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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE OFFICE OF INSURANCE COMMISSIONER

In re the Matter of

**CHICAGO TITLE INSURANCE
COMPANY,**

An authorized insurer.

Docket No. 2008-INS-0002
OIC No. D07-308

RESPONSE BY CHICAGO TITLE
INSURANCE COMPANY TO NOTICE
OF HEARING

TO: Hon. Cindy L. Burdue
Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Ct. S.W.
P.O. Box 9046
Olympia, WA 98507-9046

Without waiving its right to provide additional responses at a later date, Chicago Title Insurance Company ("CTIC"), by and through its undersigned counsel, hereby responds to the Office of the Insurance Commissioner's ("OIC's") Notice of Hearing as follows:

1. PARTIES AND JURISDICTION

1.1 CTIC admits that the Insurance Commissioner is, pursuant to the Insurance Code, Title 48 RCW, authorized to regulate the business of insurance and enforce the insurance laws of the Washington State to protect the public interest.

1.2 CTIC admits that it is authorized to transact the business of insurance in Washington State and that it is subject to Title 48 RCW and Chapter 284 WAC. CTIC denies that the OIC has named the correct party in this action and maintains that the OIC has failed to

RESPONSE BY CHICAGO TITLE INSURANCE
COMPANY TO NOTICE OF HEARING - 1

join a necessary and indispensable party, Land Title Company of Kitsap County, Inc. ("Land Title").

1.3 CTIC admits that jurisdiction and venue are appropriate.

2. FACTS

2.1 Land Title has its own title plant, solicits business on its own behalf and contracts with CTIC and others, as an authorized underwriter under Washington law, to underwrite risks less a contractually agreed deductible dollar amount. Under Washington law, a title company such as Land Title is not an "agent" within the meaning of RCW 48.17.010. *See, e.g., Fidelity Title Company v. Dep't of Revenue*, 49 Wn. App. 662, 669-70, 745 P.2d 530 (1987).

Accordingly, CTIC denies that it appointed Land Title as its agent pursuant to RCW 48.17.010. Furthermore, CTIC denies that all contracts of insurance effectuated by Land Title on properties in Kitsap County, Washington are placed with CTIC.

2.2 CTIC denies that on or about May 15, 2007, the OIC initiated an investigation of CTIC. The OIC alleges only that it commenced investigating Land Title at its business office in Silverdale, Washington; it does not allege that the OIC gave CTIC formal notice of the initiation of an investigation of Land Title. CTIC denies, for lack of information or knowledge, the allegations relating to the OIC's investigation of Land Title.

2.3 CTIC denies, for lack of information or knowledge, the allegations relating to what the OIC's investigation of Land Title revealed. CTIC denies, for lack of information or knowledge, the specific allegations in paragraphs (a) through (h) regarding Land Title's conduct. CTIC denies that Land Title's alleged conduct was as a representative of CTIC and soliciting insurance business on CTIC's behalf. The agreement between CTIC and Land Title limits the authority of Land Title to receiving and processing applications for title insurance, determining the insurability of any title, and issuing CTIC underwritten policies. Furthermore, CTIC notes that the OIC does not allege that its investigation revealed that any of the referenced expenditures were made for "placing or causing title insurance business to be given to the title

insurer” as required by WAC 284-30-800; therefore CTIC denies that a violation of WAC 284-30-800 occurred.

3. APPLICABLE LAW AND ALLEGED VIOLATIONS

3.1 CTIC admits the legal requirements of WAC 284-30-800(2), but denies that the provisions of that regulation are applicable to CTIC in this matter.

3.2 CTIC admits the legal requirements of WAC 284-30-800(3), which describe the persons referenced in WAC 284-30-800(2), but denies that the provisions of that regulation are applicable to CTIC in this matter.

3.3 CTIC denies that it violated WAC 284-30-800 through the conduct of Land Title. CTIC denies that it gave inducements, payments, or rewards exceeding twenty-five dollars in value, per person per year, to real estate agents and brokers, mortgage loan brokers or lenders, and builders, in the seventeen instances identified in Paragraph 2.3. The OIC has identified no statute or regulation providing that it may hold a title insurer responsible for the conduct of an independent title company such as Land Title. The OIC lacks the authority to determine liability or impose a fine that is not based on a violation of the insurance code or a duly promulgated regulation. Furthermore, OIC has not alleged that any of the expenditures by Land Title were made for “placing or causing title insurance business to be given to the title insurer” within the meaning of WAC 284-30-800.

