

The Honorable Cindy L. Burdue
Hearing Scheduled: Oct. 8, 2008
With Oral Argument

RECEIVED
SEP 09 2008
OAH - Olympia

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

In Re:
CHICAGO TITLE INSURANCE COMPANY,
An authorized insurer

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

CHICAGO TITLE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT RE:
AGENCY LIABILITY

I. INTRODUCTION

The Washington Office of the Insurance Commissioner (the "OIC") seeks to impose fines, totaling \$145,000, against Chicago Title Insurance Company ("CTIC"), a Missouri corporation, for alleged violations of WAC 284-30-800 (the "Inducement Regulation") by Land Title Company of Kitsap County ("Land Title"), a Washington corporation;¹ Land Title is not a party to this OIC action.

The OIC's motivation in seeking to fine CTIC rather than Land Title is unclear. It is clear, however, that there is no legal or factual basis for the imposition of liability on CTIC for the acts of

¹ This case has been bifurcated. The issue in Phase I is whether CTIC is legally responsible for the marketing conduct of Land Title. Whether the conduct of Land Title violates the Inducement Regulations is reserved for Phase II. See First Pre-Hearing Order dated April 1, 2008.

1 Land Title - an independent title company. Neither the Washington statutes nor common law
2 provide authority for the OIC to penalize title underwriters for the alleged misdeeds of underwritten
3 title companies. In the absence of such authority, the OIC's actions amount to nothing more than
4 impermissible *de facto* rule-making. Accordingly, CTIC is entitled to an order granting summary
5 judgment dismissing this proceeding.

6 II. BACKGROUND

7 A. CTIC's direct operations.

8 CTIC is a Missouri corporation engaged in the business of title insurance nationally.
9 Declaration of Brad London ("London Decl."), ¶2. CTIC was founded in 1961, and has been
10 operating in Washington since 1977. *Id.* CTIC has direct operations in eight Washington counties
11 in which it maintains or subscribes to a title plant² - King, Snohomish, Pierce, Whatcom, Thurston,
12 Clark, Benton and Grant. In these counties, CTIC offers both title insurance products and other
13 services such as closing and escrow services. *Id.*, ¶3.

14 In the counties in which CTIC has direct operations, it maintains sales personnel which
15 market CTIC's escrow and title products to customers in those counties. *Id.*, ¶4. CTIC does not
16 conduct any marketing or sales efforts in counties, such as Kitsap, in which CTIC does not maintain
17 or subscribe to a title plant and does not have direct operations. *Id.*

18 B. CTIC's Relationship with Underwritten Title Companies.

19 In the State of Washington there are a number of independent title companies that provide
20 title insurance, most often in markets in which national title companies do not have direct operations.
21 These independent title companies are commonly known as "independent agents" or "underwritten
22 title companies" ("UTCs"). Declaration of Don Randolph ("Randolph Decl."), ¶2. Because UTCs
23

24 ² A title plant, in essence, collects all documents recorded as to real property in that jurisdiction
25 (counties, in the case of Washington), and indexes them by legal description or address. This allows
26 a title company to access real property records for a specific county, indexed geographically, so that
the title company can research the state of title to any property in that county.

1 generally lack the capital required to meet the financial responsibility requirements of RCW
2 48.29.020(3), UTCs contract with larger companies, like CTIC, to provide underwriting services for
3 policies issued by the UTC. *Id.*, ¶3. UTCs often have agreements with more than one underwriter,
4 allowing them to issue policies from multiple underwriters. *Id.*

5 CTIC has underwriting agreements with eleven UTCs in Washington. *Id.*, ¶4. Under the
6 agreements, CTIC contracts to underwrite risk and hence to assume liability for claims arising under
7 policies the UTCs issue that exceed a contractually agreed amount. UTCs pay CTIC an
8 underwriting fee, typically between 12% and 15% of the title premium that the UTC charges to its
9 customer. The UTC retains 85% to 87% of the title premium. *Id.*

10 CTIC plays no role in the marketing strategies and expenditures of the UTCs with which it
11 has underwriting agreements. *Id.*, ¶5. CTIC does not play a role in the title search conducted by the
12 UTC; the UTC either owns or subscribes to a title plant in their county or counties of operation. *Id.*
13 The UTC prepares its own commitments for title insurance, which detail the exceptions to coverage.
14 *Id.* CTIC has no involvement in preparing the title policies which it underwrites, beyond providing
15 legal underwriting assistance as requested or required by the UTC. *Id.* Simply put, the UTCs
16 market their own services, which on the title side include conducting title searches, issuing
17 preliminary commitments for title insurance, addressing exceptions to title identified in the
18 preliminary commitment, and issuing title policies. CTIC does nothing more than underwrite risk.
19 *Id.* When a UTC issues a policy, CTIC only receives the following information from the UTC: (1)
20 the policy number; (2) the UTC's internal file number; (3) the effective date of the policy; (4) the
21 type of policy (included in the policy number); (5) the premium paid; and (6) the amount of liability.
22 *Id.*, ¶6. Unless an issue arises, CTIC never receives a copy of the preliminary commitment, title
23 policy, nor any documents associated with the closing of the transaction. *Id.*

24 **C. CTIC's Relationship With Land Title of Kitsap County, Inc.**

25 Land Title is a title company operating in Kitsap County, Washington. Declaration of D.
26

1 Gene Kennedy (“Kennedy Decl.”), ¶2. Land Title was founded in 1968, and has provided escrow
2 and title services to customers in Kitsap County since that time. *Id.* Land Title has branch offices
3 in Silverdale, Poulsbo, and Port Orchard. *Id.* Land Title has no corporate affiliation with CTIC, other
4 than the fact that another of the numerous subsidiaries of CTIC’s parent, Fidelity National Financial
5 Inc., owns a minority interest in the shares of Land Title stock.^{3,4} Land Title owns and operates its
6 own title plant in Kitsap County. Kennedy Del., ¶3.

7 The relationship between CTIC and Land Title is governed by a written contract which is
8 express and unambiguous as to the limited scope of the relationship between the parties, the Issuing
9 Agency Agreement,” (the “Agreement”). Randolph Decl., ¶7, Exhibit A. Under the Agreement,
10 Land Title’s authority on behalf of CTIC is limited to accepting and processing applications for title
11 insurance in accordance with prudent underwriting practices and issuing title insurance policies
12 underwritten by CTIC, on forms provided by CTIC, on Kitsap County property. Agreement, ¶3,4.
13 Land Title has authority to make determinations as to the insurability of title based on its own
14 examinations of public records and other prudent investigations. *Id.*, ¶4. Land Title has no other
15 authority under the Agreement. In fact, the Agreement specifically provides:

16 Issuing Agent shall not be deemed or construed to be authorized to do any other act for
17 principal not expressly authorized herein.

18 Agreement, ¶3.

19 Land Title has no authority to market or advertise on behalf of CTIC; in fact, paragraph 6 of
20

21 ³ CTIC is a subsidiary of Chicago Title and Trust Company (“CT Trust”), which is a subsidiary of
22 Fidelity National Title Group, Inc. Fidelity National Title Group, Inc. is a subsidiary of Fidelity
23 National Financial, Inc. Security Union Title Insurance Company (“Security Union”), a California
24 corporation, is also a subsidiary of CT Trust. Security Union owns approximately 45% of the shares
25 of Land Title. Declaration of Madeline Barewald (“Barewald Decl.”), ¶2.

26 ⁴ Even if CTIC *itself* were a shareholder of Land Title, the fact would be irrelevant to the inquiry
before the Court. A corporation is a legal entity separate and distinct from its shareholders, even
when there is a sole shareholder, and barring exceptional circumstances where grounds for piercing
the corporate veil are present, a shareholder has no liability for the obligations of a corporation.
Truckweld Equip. Co., Inc. v. Olson, 26 Wn. App. 638, 644, 618 P.2d 1017 (1980).

1 the Agreement captioned "Prohibited Acts of Issuing Agents" expressly prohibits Land Title from
2 using the name of CTIC in any of its advertising or printing, other than to indicate its authority to
3 issue policies underwritten by CTIC. *Id.*, ¶6. Land Title employs sales personnel which market its
4 services to potential customers in Kitsap County. Kennedy Decl., ¶6. Consistent with the
5 Agreement, Land Title's marketing materials do not promote its relationship with CTIC. *Id.*, ¶7. In
6 fact, Land Title does not mention CTIC at all in its marketing materials, samples of which are
7 attached to the Kennedy Decl. as Exhibits A-E.

8 Under Addendum A to the Agreement, Land Title has the right to issue title insurance
9 policies underwritten by other title insurance underwriters in certain circumstances. Agreement,
10 Addendum A. Land Title is also a party to an Issuing Agency Agreement with Old Republic
11 National Title Insurance Company, an underwriter with no relationship to CTIC. Kennedy Decl., ¶4,
12 Barewald Decl., ¶2.

13 In addition to underwritten title insurance products, Land Title offers escrow and closing
14 services, which constitute a significant portion of its revenue. Kennedy Decl., ¶5. In a typical year,
15 approximately 28% of Land Title's total revenue is from escrow services. *Id.* Land Title's escrow
16 services are separate from its title insurance business, and Land Title retains 100% of the fees it
17 collects for its escrow services. *Id.* Land Title's Agreement with CTIC does not address these other
18 aspects of Land Title's business.

19 CTIC's relationship with Land Title extends no further than the limited scope set forth in the
20 Agreement. CTIC does not pay Land Title for services nor pay any of Land Title's expenses.
21 Randolph Decl., ¶8; Kennedy Decl., ¶8. CTIC does not play any role in or exercise any control over
22 Land Title's business operations or finances. *Id.* CTIC does not provide advice or input and
23 certainly does not purport to exercise control over Land Title business operations including
24 marketing practices and expenditures. *Id.* Simply put, CTIC does nothing more than underwrite the
25 risk of title policies issued by Land Title, in exchange for an underwriting fee that is 12% of the
26

1 premium charged by Land Title to its customer.

