



FILED

OFFICE OF
INSURANCE COMMISSIONER

2013 SEP -9 A 11:44

STATE OF WASHINGTON
BEFORE THE OFFICE OF THE INSURANCE COMMISSIONER

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

IN THE MATTER OF:

**STEWART TITLE GUARANTY
COMPANY,**

An Authorized Title Insurer.

Docket No. 11-0106

**OIC Response to Stewart Title's
Supplemental Memorandum of
September 4, 2013**

The Supreme Court opinion in Chicago Title Insurance Company ("CTIC") contains ample similar facts and reasoning to support its application to the Stewart Title case pending in this forum. First off, the first paragraph summarizes that the ruling of the Court is that CTIC was responsible for the "regulatory violations" of Land Title, its appointed agent, pursuant to statutory and common law theories of agency. The holding was not limited to instances of extravagant gift-giving and "wining and dining" of producers of title insurance business. The Court went on to say that "when the statute forbids the insurer or its agent from certain conduct, it means that the insurer may not do indirectly—through its agent ---what it may not do directly." The statute at issue here is as follows:

RCW 48.29.210(1) states that:

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 the title insurance business to be given to either the title insurer, or title insurance agent, or both.

Free advertising and provision of a hyperlink to its website is a thing of value to any business. Subsection (2) allows certain exceptions by rule. Advertising with or on behalf of a producer of title insurance is not one of them. It is prohibited by WAC 284-29-215. The obvious reason for this prohibition is that as one of the "middlemen" involved in the title insurance purchasing process, a loan modification company such as Nest Financial can direct its customers toward Rainier Title insurance and escrow services. Co-advertising, particularly on behalf of real estate agents, also producers of title insurance business, was as rampant as other inducements in years past. Moreover, the Rainier Title advertisement on its website in question clearly stated that the exchange for Nest Financial's business had likely already occurred – "Rainier Title is proud to be selected as the preferred provider of title and Escrow services by Nest Financial. . ."

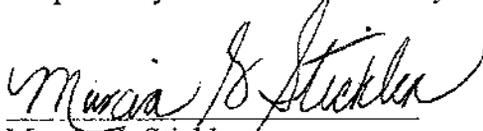
The Supreme Court concluded that CTIC gave implied authority to Land Title to do other acts necessary to sell its insurance. At the time of the Rainier Title violation, all customers who bought title insurance from Rainier Title got Stewart Title insurance, and apparently all of the customers of Nest Financial got Stewart Title insurance *and* Rainier Title escrow services. The Court went even further when it noted that "solicitation" is to be defined broadly, and that the person approached need not be the end consumer, nor that the solicitor seek applications for its own insurance. When Land Title approached a middleman for the purpose of receiving an application (from that middleman's customers) for a CTIC insurance policy, the Court said, Land Title was soliciting for CTIC. This is exactly what Stewart Title did in being selected, via Rainier Title, as the preferred provider of services to Nest Financial. As the Court succinctly noted, if an issuing title insurance agent had no authority to attract customers in the first instance, then its authority to issue and effectuate [or "sell," in the current statutory terminology] insurance contracts would be meaningless.

The fact that Stewart Title's direct operations theoretically competed with Rainier Title is irrelevant in regard to imputation of Rainier Title's regulatory violations to Stewart Title. Nor is it important that, as such, Stewart Title was kept from Rainier Title's marketing secrets. The referral to Nest Financial was right on the face of Rainier Title's website! No need to inspect the ledger or the books or warn Rainier Title to beware of co-advertising to discover or discourage the violation. Both Stewart Title and Rainier Title were well aware of the statute and regulation, but simply disagreed that the referral to Nest Financial on the website violated either of them. That Rainier Title provided the advertisement and link for free is also irrelevant; the problematic value was to Nest Financial, and need not have been a cost to Rainier Title. Nor does the number of violations make any legal difference between the CTIC case and this case.

The attempt by Stewart Title to distinguish the scope of an appointment of a title insurance agent between the old and new versions of RCW 48.17.010 makes no sense in light of the entirety of the Supreme Court opinion. The ability to "sell" insurance without the concurrent ability to "solicit," as broadly defined by the Court, would be meaningless. This is particularly true in title insurance, when the likelihood of an actual consumer popping in to purchase a title insurance policy is about nil. There is simply no evidence in the record that Stewart Title forbade Rainier Title from any activity on its behalf other than "selling" title insurance. The addition of the words in the revised statute, "solicit" and "negotiate," only clarified the component parts of what an insurance transaction had already generally consisted. That is really the core principle of the Supreme Court ruling in CTIC.

There are no differences between the CTIC case and this case of sufficient merit to come to a different conclusion than the Supreme Court's in CTIC. The Office of the Insurance Commissioner's request for sanctions against Stewart Title for the regulatory violation of Rainier Title should therefore be granted.

Respectfully submitted this 9th day of September, 2013


Marcia G. Stickler
OIC Staff Attorney