***Legal Pulse* Memorandum**
First Quarter 2015

July 22, 2015

Welcome to this edition of the *Legal Pulse Newsletter*. The *Legal Pulse* is a risk management tool that identifies real estate liability trends so you can avoid unnecessary risks in your business. In this edition, we look at three liability topics: agency, property condition disclosures, and RESPA. We will also review employment issues that can cause legal problems.

While agency is always the top liability issue, no clear theme is evident from the agency cases so far this year. Several decisions involve misrepresentations or concealed defects, raising agency issues as well as property condition disclosure questions. Other decisions explore a real estate licensee's fiduciary and statutory duties.

In 2015 RESPA cases, courts continue to encounter kickback claims. A common complaint is that mortgage insurance premiums are being used to camouflage referral payments. Some of these cases have settled. In an unusual case, a borrower sought to enforce the interest rate offered in a good-faith estimate using state law, an effort squelched by the court's interpretation of RESPA.

Details for significant new cases and authorities entered during the first quarter of 2015 are included below. Tables at the end of this edition show how many overall cases appeared for major topic areas for this quarter, along with statistics regarding how liability was decided in finalized cases.

I. AGENCY HIGHLIGHTS: FIRST QUARTER 2015

A. Cases

This section looks at two cases where damages were awarded for breaches of fiduciary duty based on misrepresentation. The key misrepresentations involved a development that was failing by the time the plaintiffs invested in it (*Haena*) and an undeveloped lot that did not have a legal access road (*Helmke*). In another case, a court determined that a broker cannot be liable for cancelling a listing if its client was not authorized to sell or lease the property (*Open Container*).

1. *Haena v. Martin* (California Court of Appeals, Jan. 12, 2015)

- A broker was found liable for using his inside knowledge of the market to induce the plaintiffs to give him money, which he told them was being invested in a real estate project, but was used to buy out his position in the project.

In *Haena*,[1] defendant real estate broker asked former clients to invest in promissory notes secured by real estate. After receiving interest payments and recouping the invested funds, the former clients gave the broker $25,000 to buy out an unnamed investor's interest in a $408,000 promissory note financing the construction of twelve townhouses. The broker said the project was almost finished and that the note had second priority. The former clients invested more money into the notes over time. Four months later, the first lender foreclosed. The former clients discovered that the broker no longer owned any interest in his note, but had sold his interest to them and that the developer was in default.

The former clients sued, alleging intentional and negligent misrepresentation, breach of fiduciary duty and other claims. The trial court concluded that the broker had misled the former clients and he had breached his fiduciary duty as a real estate licensee. The broker had previously represented the former clients which gave rise to his fiduciary duty, and that duty carried over to the ill-fated investment. The trial court's findings and the $363,380 verdict were affirmed on appeal.

2. *Helmke v. Service First Realty, LLC* (Arizona Court of Appeals Feb. 26, 2015)

- The broker, who was representing both parties to the transaction was found liable for misrepresenting the status of a planned access road to the property.

In this Arizona case, a real estate professional had been involved in subdividing vacant land.[2] She had discussed the lack of an access road with a civil engineer, who told her that it would take at least a year for the required preliminary work—including permitting—before any construction could begin. However, she represented to the eventual buyers that the access road was usable, stating that although the road was not done, "the county wouldn't let us sell these lots . . . if this road weren't built right."[3] Acting as a dual agent, the real estate professional provided several disclosures from the seller about the road, each of which showed legal and physical access to the lot. After the transaction closed, the buyers could not secure a building permit because the access road was built without a permit.

---

1 *Haena v. Martin*, No. C066280, 2015 Cal. App. Unpub. LEXIS 170 (Cal. Ct. App. Jan. 12, 2015).

2 *Helmke v. Service First Realty, LLC*, No. 1 CA-CV 14-0078, 2015 Ariz. App. Unpub. LEXIS 230 (Feb. 26, 2015).

3 *Id.* ¶ 3.

The buyers sued the broker and the seller, alleging breach of fiduciary duty and negligence-based claims. A jury returned a verdict for $318,200.47 and found the broker 70% at fault, making it liable for $222,740.33.

On appeal, the broker challenged the trial court's instruction on the breach of fiduciary duty claim. The broker's requested jury instruction stated that the broker was not liable for passing on wrong information from the seller unless the broker knew or should have known that the information was false. The court concluded that this instruction did not properly state that the real estate professional was acting as a dual salesperson and so owed a fiduciary duty to the buyer. Second, the fiduciary duty owed to the buyers required the broker to "'protect and promote the clients' interests,' and, because a salesperson 'occupies a confidential and fiduciary relationship with the client,' [the broker] is 'held to the highest ethical standards of fairness and honesty.'"[4] The court also reviewed the evidence and concluded that it supported the jury verdict because the real estate professional consistently told the buyers "everything was good about the road" and that they "knew everything there was to know" about it.[5] The verdict was affirmed.

