



THE NEWS IN GENERAL

"YOU CAN TRUST THE GENERAL"

MARCH-APRIL 2006



INSIDE THIS ISSUE

BREAKING NEWS – OHIO SUPREME COURT NEGATES ARBITRATION CLAUSE IN HENDERSON V. LAWYERS TITLE REISSUE RATE CASE 1-4

CALENDAR 5

CONGRATULATIONS!!! 6

Editors:

Carol Doering, Robert Holman & Michael McDonald

Contributing Editors:

Douglas Woods

The New In General

24262 Broadway Avenue
Oakwood Village, Ohio
44146

(440) 232-5511 Phone

(440) 232-1501 Fax

Email:

dwoods@generaltitleand

trust.com

BREAKING NEWS – Ohio Supreme Court negates arbitration clause in Henderson v. Lawyers Title reissue rate case

A long-awaited ruling in Henderson v. Lawyers Title, a reissue rate case argued before the Ohio Supreme Court more than a year ago, was issued today. The Ohio Supreme Court held that when a title insurance policy is issued in response to an unqualified request for coverage and is not delivered to the insured until after the closing, the policy is binding on the parties to the extent that it contains the usual and customary terms found in similar insurance policies. While Lawyers Title had argued that the case must be decided by an arbitrator due to provisions in the contract, the court ruled that the arbitration provision was not enforceable.

Oral arguments for the class action lawsuit that alleged that Lawyers Title failed to offer homeowners a special reissue rate on title insurance for refinancings were heard in the Ohio Supreme Court on March 8, 2005, after Lawyers

Title lost an appeal in the 8th District Court of Appeals to force the case into arbitration. While Lawyers Title argued that the case must be decided by an arbitrator due to provisions in the contract, the plaintiffs claimed the arbitration provision was not enforceable.

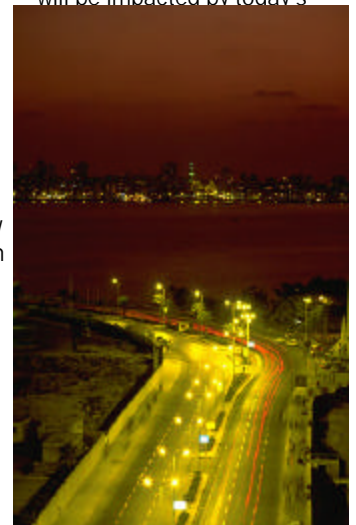
But in a 5-2 majority opinion written by Justice Alice Robie Resnick, the court ruled that a policy clause requiring arbitration of all disputes between the insurer and insured was not enforceable against the Hendersons.

In today's decision, the court affirmed the lower court's rulings, negating the arbitration clause, but indicated that

its legal reasoning supporting that judgment were "substantially different from those of the courts below." Writing for the majority, Justice Resnick said the trial and appellate courts applied an incorrect legal standard in holding that the insurance

company's failure to deliver a copy of its policy to a policyholder prior to the effective date rendered the entire contract of insurance invalid.

In addition to Ohio, New York, Florida, Minnesota and Pennsylvania, to name a few, have all been hit by class action lawsuits with plaintiffs claiming various fact patterns surrounding reissue rates not being offered in violation of state-mandated rate structures. All of these reissue cases, filed over the past three years during the height of the refi boom, are in various stages in the court system -- but a similar case in Ohio will be impacted by today's



Writing for the majority, Justice Resnick said the trial and appellate courts applied an incorrect legal standard in holding that the insurance company's failure to deliver a copy of its policy to a policyholder prior to the effective date rendered the entire contract of insurance invalid.

BREAKING NEWS – Ohio Supreme Court negates arbitration clause in Henderson v. Lawyers Title reissue rate case (continued from page 1)

decision, as the Ohio Supreme Court will now apply its ruling to Rodney Simon v. Commonwealth Land Title Insurance Co..

A 'meeting of minds?'

The complaint in the Henderson case was similar to the multiple class action lawsuits that were filed in New York against Commonwealth Title, Lawyers Title, First American Title Insurance Co. of New York, American Pioneer, Fidelity National Title Insurance Co. of New York, and National Title Insurance Co. of New York in 2004.

Within a four-month span in 1999, plaintiffs Miles and Patricia Henderson bought a home in South Russell, Ohio and subsequently sold their former home in Shaker Heights. In both transactions, the buyer and seller split the cost of a title insurance policy obtained from Lawyers Title.

The Hendersons later became aware that Lawyers Title had charged its full premium for both policies, despite indicating in its rate schedule filed with the Ohio Department of Insurance that the company offered a reissue rate 40 percent lower than the full premium if a previous title insurance policy had been issued on the property being purchased within the preceding 10 years -- a condition that applied to both the South Russell and Shaker Heights properties.

