put the industry on notice that the status quo must change by instructing it about the laws related to inducements and incentives, and how to conduct business within the letter of these laws. The agency also will put the industry on notice that an enforcement program will be undertaken, and that there will be consequences for those companies that fail in future efforts to comply with laws and regulations.

The recommendations also include an education component for title insurance consumers. The agency will undertake an education campaign, intended to dispel some of the mystery that surrounds title insurance. In more detail, here are the recommendations.

- **Technical guidance** – The agency will develop and distribute a Technical Assistance Advisory to title insurance companies, clearly stating applicable law and offering additional compliance guidance. The advisory will reference the findings of the investigation and provide notice that the agency will not at this time pursue an enforcement effort aimed at past transgressions.

However, the advisory will clearly state the agency's expectation for future compliance, and will provide warnings about penalties and sanctions that companies and individuals can expect for any future failures to follow the law. The advisory will assist the industry clean up practices and abuses that have come to be accepted as business as usual.

- Consumer education – The agency will undertake a consumer education campaign to help consumers better understand title insurance, and encourage them to shop for title insurance just like they do for auto, home, health and other types of insurance.

The campaign will develop a fact sheet that will provide basic information about title insurance. Information will be presented in other formats as well, including question-and-answer and other educational materials.

All materials and consumer education publications will be posted on the agency's Web site (www.insurance.wa) and promoted through the agency's Insurance Consumer Hotline, a toll-free consumer protection service (1-800-562-6900) provided by the agency.

The bigger picture

During the course of this investigation, and the development of the findings and recommendations, discussions often evolved into a bigger picture examination of consumer protection and the title insurance industry. Current law offers some indirect protections for consumers related to illegal inducements and incentives, but a better benefit to consumers might be gained through a new, innovative approach to address the risks that are currently handled through title insurance.

For instance, the state of Iowa abolished the need for title insurance when it created a division of government that provides low cost title protection for real estate located within the state. The system relies on an abstract and title opinion process. Under this process, the cost for a residential transaction is \$110 for coverage up to \$500,000. For a residential transaction not involving a transfer of title, such as a refinance or second mortgage, the premium is just \$90 for coverage up to \$500,000.

In recent years, other types of insurance companies have attempted to introduce insurance products that would compete with title insurers at much less cost to consumers. The title insurance industry reacted swiftly with lawsuits and challenges based on licensing requirements and other issues.

It is interesting to note that, in an age of cyberspace communications and electronic data storage, the title insurance industry still operates on an antiquated system that continues to rely on paper or microfiche records. Why is that?

Other questions that could be considered by a working group on title insurance could include:

- Do consumers receive an appropriate benefit for the premiums they pay for title insurance?
- What is the loss-ratio for title insurance companies?
- Is the loss-ratio reasonable and is it a fair measure of value for money spent?
- What percentage of policyholders ever file a claim?
- Is there technology out there that could significantly alter the way title insurance works?
- Are there alternatives for ensuring that the title to a piece of property is clear?

- Is the Iowa system a viable option for Washington?
- Since lenders play a significant role in the purchase of real estate, does the banking/savings and loan/credit union industry have any insight or interest in simplifying this process and cutting costs to consumers?

Interesting questions all.

A commitment to improving title insurance for consumers

The Office of the Insurance Commissioner concludes this report with a final recommendation. As the state's primary champion of consumer rights for Washington's insurance-buying public, the Insurance Commissioner has a duty to ensure that consumers who buy title insurance are getting a fair shake. The answers to the questions posed above can help determine if Washington's consumers are being treated fairly. The Office of the Insurance Commissioner will convene a work group to study the issue of title insurance from the consumer's perspective and make recommendations for improving what some might suggest is an antiquated system that could be brought into the 21st century to the benefit of consumers.

The Insurance Commissioner is committed to ensuring that Washington's insurance-buying public receives the best possible consumer protection, and that includes title insurance.

Appendix A

Revised code of Washington

Rebating (RCW 48.30.140)

Illegal Inducements (RCW 48.30.150)

RCW 48.30.140
Rebating.

(1) Except to the extent provided for in an applicable filing with the commissioner then in effect, no insurer, general agent, agent, broker, or solicitor shall, as an inducement to insurance, or after insurance has been effected, directly or indirectly, offer, promise, allow, give, set off, or pay to the insured or to any employee of the insured, any rebate, discount, abatement, or reduction of premium or any part thereof named in any insurance contract, or any commission thereon, or earnings, profits, dividends, or other benefit, or any other valuable consideration or inducement whatsoever which is not expressly provided for in the policy.

(2) Subsection (1) of this section shall not apply as to commissions paid to a licensed agent, general agent, broker, or solicitor for insurance placed on that person's own property or risks.

(3) This section shall not apply to the allowance by any marine insurer, or marine insurance agent, general agent, broker, or solicitor, to any insured, in connection with marine insurance, of such discount as is sanctioned by custom among marine insurers as being additional to the agent's or broker's commission.

(4) This section shall not apply to advertising or promotional programs conducted by insurers, agents, or brokers whereby prizes, goods, wares, or merchandise, not exceeding twenty-five dollars in value per person in the aggregate in any twelve month period, are given to all insureds or prospective insureds under similar qualifying circumstances.

(5) This section does not apply to an offset or reimbursement of all or part of a fee paid to a broker as provided in RCW 48.17.270.

[1994 c 203 § 3; 1990 1st ex.s. c.3 § 8; 1985 c 264 § 14; 1975-76 2nd ex.s. c 119 § 3; 1947 c 79 § .30.14; Rem. Supp. 1947 § 45.30.14.]

RCW 48.30.150
Illegal inducements.

No insurer, general agent, agent, broker, solicitor, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, or sell, buy, or offer or promise to buy or give, or promise, or allow to, or on behalf of, the insured or prospective insured in any manner whatsoever:

(1) Any shares of stock or other securities issued or at any time to be issued on any interest therein or rights thereto; or

(2) Any special advisory board contract, or other contract, agreement, or understanding of any kind, offering, providing for, or promising any profits or special returns or special dividends; or

(3) Any prizes, goods, wares, or merchandise of an aggregate value in excess of twenty-five dollars.