2 **D. The OIC's Allegations in this Proceeding.**

3 Commencing in May, 2007, the OIC conducted an investigation of Land Title (the "Land
4 Title Investigation"). Notice of Hearing, filed herein, at ¶2.2. Despite the OIC's representation that
5 the investigation was of CTIC (*id.*), the OIC never even contacted CTIC during the course of the
6 Land Title Investigation. London Decl., ¶5. It did not request records, nor did it examine CTIC's
7 marketing practices. *Id.* Notwithstanding the fact that the OIC did not investigate CTIC as part of
8 the Land Title Investigation, in November, 2007, the OIC requested that CTIC sign a Consent Order
9 Levying Fine, pursuant to which CTIC was asked, without the participation or joinder of Land Title,
10 to (1) stipulate that Land Title's conduct violated the Inducement Regulation, (2) agree to pay a fine
11 of \$114,500 based on Land Title's alleged violations, (3) enter into a Compliance Plan that required
12 specific tracking of expenditures, semi-annual internal audits and related reporting and corrective
13 actions and, (4) represent that CTIC title has "the authority to comply fully with the terms and
14 conditions of the [Compliance] Plan." *Id.*, ¶6. CTIC's Agreement with Land Title does not give
15 CTIC the right to require Land Title perform the obligations of the proposed Compliance Plan. *See*
16 Agreement. CTIC declined to enter into the proposed Consent Order. London Decl., ¶6.

17 On January 25, 2008, the OIC filed a Notice of Hearing, directed to CTIC's legal counsel,
18 proposing a disciplinary action against CTIC, not Land Title, for alleged violations of the
19 Inducement Regulation committed by Land Title. The Notice of Hearing alleges thirteen violations
20 by Land Title of the Inducement Regulation's prohibition on providing things of value, in excess of
21 \$25, for the purpose of inducing title insurance business. The Notice of Hearing alleges no
22 violations of the Inducement Regulation by CTIC, nor does it allege that CTIC was involved in Land
23 Title's alleged violations.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. ARGUMENT

A. Legal Standard.

The purpose of summary judgment is to avoid a useless trial when there is no genuine issue of any material fact. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 12, 721 P.2d 1 (1986) (citing *Olympic Fish Prods., Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980)). The burden is on the party opposing summary judgment to set forth specific facts showing there is a genuine issue for trial or have summary judgment entered against it. *Id.* (citing CR 56; *LaPlante v. State*, 85 Wash.2d 154, 158, 531 P.2d 299 (1975)). “Bare assertions that a genuine material issue exists, however, will not defeat a summary judgment motion in the absence of actual evidence.” *Mike M. Johnson, Inc., v. The County of Spokane*, 150 Wn.2d 375, 386, 78 P.3d 161, *fn.4* (2003).

As discussed more fully below, liability cannot be imputed to CTIC because CTIC does not have the right, under the Agreement which defines the scope of CTIC’s rights vis-à-vis Land Title, to control the operational conduct and decisions of Land Title upon which liability is premised. *See Bill v. Gatavara*, 24 Wn.2d 819, 836-837, 167 P.2d 434 (1936) (“It is not . . . the fact of actual . . . exercise of control by the employer, but the existence of the right or authority to interfere or control, which renders one a servant rather than an independent contractor”).

The burden is on the OIC to provide competent evidence of disputed issues of fact that are material to the issue of CTIC liability for Land Title conduct. The OIC cannot do so because the only material facts – CTIC’s rights vis-à-vis Land Title under the written Agreement -- are undisputed. CTIC simply has no right to control Land Title’s marketing practices. Accordingly, it is entitled to summary judgment.

B. CTIC Cannot be Held Liable for the Actions of Land Title.

1. Whether Land Title solicits business on behalf of CTIC is irrelevant.

The OIC relies on its allegation that Land Title violated the Inducement Regulation while

1 soliciting business on behalf of CTIC. As a matter of law, aside from the fact that this allegation is
2 not supported by the facts, the allegation is irrelevant to the question of CTIC's liability. As
3 discussed further below, the question of vicarious liability rests on whether CTIC exercised control
4 over Land Title's marketing practices, not on whose business Land Title was soliciting. Consistent
5 with this axiom of agency law, there are numerous examples of cases nationwide in which courts did
6 not find vicarious liability despite the fact that the wrongdoer was soliciting business on behalf of the
7 party against whom liability was alleged. *E.g., Shedd Brown Mfg. Co. v. Tichenor*, 257 S.W.2d 894
8 (Ky., 1953) (company not civilly liable for death caused by commission salesperson while on sales
9 trip); *American Nat. Ins. Co. v. Denke*, 95 S.W.2d 370 (Tex., 1936) (insurance company held not
10 liable for agent's negligent acts in operation of wife's automobile while soliciting new business,
11 where employment contract gave company no control over manner and means adopted by agent in
12 performance of work); *Taylor v. General Refrigeration Sales Co.*, 165 So. 572 (Ala., 1936) (same).
13 *See, also, Stephens v. Omni Ins. Co.*, 138 Wn. App. 151, 153 P. 3d 10 (2007), *review granted on*
14 *other issues*, 180 P.3d 1291 (April 1, 2008). In *Stephens*, defendant Omni Insurance retained a
15 collection agency to pursue subrogation claims. The collection agency allegedly engaged in
16 impermissible collection practices actionable under the Consumer Protection Act. Like the OIC, the
17 plaintiffs asserted claims against the Omni for the conduct of the collection agency. Like CTIC,
18 Omni did not participate in the collection practices at issue. The trial court reserved the issue of
19 damages but granted a partial summary judgment holding Omni liable for the conduct of the
20 collection agency. The Court of Appeals reversed stating:

21 The right to control is indispensable to vicarious liability. [*citations omitted*] Because
22 *Stephens* has not shown that Omni controlled any aspects of the notices send by Credit, there
23 is no basis upon which to impose vicarious liability. We conclude the trial court error by
granting summary judgment to *Stephens* in this claim against Omni.

24 *Stephens*, 138 Wn. App at 183.

25 Even if the allegation that Land Title solicits business for CTIC were relevant, it is patently
26

1 false as shown by the undisputed evidence of both CTIC and Land Title.⁵

2 Land Title is not an “insurance agent” in the traditional sense – that is, Land Title does not
3 sell insurance on behalf of an insurance company for a commission. Instead, Land Title is a title
4 company, and performs all of the functions of a title company except underwriting, a service which
5 it has contracted with CTIC (or, alternatively, Old Republic) to provide. As the Washington
6 Supreme Court noted “UTCs are distinguishable from insurance brokers and agents”. . . . “[The
7 UTC] generates business for its own account. It places the relatively small insurance component
8 with an insurer qualified by reason of compliance with financial requirements, to underwrite the
9 slight risk that [the UTC] has not properly done its work.” *First American Title v. Department of*
10 *Revenue*, 144 Wn.2d 300, 304, 27 P.3d. 604 (2001) (quoting *Fidelity Title Company v. State of*
11 *Washington Department of Revenue*, 49 Wn. App. 662, 669-670, 745 P.2d 530 (1987), *rev. denied*
12 110 Wn.2d 1010 (1988)).

13 Land Title has its own branded identity, through which it offers its services to the public,
14 rather than representing itself as an “insurance agent” of CTIC. Land Title owns its own title plant
15 and conducts its own title searches. Land Title prepares its own abstracts of title. Land Title offers
16 escrow services, and retains 100% of the fees arising from such services - leaving one to speculate as
17 to factual basis for the OIC contention that the alleged violations were committed to solicit insurance
18 business “on behalf of CTIC” rather in furtherance of Land Title’s business. Land Title collects the
19 premiums charged for title insurance and pays CTIC an underwriting fee which is calculated at 12%
20 of Land Title’s premium. Land Title is not marketing on CTIC’s behalf but its own. Simply put,
21 Land Title is a UTC with contractually proscribed and limited issuing authority from CTIC; it is not
22 a general agent and not subject to operational control by CTIC.

23 The OIC’s theory of *per se* liability is simply not the state of the law – in order to fine CTIC,
24 the OIC must be able to establish, under accepted principles of vicarious liability, that CTIC is liable

25
26 ⁵ See Decl. of Kennedy, Randolph and London.

1 for the misdeeds of Land Title. It cannot do so.

2 2. Land Title is an independent contractor, not a general agent of CTIC.

3 It is clear that Land Title is not CTIC's general agent, subject to control by CTIC, that would
4 subject CTIC to liability for Land Title's business practices, even were the general principles of
5 vicarious liability not applicable. As set forth above, CTIC has virtually no authority or ability to
6 control the actions of Land Title, an independent company operating on its own behalf – not on
7 behalf of CTIC.

8 A principal is generally not liable for the acts of an independent contractor. *DeWater v. State*
9 *of Washington*, 130 Wn.2d 128, 137, 921 P.2d 1059 (1996). An independent contractor is “generally
10 defined as one who contractually undertakes to perform services for another, but who is not
11 controlled by the other nor subject to the other's right to control with respect to his physical conduct
12 in performing the services.” *Hollingbery v. Dunn*, 68 Wn.2d 75, 79-80, 411 P.2d 431 (1966) (citing
13 Restatement (Second), Agency § 2(3) (1958) and *Miles v. Pound Motor Co.*, 10 Wn.2d 492, 117
14 P.2d 179 (1941)). Washington courts typically consider as many as ten factors in determining
15 whether an entity is an independent contractor, not all of the factors must be present and no factor is
16 determinative, with the exception of the degree of control one entity exercises over the details and
17 method of operations of the other entity. *Hollingbery*, 68 Wn.2d at 80-81.⁶

18
19 ⁶ The ten factors are those listed in Restatement (Second), Agency s 220(2) (1958), which are:
20 (a) the extent of control which, by the agreement, the master may exercise over the details of
21 the work;
22 (b) whether or not the one employed is engaged in a distinct occupation or business;
23 (c) the kind of occupation, with reference to whether, in the locality, the work is usually done
24 under the direction of the employer or by a specialist without supervision;
25 (d) the skill required in the particular occupation;
26 (e) whether the employer or the workman supplies the instrumentalities, tools, and the place
of work for the person doing the work;
(f) the length of time for which the person is employed;
(g) the method of payment, whether by the time or by the job;
(h) whether or not the work is a part of the regular business of the employer;
(i) whether or not the parties believe they are creating the relation of master and servant; and
(j) whether the principal is or is not is business.

1 Where little or no control is exercised by the principal, the subordinate entity is an
2 independent contractor, and its actions do not subject the principal to liability. *Id.* at 79-80. As the
3 Washington Supreme Court explained:

4 [t]he factors to be considered are listed in the Restatement (Second) of Agency § 220(2)
5 (1958) and the most crucial factor is the right to control the details of the work. When a
6 superior business party has retained no right of control and there is no reason to infer a right
of control over a subordinate business party, then he cannot be held liable for the negligent
acts of the subordinate party.

