

The Professional Line - April 2010 Edition

Hinshaw Newsletter | 3 min read

Apr 15, 2010

Download the hardcopy newsletter: [The Professional Line - April 2010](#)

Real Estate Brokers and Lawyers Beware!

In an article entitled “Welcome to the Hottest Trap for Unwary Real Estate Brokers & Lawyers!” which was published in the July 2009 issue of this newsletter, we alerted readers to a new loan modification scam in which struggling homeowners facing foreclosure or seeking loan modifications are targeted. In the August 2009 issue of the California Bar Journal, California Attorney General Edmund G. (Jerry) Brown, Jr. described the phenomenon as follows:

“The loan modification industry is teaming with confidence men and charlatans who rip off desperate homeowners facing foreclosures by firm promises and money back guarantees. These scam artists pocketed thousands of dollars from each victim and didn’t provide an ounce of relief.”

Recent Court Rulings — Case Summaries & Conclusions

Real Estate Broker Malpractice: Real Estate Broker Did Not Breach Fiduciary Duty When Buyer Failed to Investigate

Zoning Walker v. Berman, 2009 WL 1272395 (N.Y. Sup. Ct. May 4, 2009) (Unreported Disposition)

A buyer of investment property sued her real estate broker for breach of fiduciary duty of full disclosure because the broker did not inform the buyer that the property was not classified for apartment rentals.

Real Estate Broker Malpractice: No Caveat Emptor Where Misrepresentations Regarding Square Footage; Damages Depend on Bargained for Exchange

For Exchange Bowman v. Presley, 212 P.3d 1210 (Okla. 2009)

Property buyers sought a home larger than their one-story, 1,398 square foot house. Their real estate agent and property sellers represented that the sellers' home was 2,890 square feet. A deal was struck for the buyers to purchase the sellers' home for \$50 per square foot, or \$144,500 (rounded up to \$145,000). Shortly after the close of escrow, however, the buyers received an appraisal that stated that the home was only 2,187 square feet. They sued for fraud, breach of contract, and violation of Oklahoma real estate law.

Insurance Agents and Brokers: Triable Issue of Fact Exists Where Insurance Broker Fails to Inspect Previous Policy Prior to Placing Coverage

West Bend Mutual Insurance Company v. 1st Choice Insurance Services, 918 N.E.2d 684 (Ind. App. 2009)

A property seller entered into a conditional sale contract. The buyers were required to insure the property until the sale was finalized and to list the seller as the mortgagee on the insurance policy. The buyers purchased insurance from West Bend Mutual Insurance Company (West Bend). When the buyers failed to pay the premium, West Bend cancelled the policy.

Insurance Agents and Brokers: When Right to Subrogation is Contractual, Insurer Need Not Establish Settlement With Insured is Covered Loss or that Actual Loss Exists

Bay Rock Operating Company v. St. Paul Surplus Lines Insurance Co., 298 S.W.3d 216 (Tex. 2009)

Where an insurer has a contractual right to subrogation and seeks to assert a subrogation claim for negligence against an insured, it need not establish that its settlement with the insured was a covered loss and that the insured suffered actual loss.

Insurance Agents and Brokers: Professional Negligence Claim Against Insurance Agent and Broker Considered Assignable

Associated Insurance Service, Inc. v. Garcia, 2010 WL 246065 (Ky. 2010)

The city of Louisville operated a ship for dinner cruises called the Star of Louisville (the Star). The city sought marine insurance for these operations from Associated Insurance Services, Inc. (Associated), which in turn contacted AON Risk Services of Ohio (AON) to obtain a quote. AON provided a quote from an Australian insurer, HIH Casualty and General Insurance, Inc. (HIH). The city purchased a policy from HIH with limits of \$1 million.

Architects & Engineers: Failure to Comply with OSHA Specifications Did Not Automatically Constitute Negligence in Employees' Death

Rogers v. Barlow Eddy Jenkins, P.A., 22 So. 3d 1219 (Miss. July 28, 2009)

A roofing subcontractor's employee, Robert Rogers (Rogers), sustained injuries while climbing a ladder to inspect a leak in the roof of a building where he had previously worked. He ultimately died due to the injuries. The Occupational Safety and Health Administration (OSHA) later inspected the ladder from which Rogers fell and determined that it failed to meet the specified dimensions. Based on that determination, Rogers' widow filed a wrongful death action against the architects, Barlow Eddy Jenkins, P.A. (Barlow Eddy) and the project representative Hugh Blair (Blair). The widow's experts claimed that the ladder's design and construction did not

meet OSHA's standards because the spacing between the vertical bars on the ladder was too narrow and there was not enough space between the ladder and the wall to which it was secured.

Download the hardcopy newsletter: *The Professional Line* - April 2010

For more information, please contact Cassidy E. Chivers or your regular [Hinshaw attorney](#).

This newsletter has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.

Related Capabilities

Appellate