This section shall not be deemed to prohibit the sale or purchase of securities as a condition to or in connection with surety insurance insuring the performance of an obligation as part of a plan of financing found by the commissioner to be designed and operated in good faith primarily for the purpose of such financing, nor shall it be deemed to prohibit the sale of redeemable securities of a registered investment company in the same transaction in which life insurance is sold.

[1990 1st ex.s. c 3 § 9; 1975-76 2nd ex.s. c 119 § 4; 1957 c 193 § 18; 1947 c 79 § .30.15; Rem. Supp. 1947 § 45.30.15.]

Appendix B

Unfair practices applicable to title
insurers and their agents

WAC 284-30-800 Unfair practices applicable to title insurers and their agents. (1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twelve dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not effect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150, which continue to limit gifts, payments and other inducements to a five dollar maximum, per person, per year. [Statutory Authority: RCW 48.02.060(3)(a), 88-11-056 (Order R 88-6), § 284-30-800, filed 5/17/88.]

Appendix C

1990 amendment:

Unfair practices applicable to title
insurers and their agents

WAC 284-30-800

Unfair practices applicable to title insurers and their agents.

(1) RCW 48.30.140 and 48.30.150, pertaining to "rebating" and "illegal inducements," are applicable to title insurers and their agents. Because those statutes primarily affect inducements or gifts to an insured and an insured's employee or representative, they do not directly prevent similar conduct with respect to others who have considerable control or influence over the selection of the title insurer to be used in real estate transactions. As a result, insureds do not always have free choice or unbiased recommendations as to the title insurer selected. To prevent unfair methods of competition and unfair or deceptive acts or practices, this rule is adopted.

(2) It is an unfair method of competition and an unfair and deceptive act or practice for a title insurer or its agent, directly or indirectly, to offer, promise, allow, give, set off, or pay anything of value exceeding twenty-five dollars, calculated in the aggregate over a twelve-month period on a per person basis in the manner specified in RCW 48.30.140(4), to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to the title insurer.

(3) Subsection (2) of this section specifically applies to and prohibits inducements, payments, and rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, and any other person who is or may be in a position to influence the selection of a title insurer, except advertising agencies, broadcasters, or publishers, and their agents and distributors, and bona fide employees and agents of title insurers, for routine advertising or other legitimate services.

(4) This section does not affect the relationship of a title insurer and its agent with insureds, prospective insureds, their employees or others acting on their behalf. That relationship continues to be subject to the limitations and restrictions set forth in the rebating and illegal inducement statutes, RCW 48.30.140 and 48.30.150.

[Statutory Authority: RCW 48.02.060 (3)(a), 48.30.140, 48.30.150, 48.01.030 and 48.30.010(2); 90-20-104 (Order R 90-11), § 284-30-800, filed 10/2/90, effective 11/2/90. Statutory Authority: RCW 48.02.060 (3)(a), 88-11-056 (Order R 88-6), § 284-30-800, filed 5/17/88.]

Appendix D

Fidelity National Title - Multistate Settlement

**IN THE MATTER OF CHICAGO TITLE INSURANCE COMPANY, FIDELITY
NATIONAL TITLE INSURANCE COMPANY, SECURITY UNION TITLE
INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE
COMPANY OF NEW YORK, and TICOR TITLE INSURANCE COMPANY**

**MULTI-STATE REGULATORY SETTLEMENT AGREEMENT CONCERNING
CAPTIVE TITLE REINSURANCE ARRANGEMENTS**

THIS MULTI-STATE REGULATORY SETTLEMENT AGREEMENT (the "Multi-State Agreement") is entered into on this 7th day of September, 2005, by and between Chicago Title Insurance Company, Fidelity National Title Insurance Company, Security Union Title Insurance Company, Fidelity National Title Insurance Company of New York, and Ticor National Title Insurance Company (collectively "Fidelity"), and the Insurance Commissioners of those states (the "Signatory States") who adopt, approve and agree to this Multi-State Agreement in accordance with the provisions of this Multi-State Agreement. The Signatory States find and order as follows:

1. At all relevant times, the Signatory States had jurisdiction over Fidelity and the subject matter of this Multi-State Agreement.
2. On or about October 22nd, 2004, the Colorado Commissioner commenced an investigation of Fidelity to determine whether certain captive title reinsurance arrangements violated state and federal kickback laws. In addition, Fidelity received inquiries from the following state Departments of Insurance ("DOI") and/or Attorneys General ("AG"): Arizona DOI; California DOI, Colorado AG; Connecticut DOI, Idaho DOI; Michigan DOI; Minnesota DOI; Montana DOI, Nevada DOI; New York AG; North Carolina DOI; Ohio DOI; Virginia DOI; and Washington DOI. Based upon Fidelity's responses to the Colorado interrogatories and documents it provided, the Signatory States have agreed to accept the findings set forth in this Multi-State Agreement.
3. By their signatures and delivery of this Multi-State Agreement, as described below, and by virtue of the execution of this Multi-State Agreement by the Signatory States, the Signatory States each acknowledge and agree that they have read and understand the terms and conditions of this Multi-State Agreement and agree that the execution of this document fairly, reasonably and adequately addresses the concerns of affected citizens in their respective states. In addition, the Signatory States, by way of signature below, give that state's express assurance that under applicable state laws, regulations and judicial rulings, each has the authority to enter into this Multi-State Agreement.

4. Fidelity entered into two relevant types of reinsurance arrangements. These arrangements are known as: (1) Single-parent captive title reinsurance; and (2) sponsored captive title reinsurance, also known as protected cell captive reinsurance.
5. In a single parent captive reinsurance arrangement, a settlement producer (a homebuilder or lender) and a title insurer enter into a reinsurance treaty. The title insurer agrees to cede title insurance policy liability to a reinsurer owned in whole or in part by a homebuilder or lender, or their respective affiliates.
6. In a sponsored captive reinsurance arrangement, a settlement producer (homebuilder or realtor, or group of either or both) and a title insurer enter into a reinsurance treaty. The title insurer agrees to cede title insurance policy liability to a reinsurer that is owned by the title insurer itself. The title insurer maintains each settlement producer's business in individual accounts within the reinsurance entity.
7. On or about April, 1999, Fidelity began entering into single parent reinsurance arrangements with Vermont-licensed captive title reinsurers wholly-owned by certain homebuilders or their affiliates. Pursuant to the arrangements, Fidelity agreed to reinsure all title business it received from the builder in a defined geographical area with the builder's reinsurance entity. Generally, under the terms of the reinsurance arrangements, Fidelity deducted a "processing fee" (typically \$350) from the policy premium for the production of the title policy. Fidelity then paid 50% of the remaining premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed 50% of the policy liability on a quota-share basis.
8. On or about September, 2001, Fidelity began entering into single parent reinsurance arrangements with Vermont-licensed captive title reinsurers (and one South Carolina captive title reinsurer) wholly-owned by certain institutional lenders or their affiliates. Pursuant to the arrangements, FNF agreed to reinsure all title business it received from the lender for refinancing in a defined geographical area with the lender's reinsurance entity. Generally, under the terms of the reinsurance arrangements, Fidelity deducted a "processing fee" (typically \$250) from the policy premium for the production of the title policy. Fidelity then paid 50% of the remaining premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed 50% of the policy liability on a quota-share basis.
9. On or about September, 2003, Fidelity began entering into sponsored captive reinsurance arrangements with certain builders. Pursuant to the

