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David C. Neu, Esq., D.C.  
Attorney at Law  
D (206) 370-8125  
F (206) 370-6289  
david.neu@klgates.com

**VIA E-MAIL AND MESSENGER**

Mike Kreidler  
State Insurance Commissioner  
Office of Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255

Marcia G. Stickler  
Staff Attorney  
Legal Affairs Division  
Office of Insurance Commissioner  
P.O. Box 40255  
Olympia, WA 98504-0255

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INSURANCE COMMISSIONER  
LEGAL AFFAIRS DIVISION

**REQUEST FOR HEARING**

Re: *In the Matter of Fidelity National Title Insurance Co., Chicago Title Insurance Co., and Commonwealth Land Title Insurance Co., Order to Cease and Desist No. 11-0158*

Dear Commissioner Kreidler:

Fidelity National Title Insurance Co., Chicago Title Insurance Co., and Commonwealth Land Title Insurance Co. (collectively, "the Title Companies"), and their affiliates, request a hearing pursuant to RCW 48.04.010. The Office of the Insurance Commissioner ("OIC") has ordered the Title Companies to cease and desist from "offering discounts to producers of title insurance business and associates of producers of title insurance business, through EC Purchasing or otherwise, in violation of RCW 48.29.210(2)." See Order No. 11-0158, Order to Cease and Desist dated June 29, 2011 (the "Order").

**A. The Scope of the Order is Beyond the Authority of OIC**

The scope of the Order is overly broad. The Order applies to "affiliates" of the Title Companies and therefore improperly attempts to regulate entities that do not fall within the

regulatory authority of the OIC. The Title Companies at issue are just three of many subsidiaries of the holding company Fidelity National Financial, Inc. ("FNF"). The vast majority of FNF subsidiaries, including EC Purchasing ("ECP"), are not title insurance companies. Under the Order, these entities, despite having no connection to the title insurance business and an attenuated connection to the Title Companies themselves, are considered "affiliates" of the Title Companies. Inclusion of all "affiliates" within the Order improperly regulates the activities of companies that do not have any connection to the title insurance business other than a tangential corporate affiliation with the Title Companies.

## **B. Legal Authority for Relief to be Demanded at Hearing**

### **1. The Insurance Commissioner Lacks Authority to Regulate ECP and Other FNF Subsidiaries.**

The regulatory authority of the Insurance Commissioner is granted by RCW 28.02.060. The power of the Insurance Commissioner extends to persons or transactions that fall within the scope of the Insurance Code, RCW 48.02 (the "Code"). The Code applies to insurance and insurance transactions within the State of Washington. RCW 48.01.020.

The Order instructs *affiliates* of the Title Companies to cease and desist from conduct that violates RCW 48.29.210(2) (emphasis added). Many of the subsidiaries of FNF, while "affiliates" of the Title Companies and therefore within the scope of the Order, do not conduct title insurance transactions, nor are they involved in the issuing of title insurance within the State of Washington. ECP, for example, does not fall within the regulatory authority of the Insurance Commissioner because it is not an Insurer as defined under RCW 48.01.050, nor does it conduct insurance transactions within the State of Washington. RCW 48.01.060. ECP is separate and distinct from both the Title Companies as well as the title insurance business.<sup>1</sup>

Furthermore, the Order exceeds the authority of the OIC because it orders non-title insurers to cease and desist activities which are not violations of the Washington Insurance Code or regulations. RCW 48.29.210(2), the statutory predicate for the Order, provides:

(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.

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<sup>1</sup> FNF is a Delaware corporation and is the ultimate parent company in an extensive holding company system. Fidelity National Title Group, Inc. ("FNTG") is one subsidiary of FNF. The Title Companies at issue are subsidiaries of FNTG. Another subsidiary of FNF is FNTS Holdings, Inc. ("FNTS"). FNTS is the parent company of a subsidiary, Rocky Mountain Support Services, Inc. ("Rocky"), an Arizona corporation that does not have any insurance function. ECP is a subsidiary of Rocky, and likewise, does not have any insurance function.

On its face, RCW 48.29.210 only governs conduct by title insurers or their employees, agents, and representatives. RCW 48.29.210 does not prohibit non-title insurers from providing goods or services to persons in the State of Washington in the ordinary course of their business.

For these reasons, the Order exceeds the statutory and regulatory authority of the OIC.

## **2. The Title Companies Have Not Violated RCW 48.29.210(2)**

The Order erroneously alleges that the Title Companies have violated RCW 48.29.210(2) by offering discounts through ECP. *See* Order, ¶ 2. RCW 48.29.210(2) states:

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.

A “thing of value” is defined in WAC 2384-29-205(12) as:

[A]nything that has a monetary value. It includes but is not limited to cash or its equivalent, tangible objects, services, use of facilities, monetary advances, extensions of lines of credit, creation of compensating balances, title company employee time, advertisements, discounts, salaries, commissions, services at special prices or rates, sales or rentals at special prices or rates, and any other form of consideration, reward or compensation.

The purpose of RCW 48.29.210 is to prevent influences which may affect a title insurance agent’s ultimate responsibilities to the customer. The Title Companies and affiliates at issue have not violated the letter or the spirit of this statute. ECP is not a service or benefit provided by the Title Companies and the Title Companies do not offer “anything of value” directly or indirectly through ECP. As previously stated, ECP is a separate subsidiary of an entity which has no affiliation with the title insurance business other than that it is just one of many subsidiaries of FNF.

Though ECP operates by way of a membership system, membership in ECP is not an inducement. Membership is open to the general public and is not restricted to FNF, its subsidiaries, or its employees. Much like other association memberships—Sam’s Club and Costco to name a few—membership in ECP is not exclusive and is available to both groups and companies with no connection to the title insurance business. Hundreds of organizations and distributors, from medical suppliers to consumer marketing groups, participate in ECP. Participants in ECP do not receive anything of value—directly or indirectly—intended to influence a title insurance choice.

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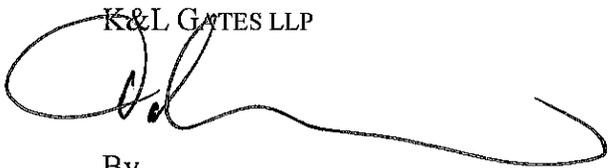
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**C. Relief Requested**

The Title Companies, and, due to the wording of the Order, "affiliates" of the Title Companies, request a hearing regarding the Order. For the reasons stated above and for reasons to be stated at the hearing, the Title Companies and "affiliates" of the Title Companies, respectfully request that the Insurance Commissioner withdraw the Order.

Very truly yours,

K&L GATES LLP

A handwritten signature in black ink, appearing to read 'D. Neu', with a long, sweeping horizontal flourish extending to the right.

By  
David C. Neu

DCN:dcn  
Enclosure