The Hendersons subse-

quently filed a class action lawsuit in Cuyahoga County Common Pleas Court on behalf of themselves and other purchasers of Lawyers Title policies, alleging that the company routinely overcharged its customers by not offering the reissue rate to qualified applicants. At dispute was whether there had been actually a "meeting of minds" between Lawyers Title agents and their clients. The suit sought reimbursement and damages.

In response to the lawsuit, Lawyers Title asked the trial court to refer the entire case to arbitration. The company cited a clause included in the policies it had issued to the Hendersons and to the buyers of their Shaker Heights home that authorized either the insurer or policyholder to demand arbitration of "any controversy or claim ... arising out of or related to this policy."

Following an evidentiary hearing, the trial court denied the motion to compel arbitration. The judge ruled that, because Lawyers Title had not given the Hendersons a copy of its policy to review before the closing of their transactions, they had no opportunity to understand and consent to the terms of the policy prior to its issuance.

In light of that fact, the trial court found that there was no "meeting of the minds" between the insurer and insured, and ruled that this defect rendered not only the arbitration clause but the

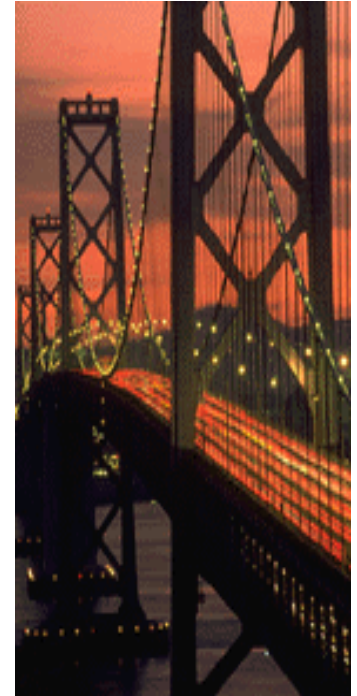
entire policy invalid and unenforceable. In the absence of a valid arbitration agreement, the judge ruled that his court had jurisdiction to hear the Hendersons' class-action complaint.

On review, the 8th District Court of Appeals affirmed the trial court's ruling. Lawyers Title appealed the 8th District's decision to the Ohio Supreme Court, which heard oral arguments for the case on March 8, 2005.

Arbitration clause 'unenforceable'

In today's decision, Resnick quoted Supreme Court decisions dating back to the 19th century: "A contract of insurance is consummated upon the unconditional acceptance of the application of the insured by the insurer (Hartford Fire Ins. Co. v. Whitman, 1906)." "And where nothing is said, in the negotiation for insurance, about special rates or conditions, it may be presumed that those which were usual and customary, were intended (Newark Machine Co. v. Kenton Ins. Co., 1893)."

Resnick noted that the historical reason for enforcing insurance contracts during the interim between agreement of the parties and actual delivery of the policy, "is that the parties may have the benefit of them during that incipient period when the papers are being perfected and transmitted. It is sufficient if one party proposes to be insured, and the other party agrees to insure, and



The Hendersons later became aware that Lawyers Title had charged its full premium for both policies, despite indicating in its rate schedule filed with the Ohio Department of Insurance that the company offered a reissue rate 40 percent lower than the full premium if a previous title insurance policy had been issued on the property being purchased within the preceding 10 years --

BREAKING NEWS – Ohio Supreme Court negates arbitration clause in Henderson v. Lawyers Title reissue rate case (continued from page 2)

amount, and the rate of insurance is ascertained or understood, and the premium paid if demanded. It will be presumed that they contemplate such form of policy, containing such conditions and limitations as are usual in such cases, or have been used before between the parties (*Eames v. Home Ins. Co.*, 1877)."

In this case, wrote Resnick, "a valid contract was formed ... when Lawyers Title acceded to the Hendersons' request for an owner's policy of title insurance. And since the parties did not negotiate for any special terms or conditions, they are presumed to have intended that the ensuing policy would include the usual and customary provisions found in similar title insurance policies.

"Thus, contrary to the holdings below, the delivery of the policy after closing does not vitiate the parties' agreement for insurance," Resnick continued. "Accordingly, we hold that a title insurance policy that is issued in response to an unqualified request for coverage, but is not delivered to the insured until after the closing, is binding to the extent that it contains the usual and customary terms found in similar insurance policies."

Turning to the specific issue of the arbitration clause, Resnick wrote that trial testimony by Lawyers Title vice president Terry Endress indicated that some, but not all, of the standard American Land Title Association (ALTA)

used in 1999 included mandatory arbitration provisions.