arrangements, Fidelity agreed to reinsure all title business it received from certain builder transactions in a defined geographical area with Fidelity Title Reinsurance Company, a Vermont-licensed reinsurer affiliated with Fidelity (and wholly owned by an affiliate of Fidelity). After deduction of a processing fee, Fidelity paid 50% of the remaining premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed 50% of the policy liability on a quota-share basis.

10. On or about September, 2003, Fidelity began entering into sponsored captive reinsurance arrangements with certain real estate brokers. Pursuant to the arrangements, Fidelity agreed to reinsure all title business it received from the real estate brokers with Fidelity Title Reinsurance Company, a Vermont-licensed reinsurer affiliated with Fidelity (and wholly owned by an affiliate of Fidelity). After deduction of a processing fee, Fidelity paid approximately 10% to 20% of the premium to the reinsurer as a reinsurance or cession premium, and the reinsurer assumed the respective policy liability on a quota-share basis.
11. In the sponsored captive reinsurance arrangements, the builders and real estate brokers, or affiliates formed by them (the "Participants") executed Participation Agreements with Fidelity Title Reinsurance Company. Under the Participation Agreements, the Participants indemnified Fidelity Title Reinsurance Company for any claims losses and, in return, received distributions as provided in the Participation Agreement.
12. On or about February, 2005, Fidelity informed the Colorado Division of Insurance that it had terminated on a nationwide basis, all of its reinsurance arrangements and any related Participation Agreements in accordance with their respective terms or notice provisions and/or obtained mutual immediate termination from certain reinsurers. Also in February, 2005, Fidelity asserted to the Colorado Commissioner that all cession payments to any captive reinsurer, and all distributions to any Participant, were permanently suspended and terminated in all states.
13. Fidelity asserts its belief that the captive title reinsurance agreements (and related Participation Agreements) to which it was a party were structured in conformance with the provisions of federal law (RESPA). In particular, Fidelity asserts its belief that the arrangements were in conformance with both an August 6, 1997 letter from HUD permitting captive reinsurance agreements in the field of mortgage reinsurance under certain defined circumstances, and a later letter dated August 12, 2004 that specifically provided that the August 6th letter also applied to captive title reinsurance arrangements.
14. The Signatory States assert that, after the Colorado Division of Insurance's review, and/or their own review of Fidelity's answers to

interrogatories, copies of the reinsurance treaties, annual statement filings, and other documentation submitted by Fidelity, the captive title reinsurance arrangements described in this Multi-State Agreement violate state and federal laws prohibiting kickbacks for the referral of title business, including, but not limited to 12 U.S.C. § 2607, commonly referred to as Section 8 of The Real Estate and Settlement Procedures Act of 1974 ("RESPA").

15. The Signatory States and Fidelity, in order to avoid the expense, uncertainty, and distractions of litigation, and without Fidelity admitting or denying the allegations set forth in this Multi-State Agreement, desire to resolve this matter and therefore stipulate and agree as set forth in this Multi-State Agreement.
16. Fidelity will promptly and voluntarily issue refunds to all consumers in all Signatory States where any consumer paid any portion of a title insurance premium that was allocated to a reinsurance entity pursuant to any of the above-referenced reinsurance arrangements or Participation Agreements. As of the date of this Multi-State Agreement, the parties estimate that approximately 18 states qualify as Signatory States, and approximately \$1.2 million will be refunded under the terms of this Multi-State Agreement.
17. Fidelity agrees to exercise its best efforts to complete the refund process in each Signatory State, no later than one hundred twenty (120) days from the date that particular Signatory State signs the Multi-State Agreement. The failure, refusal, or delay of a particular Signatory State to sign the Multi-State Agreement shall not affect the rights and obligations of Fidelity as to the other signing Signatory States.
18. Fidelity will continue to cease and desist operating under the described captive reinsurance arrangements and will diligently make the refunds outlined in this Multi-State Agreement.
19. Fidelity will not enter into any new captive reinsurance arrangements substantially similar to those described and affected by this Multi-State Agreement provided, however, that Fidelity will be relieved from the cease and desist terms of this agreement by any order entered by a court of competent jurisdiction determining that the above described captive reinsurance, arrangements or participation agreements substantially similar to the same, are legal under federal law and the respective state law of the Signatory State.
20. The Intent and purpose of this Multi-State Agreement is to provide for the complete settlement of the alleged violations described in this Multi-State Agreement, occurring on or before the effective date of this Multi-State

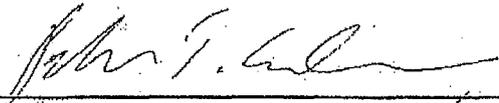
Agreement. Any other allegations, facts, and issues not described in this Multi-State Agreement have not been considered and are not made a part of this Multi-State Agreement. By entering into this Multi-State Agreement, Fidelity shall not be deemed to have made any admission of liability or wrongdoing. By execution of this Multi-State Agreement, it is the intent of the Signatory States and Fidelity to resolve all issues pertaining to the matters alleged above without the expense and uncertainty of litigation.

