



2013 Bulletin 13 AMICUS WORKS! No Duty to Actively Seek Out Prior Policies June 5, 2013

As you may recall, last January, through the generosity of First American, FLTA engaged counsel and filed an *Amicus Brief* in *Bleich & Elder v. Chicago Title*, which was then on appeal to the 3rd District Court. The appellate court was being asked to hold that a title insurer and their agents had an affirmative duty to actively search out any prior policies (even if it was not provided by the parties) in order to qualify a transaction for reissue rate.

Most of us routinely try to obtain a prior policy, first by asking our customer. We want to save our customer money; we want the benefit of a prior policy as a cross-check of our work; and we know that if we have a prior policy, we can use the Mutual Indemnification Agreement (the Treaty) to address certain title defects. But we don't think the agent should be liable to their customer or subject to fines by DFS if they don't turn over every possible rock to find the prior policy. And that would have been the result of the ruling being requested.

The standard proposed would have left every agent in a Catch-22 situation if we couldn't lay our hands on a prior policy. Prior policies are not recorded and there is no central database, so finding one is not always easy. We'd always be looking over our shoulders wondering "Will a jury or our regulator think I looked hard enough?" "Should I assume that the current own must have had a policy and give him the reissue rate anyway?" "Will I be in more trouble for not having the prior policy in my file, or for not giving the reissue rate?"

This morning, the Third District Court of Appeals released its opinion. They agreed with our position that the Rate Rule should be read as it was written; and that it does NOT impose a duty to actively search out prior policies. We are very pleased with this opinion, and expect it to be relied upon when the *Raffone* and *Higgins* cases (which held to the contrary) are later appealed.

This ruling does NOT change the rule that we must give each customer the best rate for which they qualify! We should continue to advise our customers to bring in their prior policy. The FAR/BAR contract requires it. We should be helping them save money when they can – and reducing our own exposure.

Again, FLTA would like to thank First American for its generosity in supporting our Amicus efforts to protect the entire title industry and the hard work of the team at Dentons, LLP.

More detail and links to the opinion and other filings can be [found here](#)

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