

No. D-1-GV-08-000781

The State of Texas

PLAINTIFF,

v.

Title Data, Inc.

DEFENDANT.

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

419 JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

JL MAY 15 2008
At 3:54 PM
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT AND STIPULATED INJUNCTION BETWEEN THE
STATE OF TEXAS AND TITLE DATA, INC.

The State of Texas (State), through its Attorney General Greg Abbott (Attorney General) has filed suit against Title Data, Inc. (Title Data) alleging violation of state antitrust statutes. Specifically, the Attorney General has alleged that Title Data adopted restrictions on the transfer of certain information relating to real property in Harris, Chambers, Brazoria, Fort Bend, Galveston, Jefferson, Liberty, Montgomery and Waller counties. The Attorney General has alleged that these restrictions and Title Data's enforcement thereof unreasonably restrain competition among title plants and title agents in these counties, in violation of federal and state antitrust laws. Title Data denies that these restrictions or their enforcement have unreasonably restrained competition. To avoid the uncertainty and expense of protracted litigation, the Attorney General and Title Data have entered into a Settlement Agreement (attached hereto as Appendix A) and agreed to entry of this Order.

Therefore, it is hereby ORDERED:

I. PARTIES

1.1. The Attorney General is the chief legal officer of the State of Texas. The Attorney General is authorized to bring this action for violations of federal and state antitrust laws.

1.2. Title Data is a corporation which provides title plant services in Harris, Chambers, Brazoria, Fort Bend, Galveston, Jefferson, Liberty, Montgomery and Waller counties. Its principal place of business is in Houston, Texas.

II. JURISDICTION

2.1. The Court finds that it has subject matter jurisdiction and may exercise personal jurisdiction over the Title Data. The Court finds that venue in this Court is proper. The Court finds that the Attorney General's complaint states a claim upon which relief may be granted.

III. TERMS

3.1. *Prohibited List.* Title Data (1) shall not post on its website any list of persons or entities (“Precluded Recipients”) who are precluded from receiving information the disclosure and/or transfer of which is restricted under the terms of a subscription agreement, the Title Data Master Agreement or rules promulgated pursuant to the Master Agreement (collectively “Title Data Restrictions”), and (2) it shall not advise Participants in writing, orally, or through any other medium, that any person or entity is a Precluded Recipient unless Title Data in good faith has reason to believe that (i) based upon information available to the public through the Texas Department of Insurance, such person or entity is licensed or otherwise authorized by the Texas Department of Insurance to issue title insurance for a Title Data County, but such person or entity is not authorized by contract with Title Data to access the Title Data Plant for such county, (ii) such person or entity has received or attempted to obtain title information in violation of the Title Data Restrictions, or (iii) such person or entity has otherwise engaged in conduct which would unilaterally disqualify it from receiving title information under the Title Data Restrictions. The communication permitted under subdivision (2)(i) herein shall be limited to monthly (or less frequent) distribution of a written listing (including address and phone number) of Title Companies which is publicly available from the Texas Department of Insurance, with corrections to reflect data uniquely available to Title Data. The communication permitted under subdivisions (2)(ii) and (2)(iii) herein shall be limited to written identification (including address and phone number) of the Precluded Recipient and the Title Data Counties for which the individual or entity is a Precluded Recipient. Nothing herein shall prevent Title Data from maintaining a current list of Participants on its website.

3.2. *Single Entity.* Title Data shall not automatically construe a violation of a Title Data Restriction by a Participant as a violation of such Title Data Restriction by any Affiliate of such Participant. Likewise, Title Data shall not impute a decision by the Affiliate of a Participant to underwrite title insurance policies issued by a title agent contracted with a title plant other than the Title Data Plant to such Participant. Nothing herein shall prohibit Title Data from enforcing

the Title Data Restrictions related to transfer of Retrieved Information and/or Products between Affiliated Entities.