21. The parties agree that this Multi-State Agreement shall be fully executed as to each state upon the signature of both Fidelity and that particular Signatory State. The failure, refusal, or delay of any Signatory State to sign the Multi-State Agreement shall have no effect on the rights and obligations imposed by the Multi-State Agreement as to Fidelity and the other Signatory States who have signed the Multi-State Agreement.
22. This Multi-State Agreement shall not be used as evidence of the truth of the facts alleged by the Signatory States, or as evidence of an admission or wrongdoing.
23. Fidelity understands and acknowledges that this Multi-State Agreement is a public record. Fidelity further understands that the Colorado Division of Insurance will send notice of this Multi-State Agreement to the NAIC, and that the Signatory States may, in their discretion, notify any other person of the content and terms of this Multi-State Agreement.
24. This Multi-State Agreement constitutes the complete agreement between Fidelity and the Signatory States. All previous agreements, understandings, representations or warranties have been fully and completely merged and integrated into this Multi-State Agreement.
25. Fidelity is aware of and understands the right to receive a formal notice of hearing and to have a formal administrative hearing as to this matter pursuant to the laws of the Signatory States. Fidelity hereby waives those rights and requests that this Multi-State Agreement be accepted by the Signatory States with the same force and effect as an order entered into as a result of a formal administrative proceeding. Fidelity further waives the right to either administrative or judicial appeal this Multi-State Agreement.
26. This Multi-State Agreement shall be binding on Fidelity and on the Signatory States executing this Multi-State Agreement. Any State that wishes to become a party to this Multi-State Agreement shall execute a State Amendment page within sixty (60) days from the effective date of this Multi-State Agreement, which is September 7, 2005.

27. The Signatory States reserve the right to impose fines, penalties, and take any and all other actions necessary to carry out the terms of this Multi-State Agreement if Fidelity fails to comply in good faith with all provisions of this Multi-State Agreement. In such event, Fidelity shall be responsible for reimbursing the affected Signatory State(s) for expenses incurred in bringing such action. Each Signatory State reserves the right to request from Fidelity proof of compliance in such State to ensure that the provisions of this Multi-State Agreement are enforced.
28. Fidelity enters into this Multi-State Agreement voluntarily, absent any duress or coercion on behalf of the Signatory States, after the opportunity to consult with legal counsel, and with full understanding of the legal consequences of this Multi-State Agreement.
29. This Multi-State Agreement may be executed in counterparts, and a facsimile signature will have the same force and effect as an original signature penned in ink. When Fidelity and each of the Signatory States has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully executed Multi-State Agreement which shall be binding upon and effective as to that particular Signatory State according to its terms.

APPROVED AND AGREED TO BY AND ON BEHALF OF CHICAGO TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY, SECURITY UNION TITLE INSURANCE COMPANY, FIDELITY NATIONAL TITLE INSURANCE COMPANY OF NEW YORK, and TICOR TITLE INSURANCE COMPANY

By:

 EVP

Peter T. Sadowski

Executive Vice President and General Counsel

STATE AMENDMENT

This Multi-State Agreement is accepted by the Commissioner for the Washington Office of the Ins. Commissioner with full force and effect in accordance with the terms of the Multi-State Agreement.

By:



Commissioner Mike Kreidler
Washington Office of the Ins. Commissioner

Nov. 2, 2005

Date

Appendix E

Sample demand for records

August 24, 2005

Kevin R. Chiarello
Senior VP, Chief Compliance Officer
Fidelity National Financial, Inc.
17911 Von Karman Avenue, Suite 300
Irvine, CA 92614

Re: Financial Information

Dear Mr. Chiarello:

The Commissioner is undertaking a major investigation of potential illegal inducements and rebates by title insurance companies and title insurance rates.

Therefore, we are requesting the following financial information from the below listed title companies. If you are not the correct individual to whom to direct this request for each of these companies please so inform me so that it can get directed to the correct person. If the information can be submitted in electronic format (excel and/or pdf) either by email or by disk that would be preferable to paper copies. The time period for which the information must cover is from and including January 1, 2004 through June 30, 2005.

The financial information must include a complete copy of the general ledger, both income and expenses (including employee salaries) or other such similar financial records for each of the following companies for the counties designated. The requested information does not include escrow trust account(s).

The information must also include a copy of the requests for reimbursement submitted by employees for reimbursement by the title company for the expenses they incurred on company business. At this time we are not requiring that the receipts to support these reimbursements be submitted, but we may request this information in the future.

Chicago Title Insurance Company – King, Pierce & Snohomish Counties.

Fidelity National Title Insurance Company of Washington

Ticor Title Company of Washington

Normally the statutes and regulations require that this information be submitted to the Commissioner within 15 business days of the receipt of this letter, but because of the amount of information being requested, we are willing to grant the companies until Friday, September 30, 2005 to submit the information to the Commissioner.

Kevin R. Chiarello
August 24, 2005

Page two

Sincerely,

James E. Tompkins
Staff Attorney, Policy Division
(360) 725-7036
Fax (360) 586-3109
Email: jimt@oic.wa.gov

T 06-06

To: All Washington Title Insurers and Title Insurance Agents

Subject: Rebates and Illegal Inducements

Date: Nov 21, 2006

Rebates and illegal inducements

The Office of the Insurance Commissioner has issued this Technical Assistance Advisory to clarify requirements for title insurers and their agents under the state's Rebating and Illegal Inducements statutes and regulations. This guidance is the direct result of a 10-month investigation by the agency that revealed widespread use of illegal incentives and inducements to obtain title insurance business in clear violation of state law. (A report of that investigation is available from the Insurance Commissioner's office and is posted on the agency's Web site at: http://www.insurance.wa.gov/publications/news/Investigation_Title_Insurance.pdf.)

The Insurance Commissioner contends that the law clearly specifies the spending limit: It's \$25, per person, per year.

However, in response to a commonly voiced complaint by the companies that the rule is ambiguous and unclear, the Commissioner offers the following information to ensure compliance with the law.

The "Rebating" statute¹, the "Illegal Inducement" statute² and the Commissioner's "Unfair Practices" rule³ establish that a company may not give anything of value exceeding \$25 in any twelve-month period to a person as an inducement for placing title insurance business with a particular title insurance company. Again, \$25, per person, per year.

Any gift, incentive or inducement exceeding \$25 per person per year is a violation of the insurance laws of Washington. The Commissioner is authorized to assess penalties for violations of insurance laws up to \$10,000 per violation.

Definition of "person," "year" and "value"

The definition of a person is consistent throughout the state's insurance code. A **person** means any individual, company, association, organization, partnership, corporation, or any other legal entity. Our investigation disclosed that some companies do understand this definition and apply it correctly.