3. *Open Container, Ltd. v. CB Richard Ellis, Inc.* (Ohio Court of Appeals, Jan. 13, 2015)

- A broker is not liable for removing a real estate listing from the MLS or taking down a "FOR SALE" sign when the broker learns that its client does not have authority to sell the property.

In *Open Container*,[6] the tenant in a long-term lease made an offer to purchase property from a landlord. Even though the transaction never closed, the tenant believed there was an ongoing agreement that it could buy the property. Two years later, the tenant listed the property with CB Richard Ellis (CBRE). CBRE required documentation that the tenant had the authority to sell the property, and referred to the purchase agreement. CBRE listed the property and put up a For Sale sign. When the landlord saw the For Sale sign, it called CBRE and told CBRE that the purchase agreement was null and void. CBRE took down the sign and the cancelled the listing. The tenant brought CBRE into the subsequent eviction case, claiming that it wrongfully terminated the listing agreement. The trial court granted CBRE summary judgment, noting that Ohio's licensing statute prohibits a broker from listing a property for sale or lease without the owner's knowledge or consent.[7] The appellate court affirmed.

---

4 *Id.* at ¶¶ 10–11.

5 *Id.* at ¶ 13.

6 *Open Container, Ltd. v. CB Richard Ellis, Inc.*, No. 14AP-133, 2015-Ohio-85, 2015 Ohio App. LEXIS 73 (Jan. 13, 2015).

7 *Id.* at ¶ 16 (quoting Ohio Rev. Code 4735.18(A)).

B. Statutes and Regulations

1. Arkansas

The Arkansas General Assembly enacted a new provision relating to unlicensed personnel working for real estate brokers. Unlicensed personnel are not permitted to "engage in or offer to perform any practice, act, or operation" within the definition of a broker, except unlicensed personnel may receive a security deposit or payment for delivery to, and made payable to, the principal broker, real estate firm, or owner.[8]

2. Indiana

Indiana revised several parts of its real estate licensing regulations. One new provision states that listing agreements and authorizations to sell property must be in writing (including electronic writing) and that offers to purchase, or authority to purchase, must be conveyed immediately to client.[9] Also, before a broker may acquire a direct or indirect interest in listed property, the broker must make the owner aware of the "broker's true position."[10] The broker must disclose in writing to all parties involved in the transaction that the broker has such an interest and the fact that the broker is a real estate licensee.[11]

Another new provision addresses "incompetent practice." Incompetent practice includes (1) acting as both a real estate broker and an undisclosed client, and (2) inducing a party who has a written agency agreement or contract of sale to breach that agreement for the purpose of making a new contract.[12]

---

8 Ark. Code § 17-42-104(a)(6)(A) (2015) (Act 278, § 2; HB 1244).

9 876 Ind. Admin. Code 8-2-1, -2 (2014).

10 876 Ind. Admin. Code 8-2-5 (2014).

11 876 Ind. Admin. Code 8-2-6 (2014).

12 876 Ind. Admin. Code 8-2-7 (2014).

C. Volume of Materials Retrieved

Agency issues were identified ten times in seven cases. (*See* Table 1; some cases addressed more than one Agency issue.) Most of the cases addressed Breach of Fiduciary Duty. This result is consistent with the prior updates. Dual Agency, Buyer Representation and Agency: Other were also addressed in the case law. (*See* Table 2.) Two statutes and six regulations addressing Agency issues were retrieved.[13] (*See* Table 1.) Most of these items were categorized as Agency: Other. (*See* Table 2.)

II. PROPERTY CONDITION DISCLOSURE HIGLIGHTS: FIRST QUARTER 2015

A. Cases

This section examines two new cases involving the merger doctrine and a merger clause. One case deals with structural issues in a home's foundation (*Schoembs*), while the other concerns a bat-infested apartment (*Katethis*). A third case discusses whether a real estate licensee has a duty to investigate the seller's representations (*PH West Dover Props*).

1. *Schoembs v. Schena* (Massachusetts Superior Court, Jan. 23, 2015)

- The merger doctrine does not bar a claim that a real estate salesperson negligently failed to check qualifications of an inspection company the salesperson hired on behalf of the buyer.

In *Schoembs*,[14] the disclosure statement for the house the buyers were considering stated there had been "a major settlement" of its foundation years earlier.[15] Plaintiff's real estate salesperson offered to contact an inspection company and attend the inspection himself, as the buyers were unable to attend. The inspector noted slanting in the floor and cracking in

---

13 This update covers the 2015 legislative sessions for the states in Group I. The Group I states are: Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maryland, Mississippi, Montana, New Mexico, North Dakota, South Dakota, Utah, Virginia, Washington, West Virginia, and Wyoming. Two states, Montana and North Dakota, do not meet in even-numbered years. The update also covers the end of the 2014 sessions for the legislatures in "Group IV." Group IV includes: California, District of Columbia, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin. Group IV also includes the territories of Guam, Puerto Rico, and the U.S. Virgin Islands.

14 *Schoembs v. Schena*, No. MICV2013-026690-F, 2015 Mass. Super. LEXIS 19 (Jan. 23, 2015).