3.3 *Business Presence.* Title Data shall amend the Title Data Master Agreement and its subscription agreements to provide for the following definition of “Business Presence” and shall not amend such definition for a period of at least three (3) years:

Business Presence shall mean the performance of a real estate closing (including a sign-up, a witness-only closing, an accommodation closing, a courtesy closing, and similar) in a Title Data County, for real property situated within such Title Data County, by a Title Company, acting through its employees, agents or representatives, within the last ninety (90) days, where such Title Company retained or will retain any portion of the title insurance premium paid (or to be paid) by the purchaser, borrower, seller, or lender in such real estate closing. For purposes of this definition, “agents or representatives” shall include, without limitation, notaries, mobile notaries, signing services, Participants, other Title Companies, lenders and attorneys.

3.4 *Fee Attorneys.* Title Data shall amend the Title Data Master Agreement and its subscription agreements to provide for the following and shall not amend such provision for a period of at least three (3) years:

In the event a Fee Attorney either (i) makes application to the Texas Department of Insurance to become a Title Company authorized to issue title insurance for real property situated within a Title Data County, or (ii) becomes a Fee Attorney for a Title Company which is not authorized by contract with the Title Data to access the same portion of the Title Data Plant as the Participant is authorized to access, then the Participant shall immediately discontinue providing such Fee Attorney with Promulgated Insurance Products and, within ninety (90) days of the date such Fee Attorney takes an action described by (i) or (ii) above, Participant shall retrieve and secure all Promulgated Insurance Products in the possession of such Fee Attorney, including all copies thereof.

3.5 *Antitrust Compliance and Training Program.* For a five (5) year period, Title Data shall adopt the antitrust compliance and training program described in Appendix B attached hereto.

3.6 *Publication and Notice.* Within two (2) weeks of the Settlement Agreement’s execution, Title Data shall provide a fully executed copy of the Settlement Agreement to each Participant who is a shareholder or licensee under the Master Agreement.

3.7 *Non-Enforcement of Liquidated Damages.* Title Data shall not seek recovery of liquidated damages for any conduct occurring prior to the date of the Settlement Agreement, solely to the extent such conduct would not have constituted a violation of the Title Data Restrictions had the Title Data Restrictions then in effect been amended pursuant to the Settlement Agreement.

3.8.1 *Governance—Amendments to Master Agreement.* Title Data shall amend its Master Agreement to provide as follows and not amend such provisions for a period of at least three (3) years:

Board of Directors.

The Board shall be comprised of individuals appointed by Participants (the “Participant Directors”) and individuals who are not affiliated with either the Participants or the Corporation (the “Independent Directors”).

Participant Directors.

Each Participant shall be entitled to appoint one person to the Board provided that such person must be an officer or employee of such Participant. Each member of the Board appointed by a Participant shall have one vote for each block of one hundred (100) shares of capital stock owned by such Participant. In the event a representative of a Participant ceases to meet the foregoing qualifications, he shall automatically be removed from the Board and shall be replaced by a qualified representative selected by such Participant. Any Participant may change its representative on the Board at any time by furnishing to the Corporation a certified copy of a corporate resolution, consent of partners, or other written evidence satisfactory to the Corporation confirming that such a change has been duly authorized by the Participant.

Independent Directors.

The Participants shall annually elect two individuals to serve on the Board who are not affiliated with either the Participants or the Corporation.

Executive Committee.

The Board shall elect a committee (the "Executive Committee") comprised of four (4) Participant Directors and one (1) Independent Director to supervise the day-to-day affairs of the Corporation. The duties, responsibilities, and authority of the Executive Committee shall be determined by the Board.

3.8.2 *Governance—Adoption of Rule.* Title Data shall adopt a rule pursuant to the Master Agreement as follows:

For a period of five (5) years from the date of this Agreement, no member of the Title Data board of directors shall take part in any decision by a Title Insurance Company as to whether a title plant utilized by an independent title agent that has contracted to use a title plant other than the Title Data Plant in any Title Data County is adequate to meet the criteria established by such Title Insurance Company for the appointment of independent title agents.

3.9 *Cost Reimbursement.* Title Data shall pay the Attorney General \$500,000.00 in partial reimbursement of the reasonable and necessary costs and fees associated with his investigation of Title Data's business practices.