A **year** is defined as any 12-month period.

Value means the market value of the item or service if the item or service were purchased on the open market. At a minimum, this is the entire cost of the item/service that the title company is providing. It includes the cost of the item or service as well as the resources used to provide or produce the item/service and all other associated costs.

473-AF

Record keeping

There is no requirement for a title company to give anything away as an inducement or incentive to obtain business, but if the company voluntarily chooses to do so, it must maintain complete and accurate records to document its spending under the \$25 rule. This includes names of individuals who attended the event. It is not sufficient to document an event with a statement that "X" number of people attended. Necessary records include sign-in sheets, including the name and signature for each attendee.

Examples of the \$25 limit

The \$25 limit applies:

- When a title company has given something of value to a person or paid something on behalf of that person.
- When a title company hosts an event. It must allocate the value to each of the individuals attending, with the value counting toward the \$25 limit.
- When the company hosts an educational seminar on a topic other than title insurance. The value of the seminar, based on what it would cost on the open market, must be allocated to the attendees.
- When the company supplies one of its employees to provide services (technical consultations, transaction coordination, computer training) to a real estate agent, agency or any other third party. The value is determined by what it would cost to obtain the service on the open market.
- To "customer service" (for example, "home books," demographic information and other compilations) information that title companies provide at no cost. The value of the services must be allocated to the individual's \$25 limit. The Insurance Commissioner has made an exception that allows title companies to provide a copy of the last deed, deed or trust, a map and tax information at no charge. Anything else is subject to the \$25 limit.

The \$25 limit **does not** apply:

- If the title company has been reimbursed for what it has given to the person. However, if the reimbursement is less than the full value, the \$25 limit applies to the non-reimbursed amount.
- When a title company hosts an educational seminar on title insurance topics. However, if the company provides food or refreshments, the value of the food and refreshments must be allocated to the \$25 limit for each attendee.
- When the company hosts an event or seminar and is reimbursed the full value by attendees. If full reimbursement is not made, the excess value must be allocated to attendees in accordance with the \$25 limit.

How state law compares to federal requirements

Another commonly expressed complaint from companies was inconsistency between state and federal requirements. The Federal Real Estate Settlement Procedures Act⁴ (RESPA) establishes lower limits for incentives and inducements than Washington's \$25 limit. As a result, a title company may be in compliance with Washington's

laws and regulations, but in violation of federal law at the same time. By allowing title companies to provide things of value up to \$25, the state is not condoning violation of federal law and does not excuse a company from complying with federal requirements.

Accordingly, there may be instances under federal law where a title company may provide something of value which exceeds the state limit. In those instances, the title company must comply with state law. (The contention that federal law allows the incentive will not be accepted as an excuse.)

Broker opens

In practice, broker opens are conducted for the benefit of the listing real estate broker or agent, even though others may be attending. Accordingly, the value of any food or refreshments provided by the title company for a broker open must be applied toward the \$25 limit of the broker or agent hosting the event. It may not be allocated by the number of attendees. If, however, individual items such as door prizes are given to individual attendees, then the value of the specific item must be allocated to the \$25 limit of the recipient. This rule applies regardless of whether or not a title insurance company employee attends the broker open.

When pro-rating is permitted

If a title company hosts an open house or event and has a general buffet and refreshments available to all attendees, then the value may be pro-rated by the number of attendees and allocated to each individual's \$25 limit. But if prizes or gifts are provided to attendees that are of unequal value, then, in addition to the general pro-rata allocation, the value of each individual prize or gift received by the attendee must be allocated to the attendee.

On the other hand, if the event is a meal at a restaurant, then the cost of each individual's meal must be allocated to that individual, along with their proportionate share of any tax and gratuity.

When pro-rating is not permitted

A title company that sponsors or provides food or refreshments at an event for a real estate agent or other third-party is not permitted to pro-rate the expense - the \$25 limit applies to the total event since the value benefits a single person. This means that the company cannot pay in excess of \$25 to sponsor an event or provide food and refreshments for an event and pro-rate the costs among the number of attendees.

Similarly, the test of whether or not the value of a sponsored event can be pro-rated among the total number of attendees or must be allocated to a single company or person, rests on a simple determination: Who owns the event?

- If the title company owns the event, and the benefit goes to individual real estate agents and other third parties who have a direct relationship with the title company, the value can be pro-rated among the total number of attendees.
- But when a real estate agent, entity or other third-party owns the event, food, beverages and other incentives provided by the title company cannot be pro-rated among the total number of attendees.

Co-advertising

The practice of co-advertising is permitted under state law when the title insurer's advertising benefit is proportional to the amount paid. However, when the title company's share of the advertising is disproportionate and the so-called "co-advertising" actually amounts to a subsidy, the \$25 limit applies.

The \$25 limit does not apply if the title company advertises independently and does not participate in the advertising of a real estate agent or other third party.

Some specific questions

What happens if the title company already has provided something of value to a person in the last 12 months and that person attends another function that is being sponsored by the title company and the person's allocated share of the new event puts that person over the \$25 limit?

That is a violation, and the title company may be subject to disciplinary action.

What if the title company makes a good-faith effort to collect payment (reimbursement) for what was given, but was unsuccessful in obtaining payment?

It is the actual receipt of the reimbursement that counts. If the title company does not receive reimbursement, then any non-reimbursed amount will be applied to the person's \$25 limit.

May a title company advance the excise tax payment in order to record a transaction prior to receiving the funds for the tax?

No. The advancement constitutes a loan to the parties, and as such, is a thing of value and subject to the \$25 limit.

May a title company discount its escrow fees as an inducement to obtain business?

Yes, under certain circumstances. First and most important, the escrow fee must not be less than the title company's full and complete cost for conducting the escrow. Secondly, the discount must not be discriminatory, and it must be provided to all customers meeting the same criteria. Thirdly, the criteria must be based on the actual savings to the title company in conducting the escrow and may not be based merely upon a label such as "builder."

