



Real Property Case Law Update

Recent Opinions of Interest to
Real Property Litigators and Practitioners

Week Ending October 12, 2012

By the Carlton Fields Real Property Litigation Practice Group

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II. 11TH CIRCUIT CASES - LAUREN SEMBLER

- **Surety: surety relieved of obligations under surety bond where obligee failed to give notice to surety of default before surety undertook to remedy default itself** – [CC-Aventura, Inc. v. Weitz Co., LLC](#), No. 11-11191 (11th Cir. Oct. 11, 2012)

III. TITLE INSURANCE CASES - CHRIS SMART

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- **Breach of Policy: insurer has duty to inform insured that premium has not been paid and where insured instead issues a “happy foreclosure letter” it is estopped from denying the policy on the ground of failure of consideration and insured need not produce original policy to prove breach of contract** – [F.D.I.C. v. Commonwealth Land Title Ins. Co.](#), Case No. (N.D. Ohio Sept. 30, 2012) (granting in part and denying in part motions for summary judgment)
- **E&O Coverage: agent’s knowledge of principal’s claim for coverage at the time of the application for insurance and failure to disclose it to E&O carrier, barred coverage, even though agent may have not believed that principal was going to sue** – [Fidelity National Title Ins. Co. v. Houston Casualty Co.](#), Case No. 6:11-cv-1438 (Fla. M.D. Sept. 30, 2012) (granting

defendant's motion for summary judgment)

- **Standing: where loss is incurred and insured makes claim while insured is in title, insured has standing to make claim even though title was subsequently transferred to trust – [Keys v. Chicago Title Ins. Co.](#), Case No. 3:11-cv-617 (S.D. Miss. Sept. 28, 2012) (denying motion for summary judgment)**
- **Standing: where insured owner makes claim while it is in title then deeds property to herself as trustee, the transferee trust is not also required to make a claim based on same loss in order to have standing – [Keys v. Chicago Title Ins. Co.](#), Case No. 3:11-cv-617 (S.D. Miss. Sept. 28, 2012) (denying motion for summary judgment)**

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