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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

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BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of

FIRST AMERICAN TITLE INSURANCE
COMPANY,

Authorized Title Insurer.

ORDER NO. 15-0166

WAOIC No. 461
NAIC No. 50814

**FIRST AMERICAN TITLE
INSURANCE COMPANY'S
OPPOSITION TO OIC MOTION
TO QUASH DEPOSITION**

The Motion by Office of the Insurance Commissioner ("Department") should be denied. The purpose of the Department's Motion is to avoid the deposition of AnnaLisa Gellermann who is an important witness. No evidence or law is proffered in support of the Department's Motion and the Motion fails to comply with the requirements of CR(26)(c).

A. MS. GELLERMAN IS A MATERIAL AND PROPER WITNESS

Ms. Gellermann is a material witness in this case. Ms. Gellermann played a central role in this matter. She is the Deputy Commissioner for Legal Affairs with the Department. Department Motion 2. Her department oversaw the investigation in this matter and Ms. Gellermann made and implemented decisions affecting First American in all matters related to this hearing.

The Department identified Ms. Gellermann in response to written discovery as having been involved in the decision to file this case, and one of the persons specifically involved in



1 the "decision to assess \$100,000 fine" against First American Title Insurance Company ("First
2 American") and a person who was involved in the determination of the methodology used in
3 this process. *Declaration of Jerry Kindinger in Opposition to Department Motion to Quash*
4 *Deposition* ("Kindinger Dec."), Exhibit A, *see Responses to Interrogatories*, Nos. 3 and 4.

5 One of Ms. Gellermann's investigators, Barry Walden, was assigned to investigate a
6 complaint from a competitor of First American's which underlies this action. Mr. Walden's
7 investigation was woefully flawed. Based upon what he has now testified were untruthful
8 statements made by the complainant, Mr. Walden filed an investigative report in May of last
9 year. *Kindinger Dec.*, ¶ 3. In June, based upon that flawed report, Ms. Gellermann directed an
10 action to be taken against First American and instructed her enforcement specialist, Marcia
11 Stickler, to send First American a Consent Order inviting the Company to agree to pay a
12 \$100,000 fine. First American believed then (and now) that it had done nothing wrong. It
13 investigated the allegations of the Consent Order which adopted investigator Walden's
14 conclusions. *Kindinger Decl.*, ¶ 4. Sworn declarations were obtained from third parties which
15 established the falseness of the allegations in the Consent Order which were submitted to Ms.
16 Stickler for Ms. Gellermann's consideration along with the Company's request to informally
17 explore a constructive resolution of the Department's concerns. *Kindinger Dec.*, Ex. B. Ms.
18 Gellermann ignored the Company's request, instructed the prior Consent Order to be redrafted
19 with some different allegations and filed the present Notice of Request for Hearing for
20 Imposition of Fine dated December 15, 2015. This document also contains incorrect
21 allegations. As of yesterday, investigator Walden testified that he is unaware of any evidence
22 that supports several allegations in several paragraphs of the existing Notice of Hearing.
23 *Kindinger Dec.*, ¶ 3.

24 We want to examine Ms. Gellermann on matters for which she has been identified in
25 written discovery as a percipient witness. In addition, if investigator Walden has no evidence
26 to support many of the allegations in the Notice of Hearing, we want to inquire of Ms.



1 Gellermann what specific evidence she is aware of to support the allegations in the Notice of
2 Hearing which she directed to be filed against the Company.

3 First American tried to obtain, through written discovery, documents and evidence
4 which the OIC possessed specifically related to the allegations in the Notice of Hearing filed in
5 December. *Kindinger Dec.*, Ex. A. By separate email which accompanied the written requests
6 of First American sent to Ms. Stickler, we requested the Department to provide or identify
7 specific documents responsive to each request for production rather than a general reference to
8 a file that was produced seven months earlier in connection with the earlier defective Consent
9 Order. *Kindinger Dec.*, Ex. C. The Department wholly ignored this request. It declined to
10 identify or produce documents responsive to specific requests, responding to several requests
11 vaguely: "included in OIC discovery produced in July 28, 2015." *E.g. Kindinger Dec.*, Ex. A,
12 request numbers 1-5.

13 Responses to requests for production are governed by CR 34, which states in relevant
14 part:

15 A party who produces things, electronically stored information, or documents
16 for inspection shall produce them as they are kept in the usual course of business
or shall organize and label them to correspond with the categories in the request.
17 CR 34(b)(3)(F)(i). This rule is further supported by the general policy underlying all civil rules
18 of procedure governing discovery, that parties' responses must (1) comply with the rules, (2)
19 not be interposed for an improper purpose, and (3) not be unreasonably or unduly burdensome
20 or expensive. *Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d
21 299, 344, 858 P.2d 1054 (1993). Furthermore, the OIC's failure to properly identify which
22 documents correspond with the categories in the requests for production is not in compliance
23 with the requirements of Civil Rules 33 and 34.

