

**FILED**

2016 FEB 17 A 7:37

BEFORE THE STATE OF WASHINGTON  
OFFICE OF THE INSURANCE COMMISSIONER  
HEARINGS UNIT  
OFFICE OF  
INSURANCE COMMISSIONER

*In the Matter of*

**First American Title Insurance  
Company,**

Authorized Title Insurer.

Order No. 15-0166

WAOIC No. 461

NAIC No. 50814

**MOTION TO QUASH NOTICE OF  
PROPOSED DEPOSITION**

1. First American Title Insurance Company ("First American") is an authorized title insurer domiciled in Nebraska and duly authorized to engage in the business of title insurance in the state of Washington since January 2, 1969.

2. The Insurance Commissioner ("Commissioner") has the authority to conduct hearings to determine if a licensee or authorized insurer has violated the Insurance Code under RCW 48.04.010. The Commissioner can delegate his responsibilities to "any deputy, assistant, examiner or employee of the Commissioner acting in his or her name and by his or her authority." RCW 48.02.100. The Compliance Committee is a group consisting of the Deputy Commissioners and the Assistant Attorney General who meet regularly to discuss and determine sanctions when an investigation has revealed wrongdoing on the part of an authorized insurer. Within statutory boundaries, the Compliance Committee has complete discretion to determine an appropriate sanction.

3. In the matter now under consideration, the Compliance Committee determined in June 2015 that an offer of settlement should be made to First American, fining it \$100,000 for providing a class in contravention of regulations at WAC 284-29-205 to 265. First American declined to enter into the Consent Order offered by the Commissioner and a hearing was noted

MOTION TO QUASH SUBPOENA FOR  
DEPOSITION  
ORDER NO. 15-0166

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State of Washington  
Office of the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

up. The ultimate decision as to First American's culpability, if any, and an appropriate sanction is up to the presiding officer, not the Compliance Committee.

4. First American has issued a Notice of Deposition to AnnaLisa Gellermann, Deputy Commissioner for Legal Affairs, who chairs the Compliance Committee. She is not a witness in this case. First American has made no showing that deposing Ms. Gellermann is required to develop relevant evidence. The mere allegation that Ms. Gellermann may have executed her responsibility on the Compliance Committee in a way that First American does not like does not justify deposing her. A party is not entitled to probe the deliberations of administrative officials except under exceptional circumstances. None such circumstances are present here.

5. The Compliance Committee's deliberations are not the proper subject of judicial review, and therefore they cannot lead to evidence that is relevant to any claim or defense in this case. Probing into the deliberations of the agency members requires a threshold showing of relevance, which is absent here. First American must demonstrate that a deposition is necessary to its defense against the allegations of wrongdoing. Because First American has made no such showing, the Notice of Deposition should be quashed, and a protective order be issued to prevent further inquiries on the Compliance Committee deliberations. First American may review the memorandum given to the Compliance Committee members in this case, and the list of considerations it uses in arriving at offers of settlement. But Ms. Gellermann's personal opinion of First American's actions is not relevant.

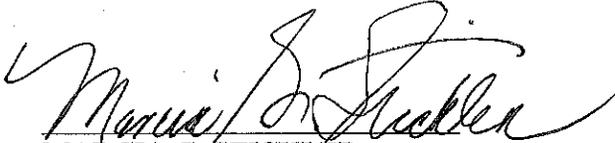
6. It is axiomatic that parties may only obtain discovery of non-privileged matters that are relevant to the subject matter involved in the action and reasonably calculated to lead to the discovery of admissible evidence. Because First American seeks review of matters committed to the Commissioner and his delegated staff, their discovery can lead to no relevant evidence.

7. First American knows how the Compliance Committee operates. Ms. Gellermann and the other members of the Committee were given basic information regarding the alleged violations of the regulations and determined an offer of settlement. First American knows that Ms. Gellermann has no other information that will lead to admissible evidence regarding the

actions of First American. First American simply wants to inconvenience and harass Ms. Gellermann and rack up billable hours.

Respectfully submitted,

Dated at Tumwater, Washington, this 16<sup>th</sup> day of February 2016.

  
MARCIA G. STICKLER  
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 MOTION TO QUASH NOTICE OF PROPOSED DEPOSITION on the following individuals in the manner indicated:

**Via Hand Delivery**

William Pardee, Presiding Officer  
Washington State Insurance Commissioner  
5000 Capitol Blvd  
Tumwater, Washington

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

Jerry Kindinger  
Ryan, Swanson & Cleveland PLLC  
1201 Third Avenue Suite 3400  
Seattle, WA 98101-3034

Dated this 17th day of February, 2016, in Tumwater, Washington.



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JOSH PACE  
Secretary Senior  
Legal Affairs Division