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The Docket: Sometimes, Ransom is Cheaper Than Claim Damages

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The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee, which reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.

Today's review of a ruling in a Missouri case awarding disproportionate damages was provided by Lance Pomerantz, a New York sole practitioner who focuses exclusively on land title law. He can be reached at lance@landtitlelaw.com.

Citation: *Spalding v. Stewart Title Guaranty Company*, WD76369 (Missouri Court of Appeals, Western Dist., September 23, 2014, *application for transfer to Sup. Ct.* deniedOct. 28, 2014).

Facts: The Insured had purchased 419 acres and procured title insurance in the amount of $1,700,000. The Insured then attempted to develop a waterfront community. The biggest challenge? There was no body of water on the parcel. The insured procured permission to open the dam of an adjoining lake and flood a portion of the property. The plan was to then build 300-400 waterfront homes. Just before flooding was to commence, a third party asserted title to *one acre* of the proposed flood plain. The Insurer determined the third party indeed owned the one-acre parcel, but the defect only affected .24 percent of the insured parcel. That's not a typo—title to 99.76 percent of the insured property was not defective. The insurer tendered $10,000 to the insured for the diminution in value. The third party insisted on a payment of $387,000 (*i.e.* a "ransom") to relinquish his claim, but the Insurer didn't budge. The planned development stalled and the Insured commenced an action for breach of contract and "vexatious refusal to pay" the policy claim.

Holding: At trial, the Insured offered an appraiser's opinion that the "highest and best use" of the property was a waterfront residential development. Because that use was now unavailable due to the title defect, the appraiser calculated damages in excess of $4,000,000. There is no indication the insurer proffered any appraisal testimony in rebuttal. For reasons not stated in the opinion, the trial court award came in just under $1.3 million.

The insurer contended the property "as insured" under the policy was undeveloped property, not a lakefront-style resort complete with residential lots and amenities, and should be valued on that basis. The court flatly stated that the contention was "without merit." It relied on a 1975 case, *Fohn v. Title Insurance Corporation of St. Louis*, 529 S.W.2d 1, 4 (Mo. *en banc* 1975), in which the Missouri Supreme Court permitted a jury to consider the "highest and best use" of the property in measuring an insured's damages under a title insurance policy.

Relevance to the Title Industry: Until now, there had been no significant cases on this issue since *Fohn*. The *Spalding* decision, and the denial of further review, indicate Missouri's commitment to the "condemnation-style" damages approach. Across the country, jurisdictions differ on the date as of which damages should be computed. But the concept that damages are to be computed as of the date of discovery, rather than the policy date, does not automatically imply that damages be based on a planned, yet unrealized, use of the property. Widespread adoption of this approach could signal a dramatic expansion of risk for the title insurance industry.

Read the full opinion here.