

## **Representative Matters Involving Title Insurers and Their Insureds**

### **Class Action Defense**

- Dismissal of putative multistate class action alleging violations of RESPA, unfair trade practices, and unjust enrichment based on alleged overcharging for title insurance.
- Dismissal of class action against bank for alleged unauthorized practice of law in preparing and charging consumer for bank's preparation of notes and mortgages - affirmed on appeal.
- Reversal of class action discovery order requiring production of over 300,000 title agent closing files.
- Represented a national title insurance underwriter in defense of a putative class action alleging that the unearned split of premiums with agents constituted a violation of RESPA – Obtained dismissal with prejudice under filed rate doctrine.
- Represented a national title insurance underwriter in defense of a putative class action alleging improper splitting of fees with national builder in violation of RESPA – Obtained settlement for nominal sum.
- Represented three national title insurance underwriters in defense of ten separate putative class actions around the country alleging failure to comply with reissue rate regulations – Three were dismissed, one settled, balance are pending.

### **Closing Protection Letter Disputes**

- Represented a national title insurance underwriter in defense of claim by a national lender for \$8.6 million alleging a series of inflated appraisals and failures to follow closing instructions – Obtained dismissal of all tort claims and settled remaining contract claim.
- Represented a national title insurance underwriter in defense of a claim by a national lender for \$800,000 alleging that the underwriter's agent had participated in mortgage fraud against the lender.

### **Coverage Disputes**

- Represented a national title insurance underwriter in defense of claim involving restrictive covenants at shopping center where the title policy did not contain any exception for the restrictions - Obtained favorable settlement limiting loss to less than 10% of the damages sought.
- Represented a national title insurance underwriter in defense of claim involving a lis pendens not excepted from title policy - Successfully defeated coverage on grounds of the "assumed and agreed to" exclusion in the policy.
- Represented a national title insurance underwriter in defense of claim involving allegations of adverse possession and an unrecorded agreement - Successfully defeated coverage on grounds of the "parties in possession" and "accurate survey" exceptions in the policy.

- Represented a national title insurance underwriter in defense of claim involving allegations that insured leases were disguised financing arrangements - Successfully defeated coverage on grounds of the "assumed and agreed to" exclusion in the policy.
- Represented a national title insurance underwriter in defense of claim involving absence of title to submerged lands where the title policy had no "sovereignty lands" exception - Obtained favorable settlement substantially limiting loss.
- Represented a national title insurance underwriter in defense of claim involving allegations of overburdening of easements and ownership of rights of way - Successfully defeated coverage on grounds of "assumed or agreed to" and "created subsequent to date of policy" exclusions in the policy.

#### **Defalcation Actions**

- Represented a national title insurance underwriter in connection with an agent defalcation of over \$8.5 million – Successfully recouped over \$6.5 million.
- Represented a national title insurance underwriter in connection with an agent defalcation of over \$4 million – Successfully pursued contribution from bank and third parties significantly reducing loss.
- Represented a national title insurance underwriter in connection with a third party misappropriation of approximately \$4 million – Obtained prejudgment writs of attachment against approximately 50 properties and prejudgment writs of garnishment against multiple bank accounts leading to successful recoupment of the entire loss.

#### **Market Conduct and Unfair Trade Practice Disputes**

- Represented a national title insurance underwriter in defense of a RESPA investigation by the U.S. Department of Housing and Urban Development involving alleged kickbacks to realtors - Consent agreement negotiated with no finding of liability.
- Represented a national title insurance underwriter in connection with a year-long market conduct examination by the Florida Office of Insurance Regulation.
- Represented a national title insurance agency in connection with a market conduct examination by the Florida Office of Financial Services – Consent agreement negotiated with no finding of liability.

#### **Title and Closing Agent Disputes**

- Represented a lender in a challenge to the validity of its mortgage on grounds it was unauthorized under a partnership agreement – Obtained summary judgment based on a finding of ratification; affirmed on appeal.
- Represented a lender in a challenge to the priority of its mortgage – Obtained summary judgment based on the doctrine of equitable subrogation; affirmed on appeal.
- Represented a title company in connection with a "flip" transaction where the plaintiff alleged a failure to disclose the recent purchase as well as environmental problems with the property – Obtained dismissal with prejudice; affirmed on appeal.
- Represented a prior owner of property in action to establish title under a constructive trust – Obtained judgment re-establishing title after bench trial; affirmed on appeal.