"It was not Endress' testimony that the more recent ALTA policies, which include arbitration clauses, have supplanted the previous policies, which do not," Resnick wrote. "Instead, all five versions of ALTA policies, some with and some without arbitration provisions, continue in general use.

"To say that the use of an arbitration clause may vary from one transaction to the next, or that some title insurance policies but not others may be issued with an arbitration clause, is hardly sufficient evidence of a usual and customary practice," she continued. "Accordingly, Lawyers Title's assertion that an arbitration clause is a usual and customary term in title insurance policies is not supported by the record."

Resnick's opinion was joined by Chief Justice Thomas J. Moyer and Justices Paul E. Pfeifer, Maureen O'Connor and Terrence O'Donnell.

Justice Judith Ann Lanzinger entered a dissenting opinion, joined by Justice Evelyn Lundberg Stratton, in which she agreed with the majority holding that title insurance policies delivered after their effective date are binding, but said she viewed the evidence presented by Lawyers Title as sufficient to establish that an arbitration clause was a usual and customary term in the standard ALTA

when the Hendersons' policies were issued.

"For Lawyers Title, the usual and customary practice was that, following an unqualified request for title insurance, it would issue the most recently approved ALTA policy," Lanzinger wrote. "At the time of the Hendersons' transactions in 1999, the most recently approved policy was the 1992 ALTA policy, which contained an arbitration clause. The majority suggests that in order for a term to be usual and customary, there must be consistency and regularity in its use ... I would hold that there is evidence of consistent and regular use to establish arbitration as a usual and customary term and would, therefore, reverse [the court of appeals' decision]."

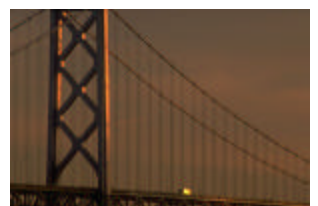
On to *Rodney Simon v. Commonwealth*

Today's ruling will have implications for a similar Ohio reissue rate case, *Rodney Simon v. Commonwealth Land Title Insurance Co.*, as the Ohio Supreme Court decided to wait for the Henderson decision before proceeding with that case.

The case unfolded in 1999, when Commonwealth Land Title issued a title insurance policy to Andrea Desberg for property she and her husband purchased from Rodney and Tracey Simon. Rodney Simon, the seller, testified the premium for the title insurance policy was \$1,674. In 2003, the Simons brought a class action suit against



"Accordingly, we hold that a title insurance policy that is issued in response to an unqualified request for coverage, but is not delivered to the insured until after the closing, is binding to the extent that it contains the usual and customary terms found in similar insurance policies."



BREAKING NEWS – Ohio Supreme Court negates arbitration clause in Henderson v. Lawyers Title reissue rate case (continued from page 3)

Commonwealth Land Title for overpayment on this policy, claiming they were entitled to a 40 percent discount on the premium.

Commonwealth Land Title's rate schedule states that purchasers of title insurance are entitled to 40 percent discount on their premiums when title insurance has been purchased within the previous 10 years of the closing sale of the property. The Simons first purchased the policy in 1995.

Commonwealth Land Title moved for an order compelling arbitration after citing §14 of the policy which states: "Unless prohibited by applicable law, either the company or the insured may demand arbitration pursuant to Title Insurance Arbitration Rules of the American Arbitration Association."

However, the Simons opposed the motion to compel arbitration on the grounds that they did not agree to the arbitration clause and were not bound by it since they weren't aware of it.

On March 15, 2004, the trial court conducted an evidentiary hearing pursuant to Commonwealth Land Title's motion to compel arbitration, and denied it. One year later the 8th District Court of Appeals affirmed the ruling.

The case came before the Ohio appeals court after Commonwealth claimed the trial court "erred by denying

defendant-appellant's motion to compel arbitration pursuant to the usual and customary arbitration provision in the subject insurance policy." The court accepted the appeal, but delayed action on the case until the Henderson ruling was handed down.

Although the appeals judges affirmed the trial court's decision, Commonwealth now has a last chance to exonerate itself -- and hopes the Ohio Supreme Court sees things their way.

We will bring you full details on the Simon case as soon as the opinion is released from the Ohio Supreme Court.



Commonwealth Land Title's rate schedule states that purchasers of title insurance are entitled to 40 percent discount on their premiums when title insurance has been purchased within the previous 10 years of the closing sale of the property. The Simons first purchased the policy in 1995.

March 2006

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			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	27	28	29	30	31	

April 2006

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						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	27	28	29
30						

We're on the web!

[Http://www.generaltitleandtrust.com](http://www.generaltitleandtrust.com)


The News In General