Authority

- 1 Rebating (RCW 48.30.140)
- 2 Illegal Inducements (RCW 48.30.150)
- 3 Unfair Practices Rule (WAC 284.30.800)
- 4 Federal Real Estate Settlement Procedures Statute, or RESPA (12 U.S.C. 2607)

The Honorable Cindy L. Burdick

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

In Re:

CHICAGO TITLE INSURANCE COMPANY,

An authorized insurer

Docket No. 2008-INS-0002
OIC No. D07-308

DECLARATION OF BRAD LONDON
IN SUPPORT OF CHICAGO TITLE
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT RE:
AGENCY LIABILITY

Brad London declares as follows:

1. I am the vice president and regional manager of Chicago Title Insurance Company ("CTIC").
2. CTIC is a Missouri corporation engaged in the business of providing title insurance nationally. CTIC was founded in 1961, and has been operating in Washington since 1977.
3. CTIC has direct operations in eight Washington counties in which it maintains or subscribes to a title plant - King, Snohomish, Pierce, Whatcom, Thurston, Clark, Benton and Grant. In these counties, CTIC offers both insurance underwriting and escrow services. A title plant, in essence, collects all documents recorded as to real property in that jurisdiction (counties, in the case

DECLARATION OF BRAD LONDON IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

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1 of Washington), and indexes them by legal description or address. This allows a title company to
2 access real property records for a specific county, indexed geographically, so that the title company
3 can research the state of title to any property in that county.

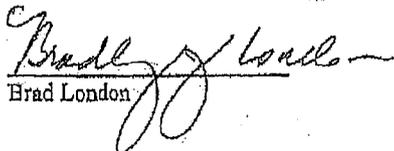
4 4. In the counties in which CTIC has direct operations, it maintains sales personnel
5 which market CTIC's escrow and title products to customers in those counties. CTIC does not
6 conduct any marketing or sales efforts in counties in which it does not have direct operations.

7 5. CTIC was not contacted by the Office of the Insurance Commissioner ("OIC")
8 during the course of its investigation into the marketing practices of Land Title Company of Kitsap
9 County (the "Land Title Investigation"), which I did not learn about until after the fact. It did not
10 request records from CTIC during the Land Title Investigation, nor did it examine CTIC's marketing
11 practices.

12 6. Notwithstanding the fact that the OIC did not investigate CTIC as part of the Land
13 Title Investigation, in November, 2007, the OIC requested that CTIC sign a Consent Order Levying
14 Fine, pursuant to which CTIC was asked, without the participation or joinder of Land Title, to (1)
15 stipulate that Land Title's conduct violated the Inducement Regulation, (2) agree to pay a fine of
16 \$114,500 based on Land Title's alleged violations, and (3) enter into a Compliance Plan that
17 required specific tracking of expenditures, semi-annual internal audits and related reporting and
18 corrective actions and to represent that Chicago title has "the authority to comply fully with the
19 terms and conditions of the [Compliance] Plan." CTIC refused to do so.

20 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
21 knowledge.

22 EXECUTED this 4th day of September, 2008, at Vancouver, Wash.

23
24 
25 Brad London
26

DECLARATION OF BRAD LONDON IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 2

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The Honorable Cindy L. Burdue

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

In Re:

CHICAGO TITLE INSURANCE COMPANY,

An authorized insurer

Docket No. 2008-INS-0002
OIC No. D07-308

DECLARATION OF D. GENE
KENNEDY IN SUPPORT OF
CHICAGO TITLE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT RE:
AGENCY LIABILITY

D. Gene Kennedy declares as follows:

1. I am the President and Chief Executive Officer of Land Title Company of Kitsap County ("Land Title").

2. Land Title is a title insurance agent operating in Kitsap and Mason Counties in the State of Washington. Land Title was founded in 1968 and has provided escrow and title services to customers in Kitsap County since that time. Land Title has branch offices in Silverdale, Poulsbo, and Port Orchard.

3. Land Title owns and operates its own title plant in Kitsap County.

DECLARATION OF D. GENE KENNEDY IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

1 4. Land Title is a party to an Issuing Agency Agreement with Chicago Title Insurance
2 Company ("CTIC"). Land Title is also party to an Issuing Agency Agreement with Old Republic
3 Title Insurance Company.

4 5. In addition to title insurance products, Land Title also offers escrow closing services,
5 which constitute a significant portion of its revenue. In a typical year, approximately 28% of Land
6 Title's total revenue is from escrow services. Land Title's escrow services are separate from its title
7 insurance business, and Land Title retains 100% of the fees it collects for its escrow services.

8 6. Land Title employs sales personnel which market its services to potential customers
9 in Kitsap County.

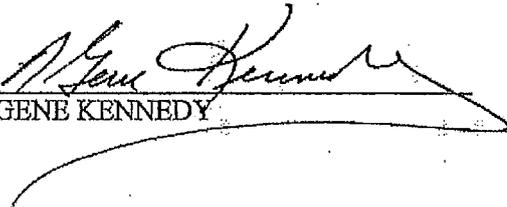
10 7. In its marketing materials, Land Title does not promote its relationship with CTIC. In
11 fact, it does not mention CTIC at all in its marketing materials, samples of which are attached to this
12 Declaration as Exhibits A-E.

13 8. Land Title markets to promote its own business, not the business of CTIC.

14 9. CTIC does not pay Land Title for its services nor pay any of Land Title's expenses.
15 CTIC does not play any role in or exercise any control over Land Title's business operations. CTIC
16 does not provide any advice to Land Title on compliance with the Inducement Regulation. CTIC
17 does not have any input in, or oversight of, Land Title's marketing practices or procedures.

18 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
19 knowledge.

20 EXECUTED this 3rd day of SEPTEMBER, 2008 at Silverdale, Washington.

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D. GENE KENNEDY

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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF THE INSURANCE COMMISSIONER

FILED

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In re the Matter of

**CHICAGO TITLE INSURANCE
COMPANY,**

An authorized insurer.

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer
Docket No. 2008-INS-0002

AMENDED NOTICE OF HEARING

TO: Kimberly W. Osenbaugh
K&L/Gates
924 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158

The Honorable Mike Kreidler, Insurance Commissioner of the State of Washington, proposes disciplinary action against Chicago Title Insurance Company and hereby issues this Amended Notice of Hearing. The Insurance Commissioner submits the following as the basis of this Amended Notice of Hearing in accordance with RCW 48.04.010.

1. PARTIES AND JURISDICTION

1.1 Pursuant to the Insurance Code, Title 48 RCW, the Insurance Commissioner is authorized to regulate the business of insurance and enforce the insurance laws of Washington State in order to protect the public interest.

