Insights

Indiana Court Of Appeals Holds That Title Insurers Are Not Liable For Negligent Misrepresentation

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On June 27, 2018, the Indiana Appellate Court handed down its decision in *Pearman v. Stewart Title Guaranty Company*, 108 N.E. 3d 342 (Ind. Ct. App. 2018); *trans. denied Jan. 17, 2019*. In *Pearman*, Plaintiff sought bad faith damages in excess of the insurance policy limit of $70,000.00 and also sought damages in excess of the policy limit pursuant to alleged negligent misrepresentation on the part of the insurance underwriter, Stewart Title.

The Court rejected Plaintiff's theory related to bad faith, given that bad faith was not alleged in the complaint. The more interesting portion of *Pearman* was the Court's analysis of the somewhat murky area of negligent misrepresentation in title insurance cases.

Put simply, negligent misrepresentation is a tort where one with a pecuniary interest supplies false information for the guidance of others in their business transactions. *U.S. Bank, N.A. v. Integrity Land Title Corp.*, 929 N.E. 2d 742 (Ind. 2010)(quoting Restatement (Second) of Torts § 552 (1977)). Negligent misrepresentation leads to interesting questions for title underwriters. If negligent misrepresentation can be pled against an insurer, does this mean an insured can obtain more than the policy limits from the insurer? What is the purpose of a title insurance policy if its limits are meaningless? *Pearman* provides some clarity to these issues.

In *Pearman*, Plaintiff attempted to purchase three parcels of property. The title agent procured a title commitment from Stewart Title for the three parcels and Stewart Title issued a title policy based on this commitment. However, the commitment did not recognize that one of the parcels had previously been transferred, so it could not be transferred to Pearman.

Litigation over the missed parcel ensued and Stewart Title filed a counterclaim requesting the trial court approve its tender of the $70,000 policy limits to end its obligations under the Policy, and end its litigation with Pearman. Pearman disputed the policy limit was all he was entitled to. He argued Stewart Title could be liable for negligent misrepresentation over and above the policy limits. The trial court agreed with Stewart Title at summary judgment, allowed it to tender the policy limits and be done with the litigation.

The Appellate Court agreed with the trial court, finding that Stewart Title could not be liable for negligent misrepresentation given that the parties were in contractual privity. It relied heavily on the Indiana Supreme Court's holding in *U.S. Bank, N.A. v. Integrity Land Title Corp*. The *Integrity* Court explained title commitments can give rise to a cause of action for negligent misrepresentation. However, it explained that negligent misrepresentation only arises if there is no contractual relationship. The *Integrity* court stated frankly that "[w]ere there to be a contract between Integrity and U.S. Bank, the parties in all likelihood would be relegated to their contractual remedies." *Integrity*, 929 N.E. 2d at 745.

Pearman clarified that *Integrity* stands for the proposition that if there is a title insurance policy between parties, then the policy controls damages between them regardless of the title commitment. Parties to a title insurance policy cannot seek extra contractual damages via negligent misrepresentation. The *Pearman* Court explained, “[h]ere, there is no genuine issue of material fact regarding whether Pearman and STGC are in contractual privity. They are. STGC issued the title commitment to Pearman, and the title insurance policy lists Pearman as the named insured. Thus, pursuant to *U.S. Bank*, Pearman may not bring a claim of negligent misrepresentation against STGC because the parties are in contractual privity.” *Pearman*, 108 N.E. 3d at 348.

Parties with a title insurance policy are bound by the policy. Title insurance underwriters do not have to be concerned that their policies, and the limits in them, become worthless upon the filing of a negligent misrepresentation claim seeking extra contractual damages.

Stewart Title Guaranty Company was represented by Krieg DeVault LLP in the litigation.