7 *Larner v. Torgerson Corp.*, 93 Wn.2d 801, 804-05, 613 P.2d 780 (1980); *see also DeWater*, 130
8 Wn.2d at 139 (holding that the State was not liable for foster parent mistreatment of a worker paid
9 by the State and managed by the foster parent because the State did not supervise or control day-to-
10 day interaction between the foster parent and those working in the foster home).

11 Here, the contract is clear as to the limited authority of Land Title vis-à-vis CTIC and the
12 limited authority of CTIC vis-à-vis Land Title⁷. There are no disputed material facts that contradict
13 the express terms of the parties' written Agreement. Evidence provided both by CTIC (See London
14 Decl. and Randolph Decl.) and by Land Title (See Kennedy Decl.) confirm the undisputed facts.
15 There is no evidence that CTIC controls, in any way, Land Title's operations, including its
16 marketing procedures – there is ample evidence to the contrary. CTIC's contractual authority to
17 audit Land Title's records does not, as a matter of law, equate with control. *Bill*, 24 Wn.2d at 837
18 (The mere right to inspect work of an independent contractor as it progresses does not operate to
19 create the relation of master and servant).

20 3. CTIC is not liable for Land Title's actions under principles of vicarious liability.

21 Consistent with applicable case authority on whether a servant is an independent contractor,
22 limited agent or general agent, general principles of vicarious liability only impose liability on a
23 principal that has control over the servant's actions which give rise to the liability. Thus, contrary to
24

25 ⁷ The relevant inquiry for such vicarious liability is not so much theoretical control but actual
26 control. *Lauchon v. Int'l Alliance of Theatrical Stage Employees*, 248 F.3d 931-935 (9th Cir. Wash.
2001).

1 the OIC's position, the mere labeling of Land Title as an "agent" pursuant to an underwriting
2 agreement is not dispositive on the legal issue of whether one party is vicariously liable for the
3 actions of another. *Kroshus v. Koury*, 30 Wn. App. 258, 263, 633 P.2d 909 (1981) (citing
4 Restatement (Second) of Agency, §250 (1958)) (the label "agent" does not *per se* create vicarious
5 liability). A principal is only subject to vicarious liability for the acts of an agent if the principal has
6 the right to control the actions that give rise to the liability. *Id.* As stated in the comments to
7 Restatement, "[i]t is only when to the relation of principal and agent there is added the right to
8 control physical details as to the manner of performance which is characteristic of the relation of
9 master and servant that the person in whose service the act is done becomes subject to liability."
10 Restatement (Second) of Agency, §250, comment a.

11 In *Stephens v. Omni Ins. Co.*, for example, the plaintiff sued Omni Insurance Company for
12 violations of the Washington Consumer Protection Act, asserting that it was vicariously liable for
13 deceptive collections notices sent by its collection agent. *Stephens*, 138 Wn. App. 151. The
14 Washington Court of Appeals overturned the trial court's entry of summary judgment in favor of the
15 plaintiff, stating, "Omni had no right of control over [the collection agent's] means of collection. . . .
16 [t]he right to control is indispensable to vicarious liability." *Id.* at 183.

17 Here, CTIC has no right to control the actions that give rise to the liability – Land Title's
18 marketing practices. As in *Stephens*, where the court found that Omni Insurance could not be held
19 liable when the plaintiff had "not shown that Omni controlled any aspect of notices sent by [the
20 collection agent]," CTIC cannot be held liable for Land Title's marketing practices, which it does
21 not control. As set forth in the Declarations of Don Randolph, Gene Kennedy, and Brad London,
22 CTIC has *absolutely no* involvement in Land Title's marketing. CTIC does not control how Land
23 Title conducts its business including how it markets its services whether for title products or for
24 escrow or closing services. More importantly, there is nothing in the Agreement that provides CTIC
25 with any authority to do so, nor did Land Title contract to submit to control by CTIC on these issues.
26

1 Under these undisputed facts, there is no theory – and certainly the OIC has not offered one -
2 under which liability for Land Title’s alleged marketing misdeeds can be imputed to CTIC. The law
3 is absolutely clear, when a principal has no ability to control the aspects of the servant’s business
4 operations in which the violation occurred, it cannot be held to be vicariously liable.

5 **C. The OIC’s Action Constitutes Impermissible De Facto Rule-making.**

6 There is no regulation in the Washington Administrative Code which provides that an
7 underwriter is civilly or criminally liable for a UTC’s violations of the Inducement Regulation.⁸
8 Notwithstanding the lack of such a regulation, the OIC takes the position that it can fine underwriters
9 because it has, over the years, sent “advisory” letters to various title insurers stating that it contends
10 underwriters are liable for violations of the Inducement Regulation committed by UTCs.

11 As an agency of the State of Washington, the OIC is subject to the Administrative Procedures
12 Act (the “APA”).⁹ When adopting a rule, the OIC must adhere to the rule-making requirements of
13 RCW 34.05.310 through RCW 34.05.395 which require, among other things, publication of notice
14 of a proposed rule in the State Register, public comment, a public hearing, maintenance of a rule-
15 making file, and an order adopting the rule which specifies the purpose of the rule and the statutory
16 authority. *J.E. Dunn Northwest, Inc. v. Dep’t of Labor & Indus.*, 139 Wn. App. 35, 46, 156 P.3d 250
17 (2007) (“Agency rules must be promulgated pursuant to the rule-making requirements of the APA”).
18 The purpose of rule-making procedures is to ensure that members of the public can participate
19 meaningfully in the development of agency policies which affect them. *Id.* citing *Hillis v. Dep’t of*
20 *Ecology*, 131 Wn.2d 373, 399, 932 P.2d 139 (1997).

21 Per the APA, a rule means “any agency order, directive, or regulation of general applicability
22 (a) the violation of which subjects a person to a penalty or administrative sanction . . . (c) which
23

24 ⁸ Moreover, such a regulation would be inconsistent with RCW 48.30.010, which only authorizes the
25 OIC to fine the “person violating” a regulation defining an unfair or deceptive act or practice.

26 ⁹ RCW 34.05.010 (“Agency means any state board, commission, department, institution of higher
education, or officer, authorized by law to make rules or to conduct adjudicative proceedings . . .”).

1 establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits
2 or privileges conferred by law (emphasis added). RCW 34.05.010(16)

3 The OIC's position that underwriters are subject to a penalty for violations of the Inducement
4 Regulation committed by UTCs certainly constitutes a rule which, under RCW 34.05.010(16)(a),
5 must be duly promulgated under the APA because it creates vicarious liability for underwriters,
6 punishable by a fine. Moreover, the OIC's attempt to revoke the legal privilege of underwriters and
7 UTCs to allocate respective liabilities by written contract [*Ketcham v. King County Medical Service*
8 *Corp.*, 81 Wn.2d 565, 570, 502 P.2d 1197 (1973) (the freedom to contract is a fundamental
9 constitutional right)] can only be accomplished, per RCW 34.05.010(16)(c), via a duly promulgated
10 rule. Rather than promulgating a rule utilizing the procedure required APA (which would have
11 allowed meaningful participation by title underwriters), however, the OIC has instead created a *de*
12 *facto* rule, without following the requisite procedures and without consideration of input, by
13 commencing disciplinary actions and seeking fines against underwriters for conduct of UTCs.
14 While such *de facto* rule-making may be convenient for the OIC, it is not permissible under
15 Washington law and renders this action invalid. *Faylor's Pharmacy v. Dep't of Social & Health*
16 *Svcs.*, 125 Wn.2d 488, 497, 886 P.2d 147 (1994) ("The remedy for failure to comply with applicable
17 APA rule-making procedures is invalidation of the action"). CTIC is entitled, on these grounds
18 alone, to summary judgment and a dismissal of the claims asserted against it.

19 Informal OIC letters do not constitute enforceable regulations; indeed, such letters do not
20 even constitute interpretive or policy statements, which must be published in the Washington State
21 Register.¹⁰ Even if the OIC had chosen to advise the title industry of its position by publishing its
22 position as authorized by RCW 34.05.230, in the absence of rule-making its opinion is not entitled to
23

24 ¹⁰ "Whenever an agency issues an interpretive or policy statement, it **shall** submit to the code reviser
25 for publication in the Washington State Register a statement describing the subject matter of the
26 interpretive or policy statement, and listing the person at the agency from whom a copy of the
interpretive or policy statement may be obtained." RCW 34.05.230 (emphasis added).

1 deference¹¹ and its opinion certainly provides no basis to impose vicarious liability that conflicts
2 with terms of the parties' written Agreement and the laws of the State on vicarious liability.

3 In this case, where the OIC has neither promulgated a rule or issued an advisory opinion, its
4 position, which is contrary to established law, is entitled to no weight.

5 IV. CONCLUSION

6 There are no genuine issues of material fact. There is a written contract that defines the
7 limited relationship between Land Title and CTIC. Declarations from Land Title and CTIC confirm
8 that the relationship is, in fact, consistent with the contract.

9 The OIC has overstepped the bounds of its authority in seeking to impose fines against CTIC
10 for the acts of a third party. While the OIC may impose fines against Land Title if it can establish
11 Land Title violated the Inducement Regulation, it chose, for reasons which are not entirely clear, to
12 bring this action against CTIC. In the absence of a duly promulgated rule providing for third-party
13 liability to an underwriter for the misdeeds of a UTC, the OIC supersedes established Washington
14 law on vicarious liability – which requires control by the principal over the specific activity of an
15 agent to give rise to the liability.

16 As a matter of law, CTIC is entitled to dismissal of claims based on alleged misconduct by

17 \\\

18 \\\

19 \\\

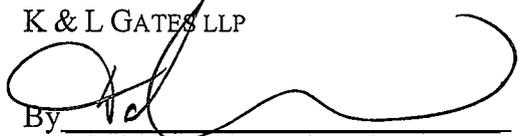
20
21
22 ¹¹ As noted by one Circuit court interpreting Washington law, “[U]nder the Washington
23 Administrative Procedures Act, interpretive statements . . . are ‘advisory only.’” [citing RCW
24 34.05.230]. While the Washington courts appear not to have addressed the question, the majority
25 view among federal courts is that statutory interpretations expressed in agency advisory opinions are
26 not entitled to deference. (citations omitted). We are persuaded that where, as here, an agency is
empowered both to promulgate binding rules, . . . , and to issue “advisory-only” interpretive
statements, by negative implication the agency’s choice to do the latter indicated that its
interpretation is not entitled to *de factor* binding effect through judicial deference.” *Management
Recruiters Int’l, Inc v. Bloor*, 129 F. 3d 851 (6th Cir. 1997). *See also* RCW 34.05.230.