1.2 Chicago Title Insurance Company ("Chicago Title") is authorized to transact the business of insurance in Washington State and, therefore, is subject to Title 48 RCW and Chapter 284 WAC.

1.3 Jurisdiction and venue are appropriate under, among other provisions, RCW 48.02.060, RCW 48.05.185, and RCW 48.04.010.

2. FACTS

2.1 Chicago Title appointed Land Title Company of Kitsap County, Inc. ("Land Title") as its agent, pursuant to RCW 48.17.010, to solicit and effectuate Chicago Title's business of title insurance on Chicago Title's behalf. All contracts of insurance effectuated by Land Title on properties in Kitsap County, Washington are placed with Chicago Title.

2.2 On or about May 15, 2007, The Office of the Insurance Commissioner ("OIC") initiated an investigation of several title insurers, including Chicago Title. The Chicago Title investigation commenced with the OIC auditing its agent, Land Title, at its business office in Silverdale, Washington. OIC investigators obtained a copy of Land Title's checkbook, ledger, expense account documents, and realtor continuing education class expenses, from December 1, 2006 through March 31, 2007.

2.3 The investigation revealed multiple violations of WAC 284-30-800. In particular, between December 1, 2006 and March 31, 2007, Land Title provided the following items and services to real estate offices, real estate agents, or lenders while acting as a representative of Chicago Title and soliciting insurance business on Chicago Title's behalf:

- a. Unlimited use of the online property information service RealQuest® for a \$25.00 annual "access fee".
- b. "Flyer Delivery" services to real estate agents, lenders, and builders in any of four "Zones of Delivery" comprising Kitsap County, for \$2.50 per zone.
- c. \$56.46 for a floral arrangement for the Reid Real Estate office on March 22, 2007.
- d. \$400.00 to take Absolute Mortgage broker C. C. and Coldwell Banker real estate agent R. S. to a Seattle Seahawks 2006 championship game.
- e. \$2,251.83 to sponsor a golf tournament for the benefit of Golf Savings mortgage lender K. B. The golf tournament included a \$1,216.00 cash donation, gift cards, and \$385.83 worth of pizza for tournament participants.
- f. \$145.00 for items purchased at the Mason County Board of Realtors® auction by Land Title employee Debbie Savunen.
- g. \$68.00 per month in advertising for RE/MAX real estate agent P. D.
- h. Meals for the following persons (pro-rated as a result of Land Title not having fully itemized receipts) in a position to steer title insurance business:
 - \$128.92: one meal, three diners, including Coldwell Banker real estate agent R. S., divided by four, \$32.23 each.
 - \$155.59: one meal, three diners, including Coldwell Banker real estate agent R. S., divided by three, \$51.86 each.
 - \$72.92: one meal, two diners, including Tim Ryan Construction builder D. R., divided by two, \$36.46 each.
 - \$65.18: one meal, two diners, including Golf Savings mortgage lender K. B., divided by two, \$32.59 each.
 - \$55.87: one meal, two diners, including Eagle Home Mortgage lender L. F., divided by two, \$27.94.
 - \$38.79: Windermere real estate agent P. M.'s share of two meals (one itemized) during the period under review.

3. APPLICABLE LAW AND ALLEGED VIOLATIONS

3.1 Pursuant to WAC 284-30-800(2), Chicago Title may not, directly or indirectly, offer, promise, allow, give, set off, or pay anything of value exceeding twenty-five dollars, calculated in the aggregate over a twelve-month period, on a per person basis in the manner specified in RCW 48.30.140, to any person as an inducement, payment, or reward for placing or causing title insurance business to be given to Chicago Title.

3.2 Pursuant to WAC 284-30-800(3), Chicago Title may not give inducements, payments or rewards to real estate agents and brokers, lawyers, mortgagees, mortgage loan brokers, financial institutions, escrow agents, persons who lend money for the purchase of real estate or interests therein, building contractors, real estate developers and subdividers, or any other person who is or may be in a position to influence the selection of a title insurer.

3.3 Chicago Title, by and through its agent Land Title, violated WAC 284-30-800 in the above-referenced seventeen instances by giving inducements, payments, or rewards exceeding twenty-five dollars in value, per person per year, to real estate agents and brokers, mortgage loan brokers or lenders, and builders.

4. SANCTIONS REQUESTED

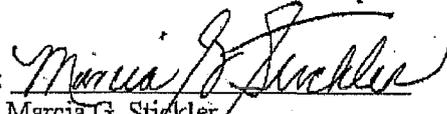
Pursuant to RCW 48.05.185, the Commissioner seeks imposition of a fine against Chicago Title in the amount of \$155,000.

5. NOTICE OF HEARING

The OIC will convene a hearing at a date, location, and time to be determined, to consider the allegations above and the sanctions to be imposed upon Chicago Title pursuant to RCW 48.04.010 and RCW 48.05.185. At the hearing, the OIC will present evidence showing that Chicago Title, by and through its agent Land Title, violated a regulation effectuated by the Commissioner pursuant to his authority under RCW 48.02.060, and that the sanction requested above is authorized under the law. Chicago Title may cross-examine OIC witnesses and present any defenses, evidence, or arguments it may have in opposition.

Dated this 21st day of March, 2008.

MIKE KREIDLER
Insurance Commissioner

By: 
Marcia G. Stiekler
Legal Affairs Division

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled matter, and competent to be a witness herein.

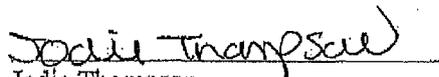
On the date given below I caused to be served the foregoing AMENDED NOTICE OF HEARING on the following individual in the manner indicated:

Kimberly W. Osenbaugh, Esq.
K&L/Gates
924 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158

Cindy L. Burdue, Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Court Southwest
PO Box 9046
Olympia, Washington 98507-9046

(XXX) Via U.S. Mail

SIGNED this 27th day of March, 2008, at Tumwater, Washington.



Jodie Thompson

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused to be deposited in the United States mail a properly stamped and addressed envelope containing a copy of this document addressed to Kim Osenbaugh.

Dated July __, 2008, at Tumwater, Washington

RECEIVED

AUG 19 2008

INSURANCE COMMISSIONER
LEGAL AFFAIRS DIVISION

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF THE INSURANCE COMMISSIONER

In Re the Matter of

CHICAGO TITLE INSURANCE
COMPANY,

An authorized insurer.

