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2016 MAY 13 P 2:21

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

In the Matter of

**First American Title Insurance
Company,**

Authorized Title Insurer.

Docket No. 15-0166

OIC'S REQUEST FOR RECONSIDERATION
OF FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND FINAL ORDER

1. The Office of the Insurance Commissioner's ("Insurance Commissioner" or "OIC") staff respectfully requests that you reconsider your ruling in regard to the ability to fine an insurer on a per violation basis under RCW 48.05.185. Although the words "per violation" are not contained in this statute, legally and practically they should be deemed to have been included.

2. RCW 48.05.140 provides that an insurer may be sanctioned if it "fails to comply with *any* provision of this code"; a *single* occurrence of a statutory or regulatory violation can justify a suspension or revocation. RCW 48.05.185 permits substitution of a fine of between \$250 and \$10,000 for such failure, in lieu of (or in addition to) the sanction established in RCW 48.05.140. RCW 48.05.185 cannot be read in isolation from RCW 48.05.140. Nothing in RCW 48.05.185 alters the number of violations that the Insurance Commissioner may consider under RCW 48.05.140; each occurrence of a violation justifies either suspension, revocation, and/or the imposition of a fine. Because the Insurance Commissioner is free to impose a penalty for each failure to comply with the insurance code under RCW 48.05.140, he is also authorized to levy a fine for each violation when using the alternative penalty found in RCW 48.05.185.

3. The legislative history of SSB 6847, cited in your order, in 2008 codified RCW 48.29.005 and RCW 48.29.210. That history states unequivocally that “the OIC may fine title companies \$10,000 for each violation.” Final Order, Conclusions of Law, paragraph 6, page 9. Although this is not direct legislative history regarding RCW 48.05.185, subsequent legislative views are entitled to significant weight under *Seatrains Shipbuilding Corp. v. Shell Oil Co.*, 444 U.S. 572, 596, 63 L. Ed. 2d 36, 100 S. Ct. 800 (1980). The Legislature has clearly expressed its view that the OIC’s authority to fine is based on each violation.

4. Failing to recognize the OIC’s ability to fine companies per violation would severely hamper the agency’s mission to protect consumers, and would encourage misconduct by insurers, and cannot be the intent of the legislature. The result would be that regardless of how numerous or egregious the violations, an insurer would only have to pay a maximum of \$10,000 fine. This sum would have almost no deterrent effect on a major insurer, and could be easily dismissed a “cost of business.” In order to levy meaningful fines, the agency would have to issue a separate order and conduct a separate hearing for each violation. While this action would clearly be within the OIC’s power, this would be an absurd result, leading to inefficiency and delay affecting all parties. Companies that would otherwise have one fine as a result of one hearing or settlement would have numerous fines, orders, or hearings for what may be one course of conduct. This is the kind of absurd result that the Legislature could not have intended.

5. The OIC has interpreted its fine authority over companies consistently for more than 20 years, and consistently enforced penalties against companies on a per violation basis. This practice has never been successfully challenged, and has been tacitly accepted by the courts, including the Washington Supreme Court in *Chicago Title Insurance Company v. Office of the Insurance Commissioner*, 178 Wn.2d 120, 309 P.3d 372 (2013), in which the OIC was upheld in imposing a fine against Chicago Title Insurance Company of \$48,334 for numerous violations of the insurance code. No mention was made of the fine amount exceeding \$10,000. Chicago Title paid the fine. *See* Order 13-0273.

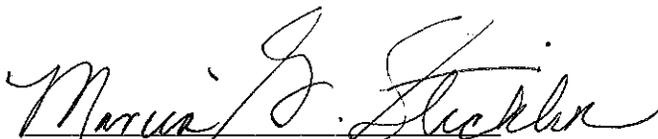
6. The OIC’s interpretation, as demonstrated by its practices over an extended period of time, is entitled to deference. The interpretation of any statute is made stronger when it follows the long-standing construction of the agency charged with administering the statute.

See *Seattle-King County Council of Camp Fire v. State Dep't of Revenue*, 105 Wn.2d 55, 65 (1985). As the Washington Supreme Court noted with respect to another chapter of the insurance code, “[t]he practices of the Insurance Commissioner at the time of and since the enactment . . . reflect the understanding the Commissioner has of this chapter of the insurance code he is charged with enforcing.” *Retail Store Employees Union v. Wash. Surveying & Rating Bureau*, 87 Wn.2d 887, 898 (1976) (regarding interpretation of Chapter 48.19 RCW). Furthermore, “the persuasive force of such interpretation is strengthened when the legislature, by its failure to amend or by amending some other particular without repudiating the administrative construction, silently acquiesces in the administrative interpretation.” *Seattle-King*, 105 Wn.2d at 66 (quoting *Hart v. Peoples Nat'l Bank*, 91 Wn.2d 197, 201 (1978)). As noted above, the OIC’s consistent practice should be followed in interpreting RCW 48.05.185.

7. The title insurance industry has a long history of inducements to middlemen that increase costs to consumers with no real benefit to consumers. So any decision limiting the Insurance Commissioner’s ability to protect consumers could be considered a decision that “establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law.” RCW 34.05.010(16)(d).

8. For the above-stated reasons, the OIC staff respectfully asks you to reconsider your ruling in regard to the limitations of the fining authority of RCW 48.05.185 in this matter.

Dated at Tumwater, Washington, this 13th day of May 2016.


MARCIA G. STICKLER, JD, LLM
Insurance Enforcement Specialist
Legal Affairs Division

CERTIFICATE OF MAILING

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 action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing OIC'S REQUEST FOR RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER on the following individuals in the manner indicated:

Via Hand Delivery

William Pardee, Presiding Officer
Office of the Insurance Commissioner
5000 Capitol Blvd
Tumwater, Washington

Via email and U.S. Mail Via State Consolidated Mail Service With Proper Postage Affixed

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Dated this 13th day of May, 2016, in Tumwater, Washington.



JOSH PACE
Secretary Senior
Legal Affairs Division