1 Land Title.

2 WHEREFORE, the OIC's proceeding against CTIC should be dismissed.

3
4 DATED this 9th day of September, 2008.

5 K & L GATES LLP

6
7 By 

8 Kimberly W. Osenbaugh, WSBA # 5307

9 David C. Neu, WSBA #33143

10 Attorneys for Chicago Title Insurance Company

11 K & L Gates LLP

12 925 4th Avenue, Suite 2900

13 Seattle, WA 98104-1158

14 Phone: (206) 623-7580

15 Fax: (206) 623-7022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned declares 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 below, I caused to be served:

- *Chicago Title Insurance Company's Motion for Summary Judgment;*
- *Declaration of Madeline Barewald;*
- *Declaration of Brad London;*
- *Declaration of Don Randolph;*
- *Declaration of D. Gene Kennedy*

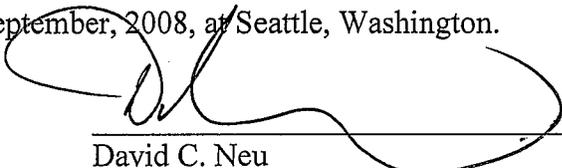
in the manner indicated:

Alan Michael Singer
Staff Attorney
Legal Affairs
Office of the Insurance Commissioner
5000 Capitol Boulevard
Tumwater, WA 98501
 Via messenger
 Via email (AlanS@OIC.WA.Gov)

Alan Michael Singer
Staff Attorney
Legal Affairs
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255
 Via U.S. Mail

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

EXECUTED this 9th day of September, 2008, at Seattle, Washington.



David C. Neu

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Cindy L. Burdue

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

In Re:
CHICAGO TITLE INSURANCE COMPANY,
An authorized insurer

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

DECLARATION OF D. GENE
KENNEDY IN SUPPORT OF
CHICAGO TITLE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT RE:
AGENCY LIABILITY

D. Gene Kennedy declares as follows:

1. I am the President and Chief Executive Officer of Land Title Company of Kitsap County ("Land Title").
2. Land Title is a title insurance agent operating in Kitsap and Mason Counties in the State of Washington. Land Title was founded in 1968 and has provided escrow and title services to customers in Kitsap County since that time. Land Title has branch offices in Silverdale, Poulsbo, and Port Orchard.
3. Land Title owns and operates its own title plant in Kitsap County.

1 4. Land Title is a party to an Issuing Agency Agreement with Chicago Title Insurance
2 Company ("CTIC"). Land Title is also party to an Issuing Agency Agreement with Old Republic
3 Title Insurance Company.

4 5. In addition to title insurance products, Land Title also offers escrow closing services,
5 which constitute a significant portion of its revenue. In a typical year, approximately 28% of Land
6 Title's total revenue is from escrow services. Land Title's escrow services are separate from its title
7 insurance business, and Land Title retains 100% of the fees it collects for its escrow services.

8 6. Land Title employs sales personnel which market its services to potential customers
9 in Kitsap County.

10 7. In its marketing materials, Land Title does not promote its relationship with CTIC. In
11 fact, it does not mention CTIC at all in its marketing materials, samples of which are attached to this
12 Declaration as Exhibits A-E.

13 8. Land Title markets to promote its own business, not the business of CTIC.

14 9. CTIC does not pay Land Title for its services nor pay any of Land Title's expenses.
15 CTIC does not play any role in or exercise any control over Land Title's business operations. CTIC
16 does not provide any advice to Land Title on compliance with the Inducement Regulation. CTIC
17 does not have any input in, or oversight of, Land Title's marketing practices or procedures.

18 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
19 knowledge.

20 EXECUTED this 3RD day of SEPTEMBER, 2008 at Silverdale, Washington.

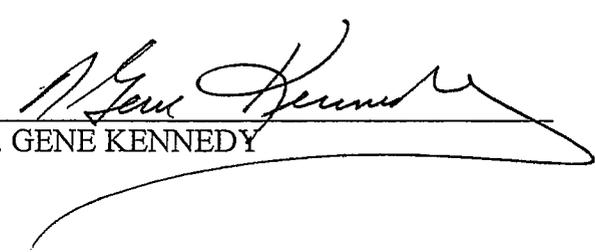
21
22
23
24
25
26

D. GENE KENNEDY

EXHIBIT A



CORPORATE OFFICES

9657 Levin Road NW
PO Box 2737
Silverdale, WA 98383

Phone: 360-698-9432
Fax: 360-698-9568
www.landtitleco.net

Kitsap Title Plant
Silverdale Escrow Office
9657 Levin Road #110
Silverdale, WA 98383
360-692-4033

Port Orchard Escrow Office
1140 Bethel Avenue #202
Port Orchard, WA 98366
360-876-0450

Poulsbo Escrow Office
19301 8th Avenue NE Ste D
Poulsbo, WA 98370
360-779-7172

Land Title Company of
Mason County
930 West Railroad Avenue
Shelton, WA 983584
360-426-8288

Belfair Escrow Office
PO Box 1820
Belfair WA 98528
360-275-8620

Shelton Escrow Office
930 West Railroad Avenue
Shelton WA 98584
360-426-0427

Land Title Company... Locally Owned, Locally Grown

Land Title Company opened its doors near downtown Bremerton in 1968. From its inception, our mission has been to provide the Olympic Peninsula with consistent, courteous, and dependable service.

Today, the three-story Land Title Professional Building on Levin Road at Clear Creek in Silverdale houses Kitsap County title services, escrow services and our corporate headquarters. Title services for Mason County are located in the heart of Shelton, on Railroad Avenue. Additional escrow offices are located in Port Orchard, Poulsbo, Shelton and Belfair.

Through all of our past and future growth, Land Title Company has and will continue to maintain one constant — excellent service. Thank you, our stockholders, for your continued confidence in our company and a special thank you to our dedicated staff members who affirm that, "Exceptional service is not just a policy, it's our commitment."

EXHIBIT B

THE CLOSING PROCESS

Compliments Of



LAND TITLE COMPANY
LEADERSHIP • TRUST • COMMITMENT

START

- buyer deals with selling agent
- seller deals with listing agent
- Purchase & Sale Agreement is completed

ESCROW

- determines status of:
 - taxes
 - liens
 - mortgages
- homeowner's association dues
- fees & commissions
- utilities (if requested)
- issues closing statement & escrow instructions
- prepares legal documents
- oversees closing & signing
- records & disburses funds

TITLE INSURANCE

- completes title search
- checks taxes & legal
- performs examination
- issues commitment
- records documents

MORTGAGE BROKER / LENDER

- verifies:
 - buyer's bank
 - credit report
 - employment
 - appraisal
- obtains homeowner's insurance, mortgage insurance, & underwriter

- Escrow & Title departments work together to:
 - review and clear title
- Escrow department and lender work together to:
 - secure homeowner & lender title policies
 - ensure insurance binder & communication

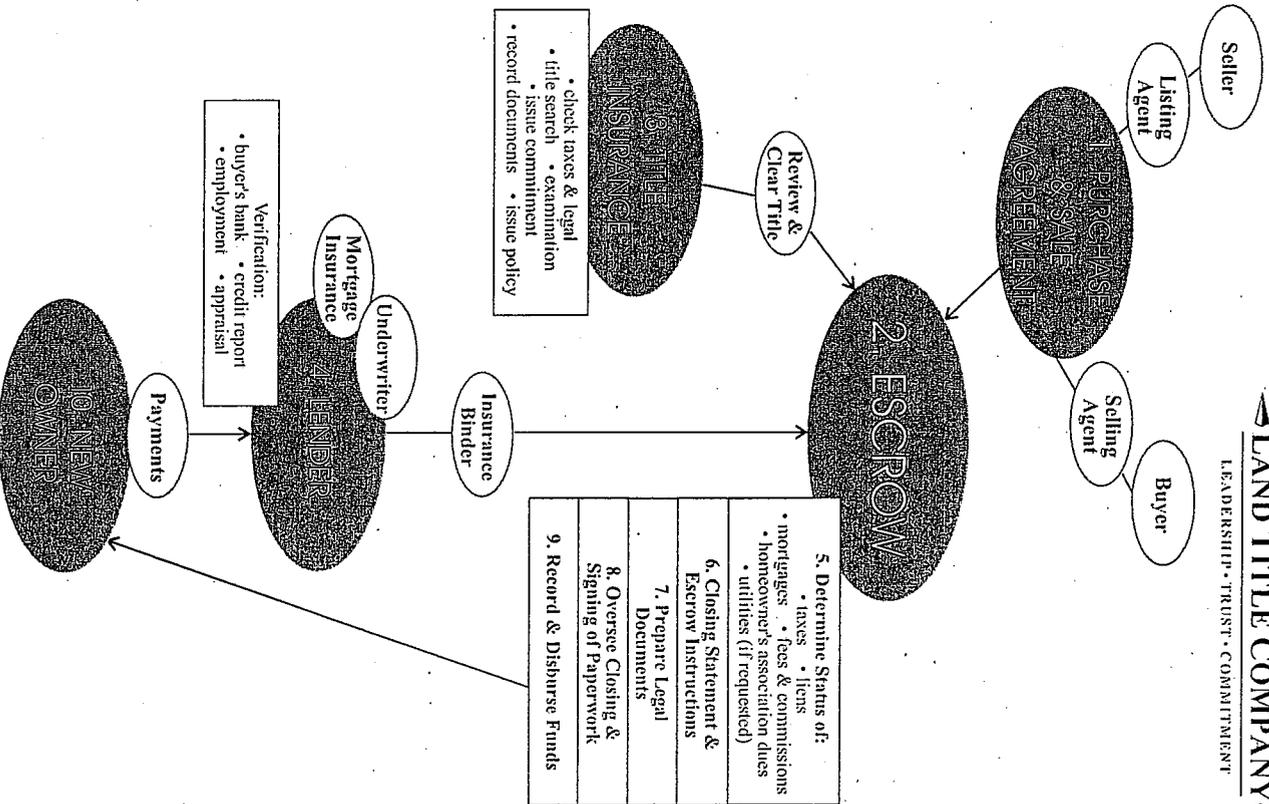


EXHIBIT C

STEPS TO THE ESCROW PROCESS

1 Lender (usually) opens escrow with a signed-around purchase and sale agreement.

2 Lender or escrow orders title commitment.

3 After escrow receives the title commitment, copies of the commitment are sent to the buyer and seller, along with escrow instructions. Escrow clears the title, coordinates with the lender, orders utility and loan payoffs, updates property taxes and assessments, and verifies real estate commission amounts.