## Reported Decisions

- Smith v. Lawyers Title Insurance Corp., No. 07-12124, 2009 WL 514210 (E.D. Mich. March 2, 2009). Dismissal of putative multistate class action alleging violations of RESPA, unfair trade practices, and unjust enrichment based on alleged overcharging for title insurance.
- Goldberg v. Merrill Lynch Credit Corp., 981 So. 2d 550 (Fla. 4th DCA 2008). Dismissal of class action against bank for alleged unauthorized practice of law in preparing and charging consumer for bank's preparation of notes and mortgages - affirmed on appeal.
- Commonwealth Land Title Ins. Co. v. Higgins, 975 So. 2d 1169 (Fla. 1st DCA 2008). Reversal of class action discovery order requiring production of over 300,000 title agent closing files.
- Hwang v. Junron Florida, Inc., 965 So. 2d 132 (Fla. 2d DCA 2007). Dismissal of action by buyer against title insurer and closing agent in "flip" transaction – affirmed on appeal.
- Lehman Bros. Holdings, Inc. v. Hirota, 2007 WL 1471690, No. 8:06-CV-2030 (M.D. Fla. May 21, 2007). Dismissal of fraud, conspiracy and negligence claims against title insurer and closing agent on economic loss rule grounds.
- Mickens v. Stewart Title Guaranty Co., 902 So. 2d 804 (Fla. 2d DCA 2005). Imposition of equitable lien after bench trial - affirmed on appeal.
- Chicago Title Insurance Co., Inc. v. Alday-Donalson Title Co. of Florida, Inc., 832 So. 2d 810 (Fla. 2d DCA 2002). Summary judgment for title insurer in interference with contract action - affirmed on appeal.
- Gulf Island Resort, L.P. v. Yale Mortgage Corp., 783 So. 2d 259 (Fla. 2d DCA 2001). Summary judgment for lender in challenge to validity of mortgage - affirmed on appeal.
- Washington Enterprises v. DiMaria, 773 So.2d 550 (Fla. 2d DCA 2000). Summary judgment recognizing priority of mortgage under equitable subrogation doctrine - affirmed on appeal.
- Chicago Title Insurance Co. v. S. Clark Butler, 770 So.2d 1210 (Fla. 2000). Adverse summary judgment finding anti-rebating statute for title agent's share of title insurance premium unconstitutional - affirmed on appeal.
- State of Florida, Dept. of Ins. v. Keys Title and Abstract Co., Inc., 741 So.2d 599 (Fla. 1st DCA 1999). Adverse summary judgment finding title insurance data call statute unconstitutional - reversed on appeal.
- Morales v. Attorneys' Title Insurance Fund, Inc., 983 F. Supp. 1418 (S.D. Fla. 1997). Class action against title insurer under RESPA dismissed under filed rate doctrine.
- Krehling v. Baron, 900 F. Supp. 1578 (M.D. Fla. 1995). Complaint alleging fraud by title insurer dismissed for lack of privity.
- Moreno v. Macaluso, 817 F. Supp. 945 (M.D. Fla. 1993). Complaint alleging breach of title insurance policy dismissed for lack of coverage.
- Estate of Smith, Hudson, Smith v. Citibank Federal Savings Bank, 626 So.2d 1379 (Fla. 2d DCA 1993). Equitable subrogation finding in favor of lender after bench trial – affirmed on appeal.
- Sappal v. Eastern Alliance, Inc., 600 So.2d 1253 (Fla. 4th DCA 1991). Dismissal of action for indemnity against title insurer – affirmed on appeal.
- Bialowas v. Title and Trust Co. of Florida, 581 So. 2d 1317 (Fla. 2d DCA 1991). Summary judgment for title insurer in fraud action – affirmed on appeal.

- Calig v. Muller, 542 So. 2d 992 (Fla. 2d DCA 1989). Finding of title in favor of client after bench trial – affirmed on appeal.

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