SMITH FREED & EBERHARD P.C.

WASHINGTON CASE UPDATE

case in point ...

When Agents Go Awry, Insurers May Be Liable

From the Desk of Jeff Eberhard: In this case, the Supreme Court of Washington held that an insurer might be liable for regulatory violations committed by its agent.

Claims Pointer: Insurers who retain other entities to market their products should be aware that in Washington insurers cannot insulate themselves from liability merely by entering into an agency relationship with a marketing company or other retained entity even if the contract provides that the marketing company is solely responsible for complying with regulatory requirements for selling insurance. Consequently, insurers should only establish agency relationships with companies they trust, and be prepared to shoulder responsibility when those companies violate the law.

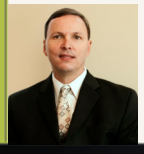
Chicago Title Ins. Co. v. Wash. State Office of the Ins. Comm'r, in the Supreme Court of the State of Washington, --- P.3d ----, 2013 WL 3946060 (August 1, 2013).

Land Title Insurance Company ("Land Title") operated as an agent of Chicago Title Insurance Company ("Chicago Title"). The two companies operated under a contract which authorized Land Title to issue and sign Chicago Title's title assurances in parts of Washington. During the course of business, Land Title was investigated by Washington's Office of the Insurance Commissioner ("OIC"). The OIC discovered that Land Title had violated various anti-inducement statutes by offering gifts to real estate agents, builders, and mortgage lenders, such as meals, golf, and tickets to sporting events. At the close of the investigation, Chicago Title refused to sign a proposed consent order stipulating that Land Title's conduct violated the anti-inducement statutes, ordering Chicago Title to pay $114,500 for Land Title's violations and forcing Chicago Title to enter into an expenditure tracking and audit plan. Instead, Chicago Title argued that it could not be liable for Land Title's conduct.

Thereafter, the OIC brought disciplinary charges against Chicago Title, which fought the allegations all the way to the Washington Court of Appeals. The Court of Appeals reversed, holding that Chicago Title could not be held liable for Land Title's violations of the anti-inducement statutes.

The Supreme Court reviewed the matter, finding that Land Title's statutory violations were a form of unlawful solicitation, for which Chicago Title was, in fact, liable. The Court held that under Washington's insurance rules, an agent has a statutory duty to solicit policies for its principals. Land Title, according to the Court, was simply doing exactly what it was required to do, by statute. Therefore, if Land Title did solicit policies improperly, Chicago Title could be held responsible.

The Court disposed of Chicago Title's arguments that (1) Land Title was merely a limited agent, (2) Land Title's conduct exceeded the scope of its agency by specifically violating the agreement, and (3) Chicago Title did not have the right to control Land Title's marketing activities. The Court noted that agents always have the implicit authority to act on behalf of the principal's goals or objectives, if those actions are customary for agents performing a particular type of work. Further, the Court found that due to the longstanding exclusive relationship of Chicago Title and Land Title, Land Title was a general agent of Chicago Title and therefore Chicago Title was liable for Land Title's conduct. Finally, the Court held that violations were common in title insurance marketing and Chicago Title's lack of investigation of Land Title cannot insulate them from liability.



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