

No. D-1-GV-08-000981

BP MAY 15 2008

At 8:00 A.M.
Amalia Rodriguez-Mendoza, Clerk

The State of Texas

PLAINTIFF,

v.

Title Data, Inc.

DEFENDANT.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

119 JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff, the State of Texas, by and through its Attorney General, Greg Abbott sues Title Data, Inc. and for its cause of action would respectfully show the Court:

I.

DISCOVERY CONTROL PLAN

1.1 The discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.

II.

SUMMARY OF PETITION

2.1 Title Data, Inc. ("Title Data") is a corporation engaged in the business of maintaining title plants. It is owned by title companies that do business in the Houston area. It has adopted and enforced rules that restrict the transfer of title information between certain title agents and direct operations of title insurance companies (collectively "title companies").

2.2 Plaintiff, the State of Texas ("State"), through the Texas Attorney General, Greg Abbott, brings this action against Title Data. The State seeks injunctive relief to remedy injuries sustained as a result of actions by Title Data which it alleges violate the antitrust laws of the State of Texas, as well as recovery of fees and costs incurred in investigating these violations.

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III.
JURISDICTION AND VENUE

3.1. Jurisdiction and venue are proper in this Court pursuant to Article 5, Section 8 of the Texas Constitution and Sections 15.20 and 15.26 of the Texas Business and Commerce Code.

IV.
PLAINTIFF

4.1. Plaintiff, State of Texas, by and through its Attorney General, Greg Abbott, brings this action as *parens patriae* on behalf of the citizens of the State of Texas, and in its enforcement capacity authorized by the statutes and the Constitution of the State of Texas. The violations of state law alleged herein have caused loss and damage and threaten loss and damage to the general welfare and economy of the State of Texas.

V.
DEFENDANT

5.1. Title Data is incorporated under the laws of Texas with its principal place of business in Houston, Texas. Title Data maintains databases of property records in several counties throughout Texas and offers title information and services to agents, underwriters, and other professionals in the title insurance industry.

VI.
FACTUAL ALLEGATIONS

A. Background

6.1. A title insurance policy usually accompanies the transfer of real property. Title insurance indemnifies against undiscovered liens, encumbrances or defects in the title and is usually required by the lender in a real estate transaction.

6.2. Title companies issue title insurance policies. The Texas Department of Insurance (TDI) licenses title companies by county.

6.3. Title insurance companies, or “underwriters,” underwrite the title insurance policies issued by title companies, authorizing such companies to issue title insurance policies on their behalf.

6.4. Upon receiving an order for title insurance, a title company typically conducts a title search and examination and based upon that search and examination, generates a title insurance commitment. TDI prescribes the form of title commitments in Texas. The title commitment identifies all known liens, encumbrances or defects in title, items that must be remedied before closing, as well as items that will be excluded from coverage under the title insurance policy.

6.5. Title companies sometimes transfer title commitments among themselves. For example, TDI rule P-24 permits title companies licensed in one county to issue title insurance policies for property located in another county, so long as the out-of-county title company contracts with an in-county title company to conduct some portion of the title search and examination. The title companies then divide the insurance premium using percentages set forth by TDI. The sharing of premium is referred to in the industry as a premium “split” and is common in most of the state.

6.6. Title companies typically conduct their title searches and examinations using a title plant. A title plant is a geographic index of and name index to all public-domain documents, such as liens, easements, etc., that might affect title to real property.

6.7. Every Texas title company is required to own or lease a title plant in each county in which that company is licensed. TEX. INS. CODE, Art 9.02(f). Under Procedural Rule 12 (P-12), TDI permits title companies to reduce costs by pooling their title plants and jointly updating and maintaining those plants. The result is a joint title plant.

6.8. Title Data was established as a joint title plant for Harris County in 1967. Its owners include many of the established title agencies in Harris County, as well as representatives of the top four national underwriter holding companies in the United States.