4. SANCTIONS REQUESTED

CTIC objects to the OIC’s request for sanctions on the basis that the OIC lacks the legal authority to impose the sanctions. The OIC identifies RCW 48.05.185 as the statutory basis for seeking a fine against CTIC in the amount of \$145,000. RCW 48.05.185 authorizes the OIC to “levy a fine upon [an] insurer in an amount not less than two hundred fifty dollars and not more than ten thousand dollars” only “in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of authority.” RCW 48.05.185. The OIC has not initiated proceedings to suspend or revoke CTIC’s certificate of authority, nor has it refused to renew the certificate. Accordingly, RCW 48.05.185 does not apply to this proceeding. Additionally, RCW 48.05.185

does not provide for the stacking of multiple fines. RCW 48.05.185 clearly limits the OIC's authority to impose a fine to "not more than ten thousand dollars."

RCW 48.30.010(5), which the OIC does not cite, is the statutory provision that authorizes fines for "unfair or deceptive acts or practices" pursuant to regulations promulgated by the OIC such as WAC 284-30-800. It authorizes fines for violations occurring after issuance of a cease and desist order, and it authorizes a per violation fine "not to exceed two hundred and fifty dollars for each violation" The OIC has not issued a cease and desist order to CTIC, nor to Land Title. Accordingly, the OIC lacks the authority to impose a fine against any party with respect to the alleged violations at issue.

5. NOTICE OF HEARING

CTIC objects to the OIC's basis for convening a hearing on this matter, because the OIC has failed to state a claim against CTIC. The OIC has failed to identify any regulation or statute that permits it to bring this action against CTIC for the alleged conduct of Land Title; it has failed to allege any expenditure was made by Land Title for the "placing or causing title insurance business to be given to the title insurer" within the meaning of WAC 284-30-800, and it has failed to issue a cease and desist order, which is a prerequisite to assessing fines for the alleged violations.

6. NOTICE OF REQUEST FOR BIFURCATION

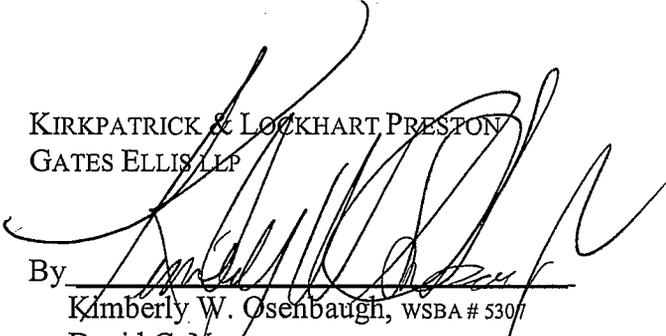
CTIC hereby gives notice that it requests that the issue of whether CTIC is liable for the alleged conduct of Land Title be bifurcated and decided before the issue of whether the expenditures alleged in Paragraph 2.3 violate WAC 284-30-800. Such bifurcation will allow for the fair and just determination of whether the OIC has the authority to pursue this action against CTIC prior to forcing CTIC to defend against allegations about transactions to which it was not a party. CTIC will file a formal Motion to Bifurcate the issues in this matter.

7. RESERVATION OF RIGHTS

CTIC reserves the right to amend and supplement this Response and to add other defenses.

DATED this 27th day of March, 2008.

KIRKPATRICK & LOCKHART PRESTON
GATES ELLIS LLP

By 

Kimberly W. Osenbaugh, WSBA # 5307

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CERTIFICATE OF SERVICE

The undersigned declares and states as follows:

1. I am a resident of the State of Washington, over the age of 21 years, not a party to the above-entitled action, and am competent to be a witness.

2. On March 27, 2008, I caused to be served by depositing into the United States mail, first-class postage prepaid, envelopes containing a copy of the **Response by Chicago Title Insurance Company to Notice of Hearing** herein, addressed to the following parties:

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

I declare under penalty of perjury according to the laws of the State of Washington that the above statements are true and correct.

SIGNED at Seattle, Washington, this 27th day of March, 2008.



Joni L. Lagenour

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