24 As the ranking member of the Legal Affairs Division of the OIC who apparently
25 directed this action against First American, we also intend to inquire of Ms. Gellermann what
26 knowledge or evidence she has regarding the subjects identified in the written requests. This is



1 particularly important because investigator Walden has testified he is unaware of any evidence
2 supporting many of the present allegations.

3 In her position, Ms. Gellermann was and is the ranking person in the department who
4 made the decision "in June 2015 that an offer of settlement should be made to First American."
5 However, the Department never issued a Cease and Desist Order and never formally assessed
6 a fine.¹ Whether a fine has ever been assessed against First American in this matter and in what
7 form lies within the knowledge and purview of Ms. Gellermann as a Deputy Commissioner of
8 Legal Affairs. The so-called "settlement offer" from the Department did not apprise First
9 American of anything other than the fact of an ongoing investigation without the initiation of
10 any formal proceedings. In response to the Department's "settlement offer," First American
11 provided the Department sworn declarations which established that the Department's claims
12 were inaccurate.

13 Whether the Department has acted in an arbitrary or unreasonable manner is a proper
14 subject for this hearing. Ms. Gellermann's role, if any, in that conduct is material and
15 admissible. Whether a fine has ever been assessed against First American in this matter is also
16 material to this proceeding. First American is entitled to obtain this information and is entitled
17 to prepare and present its defense. Ms. Gellermann's testimony is necessary to do so.

18 **B. Legal authority supports First American's right to take this deposition.**

19 In a lengthy Prehearing Order dated January 5, 2012, this tribunal made clear that
20 Washington Court Rules apply to this proceeding. CR 26(b)(1) authorizes and defines a broad
21 scope of discovery:
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25 _____
26 ¹ We believe one of these actions was required to be formerly undertaken as a necessary
condition for the underlying hearing process.



1 Parties may obtain discovery regarding any matter, not privileged, which is
2 relevant to the subject matter involved in the pending action.... It is not ground
3 for objection that the information sought will be inadmissible at the trial if the
information appears reasonably calculated to lead to the discovery of admissible
evidence.

4 Neither the knowledge nor the involvement of Ms. Gellermann in this matter is privileged. She
5 has firsthand information involving this matter as well as supervisory authority involving all
6 stages of this matter. Her decisions and the bases for them are appropriate subjects for
7 deposition. They are not only reasonably calculated to lead to the discovery of admissible
8 evidence, but they are undoubtedly themselves relevant and admissible.

9 **C. OIC FAILED TO COMPLY WITH CR 26(c)**

10 CR 26(c) requires litigants seeking a protective order to establish "good cause shown"
11 as a precondition of motions for protective orders. No such good cause is shown here. Without
12 any support, the Department alleges that First American "wants to inconvenience and harass
13 Ms. Gellermann." OIC Motion, page 3. This accusation is entirely untrue.

14 First American set Ms. Gellermann's deposition only after contacting her
15 representative, Ms. Sticker, and allowing Ms. Gellermann and Ms. Stickler to select the date
16 and time that was convenient/available for both of them. *Kindinger Dec.*, ¶ 7. In doing so, First
17 American committed to limit the time of the deposition to one-half day.

18 **CONCLUSION**

19 First American respectfully requests that the Department's motion be denied. The
20 deposition of Ms. Gellermann was properly and reasonably set. She is expressly identified in
21 responses to written discovery promulgated by First American. In addition, First American has
22 good faith basis to believe she has additional information and knowledge. The deposition of
23 Ms. Gellermann was set in a respectful and reasonable manner only after first contacting her
24 legal representation, Ms. Marcia Stickler, and coordinating dates and times for the deposition.



1 The deposition of Ms. Gellermann is material to the preparation and presentation of First
2 American's case and it will not unreasonably inconvenience her.

3 RESPECTFULLY SUBMITTED this 24th day of February, 2016.

4 RYAN, SWANSON & CLEVELAND, PLLC

5
6 By 
7 Jerry Kindinger, WSBA #5231
8 Attorneys for First American

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DECLARATION OF SERVICE

I hereby declare as follows:

1. I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within action. I am employed by the law firm of Ryan, Swanson & Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington, 98101-3034.

2. On the 24th day of February, 2016, I caused to be served the foregoing document upon the individuals listed below, at the address and in the manner described:

Mr. William Pardee, Presiding Officer	<input checked="" type="checkbox"/>	U.S. Mail
Washington State Insurance Commissioner	<input type="checkbox"/>	Hand Delivery
PO Box 40255	<input checked="" type="checkbox"/>	E-mail (dorothis@oic.wa.gov)
Olympia, WA 98504-0255	<input type="checkbox"/>	Facsimile

Ms. Marcia G. Stickler	<input checked="" type="checkbox"/>	U.S. Mail
Insurance Enforcement Specialist	<input type="checkbox"/>	Hand Delivery
Office of the Insurance Commissioner	<input checked="" type="checkbox"/>	E-mail (marcias@oic.wa.gov)
Legal Affairs Division	<input type="checkbox"/>	Facsimile
PO Box 40255		
Olympia, WA 98504-0255		

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 24th day of February, 2016 at Seattle, Washington.



Susan Smith