4 Upon receiving the lender's documents, escrow selects and prepares the necessary documents, creates an estimated HUD statement, sets appointments with clients, and faxes the HUD to both the realtor and lender for review.

5 Escrow signs both parties separately, notarizes the documents, copies the loan package and sends to lender for review.

6 After balancing with the lender, escrow coordinates wiring of the lender's funds to escrow account and sends documents to the title plant for final review. Documents are then sent on to the courthouse for recording.

7 The transaction is officially closed when the wire transfer from the lender has been received and confirmed, and when verification by "recording numbers" that the transaction is "of record" has been completed.

8 Escrow can then disburse funds: the seller's proceeds (if any), the buyer's refund (if applicable), lender's fees, title and escrow fees, the loan payoff, and realtor commissions.

9 Reconveyances, titles, and release of liens (if any) are then issued.

Provided courtesy of...



Silverdale	360 / 692.4033
Poulsbo	360 / 779.7172
Port Orchard	360 / 876.0450
Bremerton	360 / 377.9500

EXHIBIT D



5 FIVE MAJOR STEPS IN RESIDENTIAL RESALE TRANSACTIONS

- 1. AUTHORIZATION**
 - Seller authorizes broker to sell.
 - listing agreement is made
 - listing price is established
 - terms of sale are established

- 2. SHOWING**
 - Broker notifies other brokers of property for sale.
 - property is listed in Multiple Listing Service
 - property shown through open house, caravans and tours

- 3. OFFER / ACCEPTANCE**
 - Buyer makes offer; seller accepts.
 - terms and contingencies are offered
 - counter offers between parties are made
 - offer or counter offer is accepted

- 4. ESCROW**
 - Terms and conditions of transaction are established and carried out.
 - escrow instructions are prepared
 - financing is secured
 - funds and documents are placed in escrow
 - title insurance is ordered

- 5. CLOSING**
 - Transaction closes.
 - terms of sale are met
 - condition of title is accepted
 - funds and documents are transferred
 - documents are recorded at the courthouse
 - title passes from seller to the new owner

Silverdale Escrow
9657 Levin Rd., Suite 110
Silverdale, WA 98383
360.692.2233

Poulsbo Escrow
19301 8th Avenue NE, Suite D
Poulsbo, WA 98370
360.779.7172

Port Orchard Escrow
1140 Bethel Avenue, Suite 202
Port Orchard, WA 98366
360.876.0450

Bremerton Escrow
801 6th Street
Bremerton, WA 98337
360.377.9500

EXHIBIT E



The following schedule is provided as a service of Land Title Company to assist you in estimating costs for closing purposes. The rates shown are general rates and do not include sales taxes. Please call if you have any questions regarding the schedule.

* This fee is customarily paid by party indicated.
 ** Fee based upon transaction qualifying for Residential Resale Rate

RATE SCHEDULE

UP TO AMOUNT	GENERAL SCHEDULE Standard Coverage Owner's-Loan Policy (Seller-Borrower)*	RESIDENTIAL RESALE Standard Coverage Owner's Policy 30% Discount (Seller)	ALTA HOMEOWNERS POLICY Additional Coverage Owner's Policy (Seller-Buyer)**	SIMULTANEOUS RATE Extended Coverage Loan Policy (Borrower)	MORTGAGE REORG. Standard-Extended Coverage Loan Policy 50% Discount (Borrower)*	EXTENDED CONST. LOAN Extended Coverage Loan Policy (Owner-Borrower)*	BUILDER STD. SALE Standard Coverage Owner's Policy (Builder-Seller)*	SUBDIVIDER STD. SALE Standard Coverage Owner's Policy (Seller)*	SHORT TERM STANDARD Standard Coverage Owner's-Loan Policy (insured within previous 10 yrs.)	SHORT TERM EXTENDED Extended Coverage Owner's-Loan Policy (insured within previous 10 yrs.)	MORTGAGE EXTENDED Extended Coverage Loan Policy (no previous insurance)	SMART Limited Liability Standard Coverage Loan Policy
25,000	300	350	380	400	350	175	175	175	300	500	500	
50,000	350	350	385	400	350	175	175	175	300	500	550	125
75,000	470	350	397	400	350	212	175	188	376	576	670	150
100,000	550	385	440	400	350	248	193	220	440	640	750	175
125,000	625	438	501	419	350	281	219	250	500	719	844	200
150,000	675	473	541	437	350	304	237	270	540	777	912	225
175,000	735	515	589	458	368	331	258	294	588	846	993	250
200,000	775	543	621	472	388	349	272	310	620	892	1047	275
225,000	835	585	669	493	418	376	293	334	668	961	1128	
250,000	875	613	701	507	438	394	307	350	700	1007	1182	
275,000	935	655	749	528	468	421	328	374	748	1076	1263	
300,000	975	683	781	542	488	439	342	390	780	1122	1317	
325,000	1035	725	829	563	518	466	363	414	828	1191	1398	
350,000	1075	753	861	577	538	484	377	430	860	1237	1452	
375,000	1135	795	909	598	568	511	398	454	908	1306	1533	
400,000	1175	823	941	612	588	529	412	470	940	1352	1587	
425,000	1235	865	989	633	618	556	433	494	988	1421	1668	
450,000	1275	893	1021	647	638	574	447	510	1020	1467	1722	
475,000	1335	935	1069	668	668	601	468	534	1068	1536	1803	
500,000	1375	963	1101	682	688	619	482	550	1100	1582	1857	
525,000	1435	1005	1149	703	718	646	503	574	1148	1651	1938	
550,000	1475	1033	1181	717	738	664	517	590	1180	1697	1992	
575,000	1535	1075	1229	738	768	691	538	614	1228	1766	2073	
600,000	1575	1103	1261	752	788	709	552	630	1260	1812	2127	
625,000	1635	1145	1309	773	818	736	573	654	1308	1881	2208	
650,000	1675	1173	1341	787	838	754	587	670	1340	1927	2262	
675,000	1735	1215	1389	808	868	781	608	694	1388	1996	2343	
700,000	1775	1243	1421	822	888	799	622	710	1420	2042	2397	
725,000	1835	1285	1469	843	918	826	643	734	1468	2111	2478	
750,000	1875	1313	1501	857	938	844	657	750	1500	2157	2532	
775,000	1935	1355	1549	878	968	871	678	774	1548	2226	2613	
800,000	1975	1383	1581	892	988	889	692	790	1580	2272	2667	
825,000	2035	1425	1629	913	1018	916	713	814	1628	2341	2748	
850,000	2075	1453	1661	927	1038	934	727	830	1660	2387	2802	
875,000	2135	1495	1709	948	1068	961	748	854	1708	2456	2883	
900,000	2175	1523	1741	962	1088	979	762	870	1740	2502	2937	
925,000	2235	1565	1789	983	1118	1006	783	894	1788	2571	3018	
950,000	2275	1593	1821	997	1138	1024	797	910	1820	2617	3072	
975,000	2335	1635	1869	1018	1168	1051	818	934	1868	2686	3153	
1,000,000	2375	1663	1901	1032	1188	1069	832	950	1900	2732	3207	

Silverdale: 9657 Levin Road N.W. • Suite 100 • Silverdale, WA 98383 • (360) 692-2233 • FAX: (360) 692-2244
Port Orchard: 1140 Bethel Ave. • Suite 202 • P.O. Box 1489 • Port Orchard, WA 98366 • (360) 876-0450 • FAX: (360) 876-0574
Poulsbo: 19301 8th Avenue NE • Suite D • Poulsbo, WA 98370 • (360) 779-7172 • FAX: (360) 779-1004
Bremerton: 801 6th Street • Bremerton, WA 98337 • (360) 377-9500 • Fax: (360) 377-9501



Silverdale: 9657 Levin Road N.W. • Suite 110 • Silverdale, WA 98383
(360) 692-4033 • FAX: (360) 692-8669

Port Orchard: 1140 Bethel Ave. • Suite 202 • P.O. Box 1489 • Port Orchard, WA 98366
(360) 876-0450 • FAX: (360) 876-0574

Poulsbo: 19301 8th Avenue NE • Suite D • Poulsbo, WA 98370
(360) 779-7172 • FAX: (360) 779-1004

Bremerton: 801 6th Street • Bremerton, WA 98337
(360) 377-9500 • Fax: (360) 377-9501

ESCROW FEES

<u>TRANSACTION TO & INCLUDING</u>	<u>ESCROW FEE (MINIMUM)</u>	<u>SALES TAX 8.6%</u>	<u>ONE-HALF INCLUDING TAX</u>
\$50,000.00	\$500.00	\$43.00	\$271.50
\$100,000.00	\$600.00	\$51.60	\$325.80
\$200,000.00	\$700.00	\$60.20	\$380.10
\$300,000.00	\$800.00	\$68.80	\$434.40
\$400,000.00	\$900.00	\$77.40	\$488.70
\$500,000.00	\$1,000.00	\$86.00	\$543.00

NEGOTIABLE RATES: Transactions in excess of \$500,000.00
Minimum of \$1,000.00

RESIDENTIAL REFINANCE TRANSACTIONS: Minimum of \$350.00 up to \$200,000.00
Minimum of \$450.00 up to \$500,000.00
Negotiable over \$500,000.00

VA REFINANCE TRANSACTIONS: \$250.00 (plus tax)

COMMERCIAL TRANSACTIONS: Call for quotes

MOBILE HOME TRANSACTIONS: A minimum additional fee of \$250.00 will be charged to accommodate the extra paperwork involved on title transfers and eliminations.

CUSTOM CONSTRUCTION: 80% of the total escrow fee

BUILDER RATES: Call for quotes.

TITLE INSURANCE: Must be provided in conjunction with every escrow transaction provided by this office.

The Honorable Cindy L. Burdue

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

In Re:

CHICAGO TITLE INSURANCE COMPANY,

An authorized insurer

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

DECLARATION OF DON RANDOLPH
IN SUPPORT OF CHICAGO TITLE
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT RE:
AGENCY LIABILITY

Don Randolph declares as follows:

1. I am a vice president and the Western Agency Manager for Chicago Title Insurance Company ("CTIC").

2. My position involves managing CTIC's relationship with independent title companies, known in title insurance literature as "independent agents" or "underwritten title companies" ("UTCs"), in the states of Arizona, Washington, Oregon, and Idaho. In the State of Washington there are a number of UTCs which provide title insurance, most often in markets in which national title companies do not have direct operations.