V. MISCELLANEOUS

4.1. *Enforcement.* If the Attorney General believes Title Data has violated this Order he shall promptly notify Title Data in writing. The Attorney General shall thereafter permit Title Data a reasonable opportunity to cure any alleged violation without instituting legal action. If Title Data has not cured the alleged violation within sixty (60) days of the notification, the Attorney General may thereafter seek to undertake any remedial action deemed appropriate and consistent with this Order. This time period may be extended by mutual agreement in circumstances where the sixty-day (60-day) period does not allow sufficient time to cure the alleged violation.

4.2. *Legal Exposure.* This Order is not intended to give any legal rights or remedies of any nature to any third party.

4.3. *Notices.* All notices required by this Order shall be sent by certified or registered mail, return receipt requested, postage prepaid or by hand delivery to:

As to the State:

John T. Prud'homme
Assistant Attorney General
Antitrust and Civil Medicaid Fraud Division
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

As to Title Data:

Title Data, Inc.
1225 North Loop West, Suite 950
Houston, TX 77008-4722
Attn: James P. Sibley
Fax: 713.880.2660

with a copy to:

Locke Lord Bissell & Liddell
600 Travis
3400 JPMorgan Chase Tower
Houston, Texas 77002
Attn: Marcus A. Watts
Fax: 713.223.3717

4.4. *Governing Law.* This Order shall be governed by and interpreted according to the laws of the State of Texas, excluding its conflict of laws provisions.

4.5. *Extinguished Claims.* All of the Released Claims (as defined in the Settlement Agreement Between Title Data and the State of Texas) are hereby extinguished as to all of the Released Parties (as defined in the Settlement Agreement Between Title Data and the State of Texas).

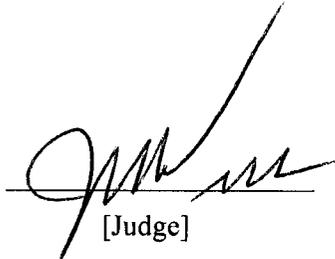
4.6. *Modification.* If the Attorney General or Title Data believe that modification of this Order would be in the public interest, that party shall give notice to the other and the parties shall attempt to agree on a modification. If the parties agree on a modification, they shall jointly petition the Court to modify the Order, and such modification shall be granted unless the Court determines that the modification is contrary to the public interest. Nothing herein prohibits a party from petitioning this Court for a modification in the absence of agreement of the other party. Likewise, nothing herein prohibits a party from opposing such modification.

4.7. *Retention of Jurisdiction.* The Court retains jurisdiction for five (5) years following this Order's entry to enable any party to apply to this Court for such further orders and directions as may be necessary and appropriate for the interpretation, modification, and enforcement of this Order.

4.8. *Termination.* If the Settlement Agreement is terminated for any reason, then this Order shall be vacated and shall have no force or effect.

4.9. *No Admission or finding of Liability.* Title Data's agreement to entry of this Order is not an admission of liability. This Order does not constitute a finding or conclusion that Title Data has violated any law. Neither this Order nor Title Data's agreement to its entry may be offered or received into evidence in any action as an admission of liability, whether arising before or after the entry of the Order.

IT IS SO ORDERED, this 15th day of ~~April~~ ^{May}, 2008,



[Judge]

GREG ABBOTT
Attorney General of Texas

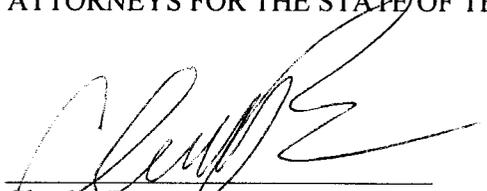
KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy Attorney General for Litigation

MARK TOBEY
Chief, Antitrust & Civil Medicaid Fraud Division
TX Bar No. 24032209

Bret Fulkerson for

JOHN T. PRUD'HOMME, JR.
Texas Bar No. 24000322
ATTORNEYS FOR THE STATE OF TEXAS



Charlie Baumann
Texas State Bar No. 01931450
ATTORNEY FOR TITLE DATA, INC.