Docket No. 2008-INS-0002
OIC No. D07-308

CHICAGO TITLE INSURANCE
COMPANY'S SUPPLEMENTARY
ANSWERS AND RESPONSES TO
SECOND INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO CHICAGO TITLE
INSURANCE COMPANY

DEFINITIONS AND PROCEDURES

A. *Procedures:* Please complete the answers and responses within the space provided, and, if needed, add additional pages. Within the time permitted under the Washington Civil Rules for Superior Court of the State of Washington, as adopted by the Administrative Procedures Act, return one copy to the office of the undersigned together with copies of documents requested.

B. *Scope of Answers and Responses:* "You" and "your" include but are not limited to Chicago Title Insurance Company ("Chicago Title"). By any use of the pronoun "you" and "your," it is intended that your answers and responses are to include all information known to you, to your appointed agents (which agents include without limitation Land Title Company of Kitsap County, Inc.; hereinafter "Land Title"), to your authorized representatives, to your attorney, and to your attorney's agents and investigators, accountants, appraisers, and employees.

C. *Document:* As used herein, the word "document" shall mean the original and any copy, regardless of origin or location, of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study, handwritten note, map, drawing, picture, photograph, other visual depiction, working paper, chart, paper, graph, index, tape, data sheet or data processing card, or any other written, recorded transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced, to which you have or have had access.

D. *Continuing in Nature:* These interrogatories and requests for production shall be deemed to be continuing. In the event that you or your attorney discovers any additional

CHICAGO TITLE INSURANCE COMPANY'S
SUPPLEMENTARY ANSWERS AND RESPONSES
TO SECOND INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO CHICAGO
TITLE INSURANCE COMPANY - 1

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1
2 The Documents in the bates number range of CTIC 000100-000104 contain a list of
3 companies with whom CTIC has entered into limited agency agreements (those with the
4 designation "CTIC" listed in the Underwriter column). Copies of the agreements were
5 produces as bates nos. CTIC 000001-000098. The parties to these agreements include
6 Alliance Title and Escrow (Asotin); Amerititle (Kittitas); Amerititle (Klickitat); Fidelity
7 Title Company (Yakima); Land Title Company of Kitsap County (Kitsap); Land Title
8 Company of Mason County (Mason); Land Title Company of Walla Walla County, Inc.
9 (Walla Walla); Pacific Northwest Title Company of Spokane (Spokane); Skamania Title
10 Company (Skamania); Spokane County Title Company (Spokane); Title Guaranty
11 Company of Lewis County (Lewis);

12 INTERROGATORY NO. 2. Please identify each individual and each business or other entity that
13 solicits Chicago Title's insurance in the Washington counties of Kitsap, Clallam, Jefferson, and/or
14 Mason, and each's WAOIC number.

15 ANSWER:

16 Objection. This interrogatory is vague, overly-broad, harassing, and not relevant to
17 determination of whether CTIC is liable for the actions of Land Title. Without waiving the above
18 general and specific objections, CTIC answers Interrogatory No. 2 as follows:

19 As set forth in CTIC's answer to Interrogatory No. 1, CTIC has produced all agency
20 agreements with UTCs in Washington; with whom CTIC has an agreement to underwrite title
21 policies issued by the UTC. To the extent such UTCs have "WAOIC numbers," such numbers are
22 known to the OIC. UTCs do not solicit business on behalf of CTIC, but rather solicit business on
23 their own behalf.

24 CTIC supplements its answer as follows:

25 CTIC has no employees that solicit business on its behalf in Kitsap, Clallam,
26 Jefferson, and/or Mason Counties. As set forth in answer to Interrogatory No. 1, CTIC is a
party to limited agency agreements with UTCs that operate in Kitsap, Clallam, Jefferson
and/or Mason Counties - specifically Land Title of Kitsap County, Inc. and Land Title
Company of Mason County. CTIC reiterates that UTCs solicit business on their own behalf,
not on behalf of CTIC.

CHICAGO TITLE INSURANCE COMPANY'S
SUPPLEMENTARY ANSWERS AND RESPONSES
TO SECOND INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO CHICAGO
TITLE INSURANCE COMPANY - 4

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1 CTIC supplements its answer as follows:

2 CTIC does not conduct any advertising or marketing in Mason, Kitsap, Clallam, or
3 Jefferson Counties. CTIC believes that Fidelity National Financial, Chicago Title and Trust
4 Company, and/or Security Union Title Insurance Company do not advertise or engage in
5 marketing on CTIC's behalf in Mason, Kitsap, Clallam, or Jefferson Counties.

6
7 INTERROGATORY NO. 14. Please identify and describe all advertising, marketing, and other
8 such efforts and activities undertaken to bring about Chicago Title insurance business in
9 Washington, both generally in the state and also more particularly in the counties serviced by
10 Land Title. Please identify the persons with knowledge of such activities and efforts.

11 ANSWER:

12 CTIC objects to this interrogatory as vague, overly-broad, unduly burdensome, calling for
13 information not within the custody or control of CTIC, not relevant to determination of whether
14 CTIC is liable for the actions of Land Title, and designed solely to harass CTIC.

15 CTIC supplements its answer as follows:

16 See answer to Interrogatory No. 13.

17
18
19 INTERROGATORY NO. 15. Do you contend that the insurance you transact in this state need not
20 meet the standards and requirements of Title 48 of the Revised Code of Washington? Unless your
21 answer is an unqualified "no," please set forth the basis for your answer.

22 ANSWER:

23 CTIC objects to this interrogatory as vague and not relevant to determination of whether
24 CTIC is liable for the actions of Land Title. Objection is also asserted to the extent this
25 interrogatory seeks work product, legal conclusions, and case theory. Without waiving the above
26 general and specific objections, CTIC answers Interrogatory No. 15 as follows:

CTIC concurs that Title 48 of the Revised Code of Washington regulates insurance and
insurance transactions in the State of Washington.

CHICAGO TITLE INSURANCE COMPANY'S
SUPPLEMENTARY ANSWERS AND RESPONSES
TO SECOND INTERROGATORIES AND
REQUESTS FOR PRODUCTION TO CHICAGO
TITLE INSURANCE COMPANY - 10

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