DECLARATION OF DON RANDOLPH IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

1 3. Because UTCs generally lack the reserve and capital required to issue insurance in
2 Washington, the UTCs contract with larger insurers, like CTIC, to underwrite policies which they
3 issue. In my experience, UTCs often have agreements with more than one underwriter, allowing
4 them to issue policies from multiple underwriters.

5 4. CTIC has agreements with eleven (11) UTCs in Washington, pursuant to which it
6 underwrites policies. CTIC is contractually liable for claims arising under policies the UTCs issue,
7 for which the UTCs pay it between 12% and 15% of the title premium charged to its customer.

8 5. CTIC plays no role in the marketing strategies and expenditures of the UTCs with
9 which it has agreements. CTIC does not play a role in the title search conducted by the UTCs,
10 which either own or subscribe to a title plant in their county or counties of operation. The UTCs
11 prepare their own commitments for title insurance, which detail the proposed exceptions to
12 coverage. CTIC also has no involvement in preparing the title policies which it underwrites pursuant
13 to its agreement with UTCs, beyond providing legal underwriting assistance as requested or required
14 by the UTC. The UTCs market their own services, which on the title side includes conducting title
15 searches, issuing preliminary commitments for title insurance, addressing exceptions to title
16 identified in the preliminary commitment, and issuing title policies. CTIC does nothing more than
17 underwrite risk.

18 6. When a UTC issues a policy, CTIC only receives the following basic information
19 from the UTC: (1) the policy number; (2) the UTC's internal file number; (3) the effective date of
20 the policy; (4) the type of policy (included in the policy number); (5) the premium paid; and (6) the
21 amount of liability. Unless an issue arises, CTIC never receives a copy of the preliminary
22 commitment, title policy, nor any documents associated with the closing of the transaction.

23 7. In 1992, CTIC and Land Title Company of Kitsap County ("Land Title") entered to
24 an "Issuing Agency Agreement," pursuant to which Land Title issues title insurance policies which
25 CTIC underwrites. A copy of the agreement is attached hereto as Exhibit A.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8. CTIC's relationship with Land Title extends no further than the limited scope set forth in the Issuing Agreement. CTIC does not pay Land Title for its services nor pay any of Land Title's expenses. CTIC does not play any role in or exercise any control over Land Title's business operations or finances. CTIC does not provide any advice to Land Title on compliance with the regulations enforced by the Washington Office of the Insurance Commissioner. CTIC does not have any input in, or oversight of, Land Title's marketing practices or procedures. CTIC merely underwrites the risk of title policies issued by Land Title, in exchange for 12% of the premium collected by Land Title

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 4th day of September, 2008, at Vancouver, Washington

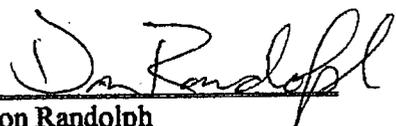

Don Randolph

EXHIBIT A

ISSUING AGENCY AGREEMENT

CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation,

hereinafter referred to as "Principal" and

LAND TITLE COMPANY OF KITSAP COUNTY, INC.
hereinafter referred to as "Issuing Agent", in consideration of the mutual promises made herein, hereby agree as follows:

1. **Appointment of Issuing Agent.** Principal hereby appoints Issuing Agent to issue its title assurances in the following County or Counties: KITSAP, CLALLAM, JEFFERSON and MASON
State of WASHINGTON, with the right of Principal to appoint other issuing agents in the same or other Counties in said state.
2. **Term of Agreement.** This Agreement is made for a term of 1 year from February 1, 1992 which shall be the effective date hereof, and shall be automatically extended at each expiration date unless either party gives written notice to the other party of its election not to extend at least 90 days prior to the end of said original term or any additional term.
3. **Authority of Issuing Agent.** Issuing Agent, by its employees and/or officers as denoted in this Agreement or any amendment thereto, (hereinafter "Authorized Signatories"), shall have authority on behalf of Principal to sign, countersign and issue Principal's title assurances on forms supplied and approved by Principal and only on real property located in the County or Counties listed above, and in such other Counties as may be designated in writing by Principal, as long as said "Authorized Signatories" remain employed by Issuing Agent and, where necessary, properly licensed during the period of time that this Agreement remains in full force and effect. Issuing Agent shall not be deemed or construed to be authorized to do any other act for principal not expressly authorized herein.
4. **Acts of Issuing Agent.** Issuing Agent shall:
 - A. Issue only title assurances of Principal, and of no other title insurance company;
 - B. Receive and process applications for title assurances:
 - (1) In accordance with usual customary practices and procedures and prudent underwriting principles; and
 - (2) In full compliance with instructions, rules and regulations of Principal given to Issuing Agent.
 - C. Base determination of the insurability of any title so insured upon:
 - (1) An examination of an abstract or chain of title, showing all relevant and necessary public record matters, prepared by (a) Issuing Agent, (b) a qualified attorney retained by Issuing Agent, or (c) any other qualified abstractor appointed by Issuing Agent whose work is accepted by prudent local examiners, or
 - (2) An examination from Issuing Agent's title plant, supplemented to the extent necessary by an abstract meeting the requirements set forth in Paragraph (1) above, or a search of the relevant public records; and
 - (3) Such further prudent off record investigation as may be required by the coverage of the title assurances being issued.
 - D. During the term of this Agreement, and for a period of no less than ten (10) years thereafter Issuing Agent, its heirs, successors and assigns shall preserve for examination by Principal all files and supporting documents on which title assurances and underwriting decisions were made including, but not limited to, searches, work sheets, maps, and affidavits.
 - E. (1) Pay Principal 12 % of the gross premiums. Regarding any title assurance order which involves reinsurance or coinsurance, then, pay Principal the amounts, as provided in paragraph 5. Below. Issuing Agent shall forward said payments to Principal at its Home Office on such dates as may be established by Principal, along with full and complete copies of all premium bearing title assurances issued during said period.
In the event there is an underpayment by reason of Issuing Agent's miscalculation of the amounts owed Principal, Issuing Agent shall pay the shortage with the next month's submission. In the event of an overpayment, Principal shall issue a credit to Issuing Agent which shall be applied to the next monthly payment due to Principal.
(2) On all title orders in excess of One Million Dollars (\$1,000,000.00) referred to Issuing Agent by Principal the percentage of the premiums to be submitted to Principal shall be negotiated when such order is placed, when authorized by law.
(3) Forward to Principal all deposits, securities or Letters of Credit over the aggregate amounts of Ten Thousand Dollars (\$10,000.00) which were taken as security for the performance of an indemnity agreement.
 - F. Comply with all federal and state, municipal ordinances, statutes, rules and regulations.
 - G. Conduct all its business in a safe and prudent manner.
 - H. Safely keep the forms referred to in Paragraph 3, above, in its exclusive possession and be liable to Principal for all loss or damage suffered by principal by reason of wrongful or negligent use of such forms.
 - I. Return all obsolete forms to Principal on demand.
 - J. Segregate and safely keep in a separately designated account all monies entrusted to Issuing Agent by Principal and others, including, but not limited to, fiduciary funds, indemnity deposits and Principals share of all premiums due hereunder.
Said funds shall be used for no other purpose than for which entrusted to Issuing Agent. With respect to said funds, Issuing Agent shall perform and carry out all instructions given to Issuing Agent which relate to the issuance of Principal's title assurances or to the liability of Principal thereunder.
 - K. Promptly forward to Principal:
 - (1) All documents received by Issuing Agent in which Principal is a party to any administrative or judicial proceeding; and
 - (2) All written complaints or inquires involving title assurances made to or by any insurance department or regulatory agency.
 - L. Upon request of Principal, establish a loss reserve account for claims arising out of the issuance of Principal's title assurances, or any other acts of Issuing Agent, for which Issuing Agent may be liable, and in such amounts as Principal would normally establish for its own claims. Within ten (10) days of demand by Principal, Issuing Agent hereby agrees to forward any such loss reserve funds to Principal.
 - M. Forward annually to Principal a copy of Issuing Agent's balance sheet and profit and loss statement.