6.9. In 1990, Title Data began offering subscriptions which provided title companies who did not have an ownership interest in Title Data with access to its Harris County title plant. Beginning in 1989, Title Data began an expansion into the counties surrounding and including the Houston metropolitan area. Today, Title Data offers subscriptions to its title plants in Harris, Chambers, Brazoria, Fort Bend, Galveston, Jefferson, Liberty, Montgomery and Waller counties.

6.10. Title Data's shareholders pay monthly assessments to cover maintenance of the Harris County title plant. The income generated by subscription fees enables Title Data to return these assessments at the end of its fiscal year, as well as provide each shareholder with a dividend.

B. Data Restrictions.

6.11. Title Data's Master Agreement and subscription agreements restrict title companies' ability to transfer title commitments.

6.12. The "business presence rule" provides in essence that title companies subscribing to or owning an interest in Title Data may only use Title Data's records and information to provide a title commitment to a title company licensed in another county if that title company has not established a "business presence" within the Title Data county where the real property is located. If the out-of-county title company has established a "business presence," the in-county title company is required to retain 100% of the title insurance premium. Title Data's rules define "business presence" to include performing a real estate closing by any means, through any agents or representatives.

6.13. Title Data's rules also strictly forbid members or subscribers from sharing title

commitments with title companies licensed in a Title Data county who are not members or subscribers. They also prevent the transfer of title information or products to anyone other than an "end user," defined as someone acquiring a non-insurance product (such as an abstract) for his or her own use and not for resale or dissemination to others.

6.14. These restrictions, and Title Data's enforcement thereof, are on balance anti-competitive.

VII. RELEVANT MARKETS

7.1. There are two relevant product markets. One relevant product market is the provision of title plant services. Another relevant product market is the provision of title company services.

7.2. The relevant geographic markets for each of the above-mentioned product markets are Harris, Chambers, Brazoria, Fort Bend, Galveston, Jefferson, Liberty, Montgomery and Waller counties in the State of Texas.

7.3. Title Data has substantial market power in the title plant services market in the relevant geographic markets. The title agent owners and underwriters of Title Data cumulatively have substantial market power in the title company services market in the relevant geographic markets.

VIII. FIRST CAUSE OF ACTION

8.1. The State incorporates and adopts by reference the allegations contained in every paragraph of this petition.

8.2. Beginning at least as early as 1990, and continuing thereafter until now, Title Data and its owners and subscribers entered into agreements to adopt and/or enforce policies that restrict the transfer of title information obtained from Title Data title plants. The State alleges that these

agreements suppressed competition in the market for title company services in the relevant geographic markets and constituted an agreement in restraint of trade and commerce in violation of Section 15.05(a) of the Texas Business and Commerce Code.

IX.
SECOND CAUSE OF ACTION

9.1. The State incorporates and adopts by reference the allegations contained in every paragraph of this petition.

9.2. Beginning at least as early as 2003, and continuing thereafter until now, the State alleges that Title Data exercised its substantial market power in the market for title plant services in the relevant geographic markets in a manner that violates Section 15.05(b) of the Texas Business and Commerce Code.

X.
PRAYER

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a) Adjudging and decreeing that Title Data engaged in conduct in violation of Section 15.05(a) of the Texas Business and Commerce Code;
- b) Adjudging and decreeing that Title Data engaged in conduct in violation of Section 15.05(b) of the Texas Business and Commerce Code;
- c) Awarding the State of Texas injunctive relief to remedy the violations alleged in this petition;
- d) Awarding the State of Texas its costs of this action, including reasonable attorneys' fees, costs, and where applicable, expert fees as provided in Business and Commerce Code section 15.20(b) and Texas Government Code section 402.006(c); and
- e) Directing such other and further relief as the Court deems just and proper.

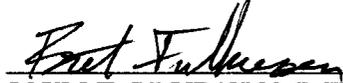
Respectfully submitted,

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