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March 15, 2012

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Marcia Stickler, Esq.  
Legal Affairs Division  
Office of Insurance Commissioner  
5000 Capitol Blvd.  
Tumwater, WA 98501

RE: In the Matter of Stewart Title Guaranty Company  
Docket No. 11-0106

Dear Counsel:

On March 1, 2012, Mr. Sirianni sent an email to my Paralegal which reads ... *Particularly in light of the Court's ruling that underwriters have no vicarious liability, we respectfully request that (1) the OIC's motion for summary judgment be denied, (2) Stewart's cross-motion be granted, and (3) the claims of the OIC against Stewart be dismissed with prejudice.* As to (1) and (2), both parties' motions for summary judgment were denied months ago. As to (3), which requests that the OIC's claims against Stewart be dismissed with prejudice *in light of the Court's ruling that underwriters have no vicarious liability*, this request lacks adequate authority even if this March 1 communication had been properly filed.

However, I am aware that on February 29, 2012, Division II of the Court of Appeals handed down its decision in *Chicago Title Ins. Co. v. OIC*, No. 40752-3-II. My Final Order in *Stewart Title Guaranty Company*, Docket No. 11-0106, has not yet been entered.

The *Chicago* decision is not in evidence in this proceeding. Because I am aware of this decision, however, instead of simply entering my Final Order in *Stewart* and then requiring the parties, if they choose, to file Motions for Reconsideration to include consideration of *Chicago*, I ask both the OIC and Stewart to please provide me with briefing and argument concerning the applicability of the *Chicago* decision to this case. I will then consider the Court of Appeals' decision in *Chicago* prior to entry of my Final Order in *Stewart*. I believe this will save both parties substantial time and effort.

With regard to the briefs I am requesting of the OIC and Chicago, I recognize that the significant issue in *Stewart* is similar to the significant issue in *Chicago*. However, the facts in these two cases are not identical and neither were the legal arguments of the parties. For these reasons, I would appreciate your briefing to be focused not only on any areas which you believe are significant, but also, as suggestions:

- 1) Please focus on the difference in facts between these two cases, for examples:
  - To the extent that it may be relevant, is the private agreement between Stewart and Rainier in *Stewart* the same as the private agreement between Chicago and Land Title in *Chicago*? If they are not, is the private agreement in *Stewart* different enough in significant ways to arguably result in a different decision in *Stewart*? (E.g., are the rights, responsibilities and control set forth in the Stewart-Rainier agreement different enough from those set forth in the Chicago-Land Title agreement to result in a decision in *Stewart* that Rainier is not an independent company?)
  - The Court of Appeals in *Chicago* appears to have adopted Chicago's argument that ...*the [OIC judge's] ruling erroneously imposed vicarious liability on Chicago Title for the regulatory violations of Land Title Insurance [sic – it is correctly Land Title of Kitsap County, Inc.] (Land Title) merely because Chicago Title underwrites Land Title's title insurance policies....* It thus appears that Court has determined the facts to show that Land Title is an independent entity which has essentially assumed the position of the title company (insurer) by "issuing" the Chicago policy and by conducting all solicitation, sales, and all other activities related to the Chicago policy. The Court appears to indicate in its decision that, factually, Land Title, as the title company issuing the policy, simply contracted with Chicago for Chicago to underwrite the policy which was actually issued by Land Title, and that Chicago had nothing more to do with the policy aside from agreeing with

Land Title to underwrite Land Title's title policies. Are the facts in *Stewart* sufficiently different -- or more detailed so as to be more clear -- from the facts upon which the Court in *Chicago* based its decision, so that one could argue the facts in *Stewart* dictates a different decision in *Stewart*? (E.g., a review of a *Stewart* title policy face page, and that of *Stewart*'s Endorsement pages, would likely state in its own wording that it is *Stewart* (and not *Rainier*) which issues the title policy; a review of a *Stewart* title policy's later pages would likely bear only *Stewart*'s (and not *Rainier*'s) stamp on the pages of the title policy indicating that it is *Stewart*'s (and not *Rainier*'s) title policy; and a review of the entire policy would likely make no mention of *Rainier* at all: these facts together might arguably indicate that *Stewart* has remained in the position of a traditional insurer as regards to *Rainier*.)

2) Please also focus on any differences in the legal arguments made by the parties in *Chicago*, upon which the *Chicago* Court's legal conclusions were based, and the legal arguments made by the OIC and *Stewart* in *Stewart*. For examples,

- Were the legal arguments presented in *Chicago* -- upon which the *Chicago* Court relied -- and the legal arguments presented in *Stewart* different enough from each other (or perhaps made significantly more clear) to justify reaching different legal conclusion(s) in *Stewart*?
- How do the legal arguments in *Stewart* differ with regard to 1) the effect of pertinent provisions of the Insurance Code and regulations upon a decision herein (e.g., whether the Code establishes the existence of an agency relationship and a scope of agency that makes the principle vicariously liable for the agent); 2) the effect of the common law principle of principle/agent; and 3) the effect of the common law principle of apparent authority?
- The *Chicago* Court restates, and disagrees with, what it believes was the OIC's argument that *the legislature authorized the insurance commissioner to declare one insurance company vicariously liable for another without a common law basis*. Does the OIC's argument in *Stewart* differ from the argument which the Court has reviewed, and rejected, in *Chicago*?
- With regard to any impact which the private agreements might have on the OIC's authority, do the legal arguments in *Stewart* differ from those presented in *Chicago* in any ways significant enough to justify reaching different legal conclusion(s) in *Stewart*?
- With regard to any effect of designating a company as an "issuing agent" or "underwritten title company" or "issuing underwriter" or "underwriting insurance company" might have upon the rights and responsibilities of the parties and the ultimate liabilities as between the parties, do the legal arguments in *Stewart* differ enough from

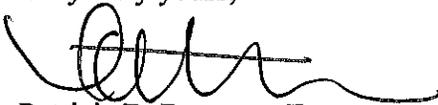
Mr. Stephen J. Sirianni, Esq.  
Ms. Marcia Stickler, Esq.  
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those upon which the Court relied in *Chicago* to justify reaching different legal conclusion(s) in *Stewart*?

The above are simply examples of areas where I suggest the parties consider focusing, in addition to those areas of their own choosing. As stated above, I believe that allowing the parties the opportunity to present briefing at this point might ultimately save them significant time and effort: for this reason, which I consider good cause shown, I have extended the statutory time to file my Final Order in *Stewart* as permitted by RCW 34.05.458(8).

Please submit your briefs within 30 days of the date of service of this letter. Your cooperation is very much appreciated. Should you have any questions, please contact Kelly Cairns, my Paralegal, at the above address and telephone number.

Very truly yours,



Patricia D. Petersen, Esq.  
Chief Hearing Officer  
Presiding Officer