- N. Maintain at its own expense:
- (1) Blanket Fidelity Bond in the principal sum of at least \$ 250,000. in a form and issued by a company acceptable to Principal;
 - (2) Issuing Agent's error and omissions liability insurance in the principal sum of at least \$: 00: 00 in a form and issued by a company acceptable to Principal, with a deductible of no more than \$: 00: 00; and
 - (3) Issuing Agent shall annually furnish Principal with true copies together with current premium receipts for said bonds and insurance.
- O. Upon request of Principal, Issuing Agent agrees to notify its fidelity bond or errors and omissions insurance carrier of any claim for which Issuing Agent may be liable to Principal.
- P. Become and remain a member in good standing of the State Land Title Association in any state where the Issuing Agent conducts business, or in the event that Issuing Agent is an attorney, Issuing Agent shall remain a member in good standing with the Bar Association of any state where the Issuing Agent conducts its principal place of business.
5. Reinsurance/Co-insurance:
- (A.) Issuing Agent shall be responsible for reinsurance or coinsurance fees on any title assurance:
 1. Over Twenty Million Dollars or such other amounts as may be determined from time to time by Principal, or
 2. Such lesser limits as may be set by customer.
 - (B.) Compensation to Principal shall be computed on the basis of the net amount of gross premium after deducting the cost of such reinsurance or coinsurance.
 - (C.) Principal expressly reserve the right to select any and all reinsurers and co-insurers unless the customer requires otherwise in writing.
6. Prohibited Acts of Issuing Agent. Issuing Agent shall not, without prior written consent of Principal:
- A. Accept service of process on behalf of Principal, unless required by law, in which event Issuing Agent shall promptly forward all documents served on Issuing Agent to Principal.
 - B. Incur debts in the name of Principal.
 - C. Issue:
 - (1) Any title assurance in a liability amount in excess of \$500,000.00
 - (2) Any title assurance in a liability amount in excess of \$200,000.00 where coverage is to be afforded on a risk basis with respect to lien, for services, labor or materials; or
 - (3) Any title assurance, regardless of liability amount, where a known dispute as to title exists, or extra hazardous risks are involved and where such dispute or risks are not to be excepted. However, Principal will consider approving the issuance of a title assurance without such exception or with affirmative coverage upon receipt of all relevant information, supporting documents, and a statement of the question or risk involved. In lieu of prior written approval, Principal agrees to consider oral approval if it deems the risk acceptable, subject to Issuing Agent thereafter submitting the information as set forth above, and thereafter secure written confirmation of such oral approval.
 - D. Alter any title assurance form furnished by Principal.
 - E. Issue any title assurance for an amount less than the market value of the real property, or the estate or interest insured, or for less than the amount of the indebtedness in the case of a lender's policy.
 - F. Issue any title assurances affecting oil, gas, mineral or other hydro-carbon or thermal interest, separate and apart from the Fee or Leasehold estate in the land.
 - G. Use the name of the Principal in any advertising or printing other than to indicate the Issuing Agent is a policy issuing agent of the Principal.
 - H. Charge a premium other than one approved by the Principal, exclusive of any special work charges.
7. Additional Premium. Only Principal shall be entitled to any additional premium charged by either Principal or Issuing Agent for Extra Hazardous Risks.
8. Acts of Principal. Principal shall:
- A. Furnish to Issuing Agent, without cost, the then currently approved forms of title assurances which Issuing Agent is authorized to issue hereunder.
 - B. Decide all questions of risk submitted by Issuing Agent.
 - C. Secure reinsurance and co-insurance when necessary.
 - D. Appoint in writing validating officers to countersign Principal's forms issued by Issuing Agent.
 - E. Provide Issuing Agent with its Agency manual, underwriting manual, underwriting memos, and underwriting rules and regulations which may now or hereinafter be promulgated.
9. Allocation of Losses. Principal and Issuing Agent shall be responsible for and promptly pay losses as follows:
- A. Principal shall be responsible for loss, cost or damage, including attorney's fees, caused by:
 - (1) All off record matters, provided insurability is determined in compliance with paragraph 4. C., above.
 - (2) A proposed Extra Hazardous Risk submitted to Principal and the assumption of the risk has been approved on the basis of all available facts submitted and representations made by Issuing Agent, provided Issuing Agent accurately submits all available information relevant to said risk.
 - B. Issuing Agent shall be responsible to Principal for all loss, cost or damage, including attorney's fees, caused by:
 - (1) Failure of Issuing Agent to comply with the terms and conditions of this Agreement or with the rules, regulations or instructions given to Issuing Agent by Principal.
 - (2) The issuance of title assurances which contain errors or omissions, caused by Issuing Agent's abstracting, examination of title, including but not limited to examination of surveys, or failure of any title assurance to accurately reflect the correct description of the real property involved or record title thereto, so long as said error in description is discoverable by an accurate search of the public records.
 - (3) The issuance of title assurances which contain errors or omissions, that were disclosed by the application, the examiner's report, or which were known to Issuing Agent, or in the exercise of due diligence should have been known to Issuing Agent.
 - (4) A title assurance insuring a mechanic's lien risk within Issuing Agent's authority, or an extra hazardous risk not approved in writing by Principal.
 - (5) The escrow or closing operations of Issuing Agent, including but not limited to the preparation of documents, deeds and other conveying instruments, or any loss under an Insured Closing Letter, issued by Principal on behalf of Issuing Agent.
 - (6) Fraud, dishonesty or defalcation committed by Issuing Agent, or its employee(s), officer(s), director(s) or agent(s).
 - (7) Any act, or failure to act, of Issuing Agent, or its employee(s), officer(s), or attorney(s) which results in Principal being liable for bad faith, unfair claim practice or punitive damages.
 - (8) Allegations, against either Principal or Issuing Agent, by reason of the activities of the Issuing Agent, its agents, servants and employees, of fraud, conspiracy, or failure to comply with any Federal or State Law or regulation, including securities laws.
- C. Recovery of loss under a claim will first be applied to Principal's loss, then the balance, if any, to Issuing Agent's loss.

10. Claims.
- A. Issuing Agent shall notify Principal in writing of any claim or threatened claim under any title assurance issued hereunder within thirty-five (35) calendar days from first notice, except claims Issuing Agent is fully liable for and pays within thirty (30) calendar days.
 - B. Issuing Agent agrees that Principal shall be fully authorized and empowered in its absolute discretion, to defend, settle, compromise or dispose of any claim for which any party to this Agreement may be liable. Unless specifically authorized in writing, Issuing Agent shall have no right to defend, deny, settle, compromise or dispose of any claim against Principal. Issuing Agent agrees to cooperate with Principal in the handling of any claim made under or in connection with any title assurance issued hereunder, and to assist in the settlement or disposition of any such claim whenever requested by Principal, all at no charge or cost to Principal. Regarding any claim or threatened claim, Issuing Agent agrees to keep Principal fully advised and promptly forward to Principal all relevant communications, reports, statements, pleadings and other writings or instruments. Issuing Agent shall remit to Principal, within ten (10) days after demand, any funds required to settle, compromise or satisfy any claim for which the Issuing Agent is responsible hereunder.
 - C. Issuing Agent shall keep a record of all claims showing the disposition of each claim, which shall be made available to Principal upon its request.
 - D. Notice required in this paragraph will be given to Chicago Title Insurance Company, Claims Department, 111 West Washington Street, Chicago, Illinois 60602 or such other place as Principal may designate in writing.
11. Right of Examination. During the term of this Agreement, and any extensions thereof, and also including the times contemplated in paragraphs 4.D and 19., herein, Issuing Agent agrees that at any reasonable time or times, it will permit examination by Principal of all accounts, books, ledgers, searches, abstracts and other records which relate to the title insurance business carried on by Issuing Agent for the Principal.
12. Assignment.
- A. Except as hereinafter provided, neither Issuing Agent nor Principal shall have any right to assign this Agreement without the written consent of the other party. No such written consent shall be required in the event that Principal shall change its name, or shall merge or consolidate with one or more title insurance underwriter(s) or with any other party with or without change of name, and in such event this Agreement shall continue in effect between Issuing Agent and the successor of Principal.
 - B. Any other assignment or attempted assignment of this Agreement, in whole or in part, whether such assignment be by operation of law, voluntary or involuntary, shall automatically cause a termination of the agency created by this Agreement unless there shall be a written consent or ratification to such assignment. An assignment by operation of law shall include either of the parties filing a petition in bankruptcy or insolvency or for reorganization under the bankruptcy laws of the United States, or the insolvency laws of any state, or voluntarily taking advantage of any such law, or act by answer or otherwise, or shall be dissolved or shall make an assignment for the benefit of the creditors; or, if involuntary proceedings are instituted against either party under any such bankruptcy law or insolvency act, or for the dissolution of the legal entity; or if a receiver or trustee shall be appointed for all or a portion of the property of either party.
 - C. This Agreement may be terminated, at the sole option of Principal, upon ten (10) days written notice, in the event that the Issuing Agent is a corporation and there is a change in the controlling interest in said corporation. A change in the controlling interest shall be deemed to occur when an owner of more than fifty percent (50%) of the capital stock of said corporation ceases to own more than fifty percent (50%) of said stock, or a sale of substantially all of Issuing Agent's assets.
13. Termination by Change of Circumstance. If the current annual tax, gross premium tax or State Income Tax rate shall be increased, or should a tax or assessment in addition, substitution, or in lieu thereof be imposed on principal, either by constitutional amendment, legislative act or otherwise, and should said tax or assessment be higher than the tax as presently paid by Principal, Issuing Agent and Principal shall in good faith renegotiate the percentage of the gross premiums paid to Principal hereunder as an underwriting fee. In the event that the parties cannot after good faith negotiations come to any agreement, then the Principal shall have the option to terminate this Agreement by giving ninety (90) days written notice to Issuing Agent.
14. Default.
- A. Should either party fail to observe the terms of this Agreement or in any manner fail, refuse or neglect to perform its obligations in accordance with the terms of this Agreement, this Agreement may be terminated, at the option of the party not in default, upon ten (10) days written notice.
 - B. Upon termination or cancellation of this Agreement, Issuing Agent shall promptly furnish to Principal, a complete accounting of any and all unpaid premiums owing either of the parties hereto and return to Principal all files relating to premium-bearing title assurance forms issued or about to be issued on behalf of Principal, all unused forms, blanks and supplies and all manuals and memos furnished by Principal to Issuing Agent.
 - C. A failure of any party to declare a termination of this Agreement by reason of default, or a failure of either party to take action under this Agreement for a default of any of the provisions hereof, shall not be construed to be a waiver of such default or any subsequent default of the same, or other provisions hereunder, and either party may at any time assert its right to terminate and act upon any such default.
 - D. In the event that a shortage in the accounts described in paragraph 4.J., hereof is hereafter revealed or, there is an occurrence contemplated by paragraph 9.B.(5) hereof, then, Principal may cancel and terminate this Agreement immediately upon written notice to the Issuing Agent, and further, Principal may declare immediately due any debts or accounts, together with interest, owed by Issuing Agent to Principal. Principal shall have a lien on all property of the Issuing Agent as security for the repayment to Principal of any such debt or accounts or any losses, or claims Principal may be subjected to by reason of the Issuing Agent's inability or refusal to account for any funds entrusted to him, and on demand by Principal, Issuing Agent shall forthwith make good any shortages of funds or convey to Principal, or its nominee, as security therefor, all property of Issuing Agent, and Principal shall be entitled to immediate possession of any and all such property, including, without limiting the generality of the foregoing, any title plant in which the Issuing Agent may have an interest or right of possession, whether by reason of stock ownership or otherwise.
 - E. Any right of termination set out in this Agreement shall be in addition to any remedy provided by law.
15. Termination Upon Excess of Loss. In the event Principal sustains a loss or losses during any given twelve (12) month period which exceed the amount of premium income paid by Issuing Agent to Principal during said twelve (12) month period, Principal shall have the right, at its option, to terminate this Agreement on sixty (60) days written notice to Issuing Agent.
16. Attorney's Fee. If either party shall institute an action against the other party for breach of this Agreement, the unsuccessful party shall pay court costs and reasonable attorney's fees to the successful party.
17. Unenforceable Provisions. If any one or more of the terms of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason, such and all of the remaining terms of the Agreement shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law.

- 18. **Successors.** This agreement is binding upon and shall inure to the benefit of the parties hereto, their permitted successors, personal representatives, heirs and assigns, subject to the provisions of Paragraph 12 above.
- 19. **Surviving Obligation.** In the event this Agreement is terminated pursuant to any of the terms hereof, or by mutual agreement of the parties hereto, the obligations to make any payments, provide notification as to claims and to provide access to records and files shall continue beyond the date of termination of this Agreement.
- 20. **Headings.** The subject headings of the paragraphs and subparagraphs of this Agreement are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.
- 21. **Notices.** All notices permitted or required to be given under this Agreement, except for notices of claim covered in paragraph 10, shall be in writing and may be personally delivered to the offices of the parties hereto or mailed to the offices of the parties hereto by Registered United States Mail or by Certified United States Mail, postage prepaid, return receipt requested, addressed as shown below. The effective date of notice shall be three (3) business days after personal delivery or receipt of notice by mail. Said notices shall be addressed as follows.

