

IN THE SUPREME COURT OF FLORIDA

CHICAGO TITLE INSURANCE COMPANY,
AMERICAN PIONEER TITLE INSURANCE
COMPANY, FLORIDA LAND TITLE
ASSOCIATION, ATTORNEYS' TITLE
INSURANCE FUND, INC., FLORIDA
ASSOCIATION OF INDEPENDENT TITLE
AGENTS, INC., STEWART TITLE GUARANTY
COMPANY, COMMONWEALTH LAND TITLE
INSURANCE COMPANY, LAWYERS TITLE
INSURANCE CORPORATION, and FIRST
AMERICAN TITLE INSURANCE COMPANY,

Appellants/Cross Appellees,

vs.CASE NO.: 95,312

S. CLARK BUTLER, FLORIDA HOME
BUILDERS ASSOCIATION, NATIONAL TITLE
INSURANCE COMPANY and the FLORIDA
DEPARTMENT OF INSURANCE,

Appellees/Cross Appellants.

On Review of a Final Declaration by the Circuit
Court of the Second Judicial Circuit, Leon County,
As Certified by the District Court of Appeal, First
District, State of Florida, as Requiring Immediate Resolution

Statement of Limited Purpose on Behalf of
Appellee/Cross Appellant, Florida Department of Insurance

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TABLE OF CONTENTS

	PAGE
Table of Contents.....	i
Table of Citations.....	ii
Statement of Limited Purpose.....	1
Certificate of Service.....	3

TABLE OF CITATIONS

STATUTES

PAGE

Section 627.782, Florida Statutes 2

Section 627.782(2), Florida Statutes 1,2

Section 627.782(2)(c), Florida Statutes 2

CHAPTER LAWS

Chapter 99-286, Laws of Florida 2

RULES

Rule 4-186.003, Florida Administrative Code 2

Rule 4-186.003(13)(a), Florida Administrative Code 2

STATEMENT OF LIMITED PURPOSE

The Department of Insurance, a party-Defendant in the trial court, has been designated as an Appellee/Cross-Appellant by the First District Court of Appeal by virtue of not taking an appeal from the Circuit Court's Final Judgment and Declaration dated February 26, 1999.

2. The Department files this statement for the limited purpose of clarifying one point made in the Initial Brief of the Appellants made on Page 40 of the Initial Brief, which may be somewhat misleading. In this regard Appellant's Brief indicates:

Nowhere in §627.782(2), which specifies the factors DOI is to consider when setting the risk premium, is there any reference to any "commission". Nor does that term appear in Rule 4-186.003(13)(a). **More importantly, nowhere does the statute authorize title insurance rates to contain any amount for the act of producing a customer.** (Initial Brief at 40)(Emphasis supplied).

The Department disagrees with the highlighted statement. Section 627.782(2), Florida Statutes, provides:

In adopting premium rates, the department must give due consideration to the following:

(a) The insurers' loss experience and prospective loss experience under insured closing service letters, search and examination services, and policy liabilities.

(b) A reasonable margin for underwriting profit and contingencies, including contingent liability under s. 627.7865, sufficient to allow insurers and agents to earn a rate of return on their capital that will attract and retain adequate capital investment in the title insurance business.

(c) Past expenses and prospective expenses for administration and handling of risks.

(d) Liability for defalcation.

(e) Other relevant factors.

), Florida Statutes, requires the Department to consider prospective

administrative expenses in adopting premium rates. This statutory section was undisturbed by the enactment of Chapter 99-286, Laws of Florida.

r title insurance premiums, in accordance with Section 627.782,

Florida Statutes, and Rule 4-186.003, Florida Administrative Code, the Department has considered the expense of producing business to be an administrative expense described in Section 627.782(2)(c), Florida Statutes.

e of setting title insurance rates, the Department has considered some

portion of the risk premium retained by the agent to include the production of a customer.

This is true regardless of whether Section 627.782(2), Florida Statutes and/or Rule 4-186.003(13)(a), Florida Administrative Code, specifically refer to a “commission”.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to:

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this ____ day of August, 1999, and that the size and style of the print used herein
is 14 point proportionally spaced Times New Roman type.

S. Marc Herskovitz