To Principal: **CHICAGO TITLE INSURANCE COMPANY**
 711 West Washington Street
 Chicago, Illinois 60602
 Attention: The President

To Issuing Agent:
LAND TITLE COMPANY OF KITSAP COUNTY INC.
 400 Warren Avenue
 Bremerton, WA 98310

Either party may by written notice to the other, as aforesaid, change the address to which notices are to be sent.

- 22. **Definition of Terms.** The following terms when used in this Agreement are defined as follows:
 - A. **LOSS.** As used herein, loss shall mean sums paid, or to be paid, in cash or otherwise, to settle or compromise all claims under any of Principal's title assurance(s) issued by Issuing Agent. Loss shall include, but not be limited to, expenses, costs and attorneys fees actually paid or incurred in connection with the investigation, negotiation, litigation or settlement of such claim or obligation which ultimately requires payment of any sum by Principal. Loss, as defined herein, shall be reduced by the value of any recoveries realized.
 - B. **Off Record Matters.** Off Record Matters shall mean those items which could not be ascertained from a diligent search and examination of the public records or from information contained in the Issuing Agent's file. Included herein are the identity, competency and powers of the parties to the transactions reflected in the chain of title, including forgery of record documents and fraud in the execution of such record documents. Specifically excluded from the term "Off Record matters" are allegations against either Principal or Issuing Agent, derived from the activities of the Issuing Agent, its escrow, trustee and fiduciary services, if any, its servants and employees, including but not be limited to, fraud, conspiracy, or the failure to comply with any Federal or State law or regulation, including securities laws.
 - C. **Premium.** Premium shall mean the amount payable or paid in accordance with Principal's schedule of rates in effect or as otherwise approved by Principal in writing for the issuance of title assurance.
 - D. **RISKS.** Risks shall mean those items insured against as stated on the face page of Principal's title assurance form.
 - E. **Extra Hazardous Risks.** Extra Hazardous Risks as used herein shall mean all title and off record risks, other than those defined in Paragraph 22B above which results in a liability not normally assumed in policies, and includes those extra hazardous risks which may now or hereafter be identified in Principal's agency manual.
 - F. **Title Assurances.** Title assurances shall mean commitments, binders, guarantees, indorsements and title insurance policies of Principal.
 - G. **Default.** The failure to observe any terms of this agreement shall constitute a default.

IN WITNESS WHEREOF, the parties have executed this Agreement the 20th day of April, 1992

Principal: **CHICAGO TITLE INSURANCE COMPANY**

By: *[Signature]*
 By: *[Signature]* VP
 Authorized Officer

This Agreement is not binding upon Principal until countersigned by an authorized officer.

Issuing Agent: **LAND TITLE COMPANY OF KITSAP COUNTY**

Authorized Signatories on "Title Assurances"
 By: *[Signature]*
 By: *[Signature]*

ADDENDUM "A"
to
ISSUING AGENCY AGREEMENT
DATED MAY , 1992
between
CHICAGO TITLE INSURANCE COMPANY, A Missouri Corporation
and
LAND TITLE COMPANY OF KITSAP COUNTY INC.
a Washington Corporation

1. Paragraph 4 (A) is amended by adding the following language:

Principal hereby grants the right to issue assurances of other qualified Title Insurance Companies which orders are either referred or in cases where principal declines to underwrite a specific transaction.

2. Notwithstanding the provisions of Paragraph 9b (2 and 3) issuing agent's loss cap shall be limited to the first \$5,000 (five thousand dollars) per loss.

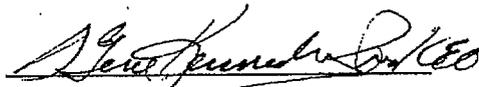
3. Except as amended here, all the terms and conditions of the Issuing Agency Agreement, Addendum "A", First and Second Amendments to Issuing Agency Agreement, shall be and remain the same as set forth therein.

Dated: May 1, 1992

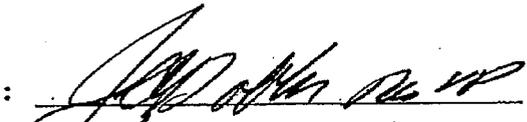
LAND TITLE COMPANY
OF KITSAP COUNTY INC.,
a Washington Corporation

CHICAGO TITLE INSURANCE COMPANY
a Missouri Corporation

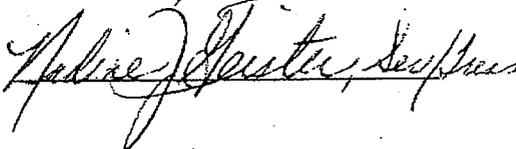
BY:



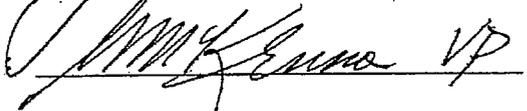
By:



BY:



By:



The Honorable Cindy L. Burdue

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

In Re:

CHICAGO TITLE INSURANCE COMPANY,

An authorized insurer

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

DECLARATION OF MADELINE
BAREWALD IN SUPPORT OF
CHICAGO TITLE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT RE:
AGENCY LIABILITY

Madeline Barewald declares as follows:

1. I am employed by a subsidiary of Fidelity National Financial, Inc. as an Assistant Vice President and Corporate Paralegal. I perform corporate maintenance for Fidelity National Financial, Inc. and its subsidiaries, including Chicago Title Insurance Company ("CTIC").

2. CTIC is a subsidiary of Chicago Title and Trust Company ("CT Trust"), which is a subsidiary of Fidelity National Title Group, Inc. Fidelity National Title Group, Inc. is a subsidiary of Fidelity National Financial, Inc. Security Union Title Insurance Company ("Security Union"), a California corporation, is also a subsidiary of CT Trust. Security Union owns approximately 45% of

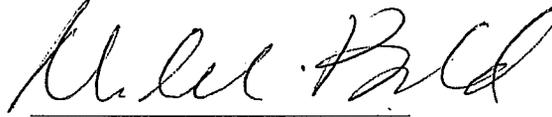
\\

DECLARATION OF MADELINE BAREWALD
UN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

1 the shares of Land Title Company of Kitsap County.

2 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
3 knowledge.

4 EXECUTED this 26th day of August, 2008, at Santa Ana, California.

5 

6 Madeline Barewald
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Honorable Cindy L. Burdue

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

In Re:
CHICAGO TITLE INSURANCE COMPANY,

An authorized insurer

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

DECLARATION OF BRAD LONDON
IN SUPPORT OF CHICAGO TITLE
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT RE:
AGENCY LIABILITY

Brad London declares as follows:

1. I am the vice president and regional manager of Chicago Title Insurance Company ("CTIC").
2. CTIC is a Missouri corporation engaged in the business of providing title insurance nationally. CTIC was founded in 1961, and has been operating in Washington since 1977.
3. CTIC has direct operations in eight Washington counties in which it maintains or subscribes to a title plant - King, Snohomish, Pierce, Whatcom, Thurston, Clark, Benton and Grant. In these counties, CTIC offers both insurance underwriting and escrow services. A title plant, in essence, collects all documents recorded as to real property in that jurisdiction (counties, in the case

DECLARATION OF BRAD LONDON IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

1 of Washington), and indexes them by legal description or address. This allows a title company to
2 access real property records for a specific county, indexed geographically, so that the title company
3 can research the state of title to any property in that county.

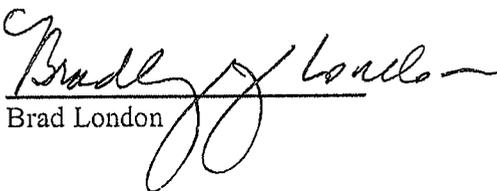
4 4. In the counties in which CTIC has direct operations, it maintains sales personnel
5 which market CTIC's escrow and title products to customers in those counties. CTIC does not
6 conduct any marketing or sales efforts in counties in which it does not have direct operations.

7 5. CTIC was not contacted by the Office of the Insurance Commissioner ("OIC")
8 during the course of its investigation into the marketing practices of Land Title Company of Kitsap
9 County (the "Land Title Investigation"), which I did not learn about until after the fact. It did not
10 request records from CTIC during the Land Title Investigation, nor did it examine CTIC's marketing
11 practices.

12 6. Notwithstanding the fact that the OIC did not investigate CTIC as part if the Land
13 Title Investigation, in November, 2007, the OIC requested that CTIC sign a Consent Order Levying
14 Fine, pursuant to which CTIC was asked, without the participation or joinder of Land Title, to (1)
15 stipulate that Land Title's conduct violated the Inducement Regulation, (2) agree to pay a fine of
16 \$114,500 based on Land Title's alleged violations, and (3) enter into a Compliance Plan that
17 required specific tracking of expenditures, semi-annual internal audits and related reporting and
18 corrective actions and to represent that Chicago title has "the authority to comply fully with the
19 terms and conditions of the [Compliance] Plan." CTIC refused to do so.

20 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
21 knowledge.

22 EXECUTED this 4th day of September, 2008, at Vancouver, Wash.

23
24 
25 Brad London
26

The Honorable Cindy L. Burdue
Hearing Scheduled: Oct. 8, 2008
With Oral Argument

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

In Re:
CHICAGO TITLE INSURANCE COMPANY,
An authorized insurer

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

[PROPOSED] ORDER GRANTING
CHICAGO TITLE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT RE:
AGENCY LIABILITY

This matter having come before the Court on the motion of Chicago Title Insurance Company for Summary Judgment Re: Agency Liability, and the Court having considered the Motion, the Declaration of Madeline Barewald, the Declaration of Brad London, the Declaration of D. Gene Kennedy, and the Declaration of Don Randolph, and the appended exhibits to the declarations, and having further considered any response and reply briefs, the arguments of counsel, and the pleadings and papers herein, and being otherwise fully informed in the premises, and having found that there are no material issues of fact and that Chicago Title, as a matter of law, is not liable for violations WAC 284-30-800 allegedly committed by Land Title of Kitsap County, Inc., NOW, THEREFORE, it is ORDERED as Follows:

1. Chicago Title Insurance Company's Motion for summary judgment is hereby granted;