15 *Id.* at *3.

the foundation, but was unable to inspect part of the foundation because he could not access the entire foundation. The salesperson recommended that the buyers consult with a structural engineer if they wanted the cracks and slanting floors investigated further. The buyers did not consult anybody else and bought the house. They later noticed cracks in the foundation, and, six years after closing, sued the salesperson, his broker, the sellers, the seller's salesperson and broker, and the inspector and his employer.

The claims against the buyer's salesperson were based on his recommendation of the inspection company. The salesperson contended that the merger doctrine precluded the claims. The merger doctrine bars claims based on the provisions of a purchase agreement after the deed has been conveyed, unless those provisions are included in the deed.[16] However, the court held that since the purchase agreement compensated the brokers for their services, the negligence claims against the salesperson could survive because of his alleged failure to check the inspection company's qualifications.[17] The court dismissed the claims against the buyer's salesperson based on intentional misrepresentation because the salesperson did not prepare the inspection report.

2. *Katehis v. Sovereign Assocs., Inc.* (New York Superior Court, Aug. 11, 2014)

- Renter's lawsuit alleging brokerage's negligence, among other claims, was dismissed because brokerage had no duty to find renter a habitable apartment.

In *Katehis*,[18] the plaintiff rented an apartment "as is" and "not sanitized" with the assistance of a real estate salesperson. She spent about 45 minutes inspecting the apartment before signing the lease and asked the salesperson about rodents and pests. The salesperson testified that he responded by saying, essentially, "this is New York," and told her that monthly exterminator service was provided without charge. Two days after moving in, she saw a bat flying in the apartment. The building superintendent removed the bat and assured her that bats were not common. Four days later, a bat scratched the plaintiff's head. She promptly left the apartment and went to the emergency room for rabies shots. The physician treating her noticed additional marks and scratches on her that may have been caused by a bat.

---

16 *Id.* at *7.

17 *Id.* at *8.

18 *Katehis v. Sovereign Assocs., Inc.*, 44 N.Y. Misc. 3d 1220(A), 2014 N.Y. Misc. LEXIS 3547 (S. Ct. Aug. 11, 2014).

The plaintiff sued the real estate broker, contending that it failed to disclose the bat infestation. She also brought a claim for breach of contract, contending that the defendants had undertaken to find her a "habitable" apartment. The trial court disagreed, finding that the contract did not require the salesperson to find a habitable apartment for her and that the contract contained a merger clause that superseded any oral promises made before the agreement was signed. The plaintiff's fraud- and negligence-based claims also were also dismissed because the plaintiff took the apartment "as is".

3. *PH West Dover Props. v. Lalancette Eng'rs* (Vermont Supreme Court, Mar. 20, 2015)

- A broker does not have a duty to verify a seller's representations about the condition of the property unless the broker is aware of facts to put him or her on notice that the seller's representations are not accurate.

In *PH West Dover Properties*,[19] the seller's disclosure statement for an inn stated that the seller was not aware of any *current* problems with the roof and there were no problems with flooding, drainage or grading. When the broker secured the listing, however, she called an earlier prospective purchaser to see if she wanted to talk about buying the inn. The person allegedly told the broker she had seen flooding in the parking lot and the roof had major problems and could collapse. An inspection report stated that the roof showed signs of wear and should be kept under observation. The report also made specific recommendations about the roof.

A buyer eventually purchased the property and a few months after the closing, the buyer sued the broker alleging that she had misrepresented the condition of the property. The trial court ruled that the statements from the prior potential purchaser were too vague to provide notice to the broker, and the buyer already knew the roof needed work and should have inquired further.[20]

---

19 *PH West Dover Props. v. Lalancette Eng'rs*, No. 13-157, 2015 VT 48, 2015 Vt. LEXIS 28 (Mar. 20, 2015).

20 *Id.*, 2015 VT 48, ¶¶ 2–8.

In affirming the trial court, the Vermont Supreme Court noted that a real estate licensee does not have a duty to independently verify the seller's representations about the property unless the licensee is aware of facts indicating the seller's representations are false.[21] The prior purchaser's reasons for not buying the inn were insufficient to put the salesperson on notice because they were too vague. According to the court, "[t]o require the [licensee] to relate every nonspecific and unattributed rumor to subsequent buyers would be unreasonable."[22] Because the buyers knew that the roof needed replacement within a few years and that leaks around the chimney needed immediate attention, they could not recover damages from the broker.

B. Statutes and Regulations

1. Virginia

Virginia added language to its property condition disclosure form stating that the seller makes no representations about whether the property is in a special flood hazard area. The disclosure form also states that the buyers should do their own due diligence about flood zones before closing the transaction.[23]

C. Volume of Materials Retrieved

Property Condition Disclosure issues were identified seven times in five cases. (*See* Table 1; some cases addressed more than one Property Condition Disclosure issue.) Three of the cases addressed Boundary issues, which includes disputes over square footage, access, easements, and similar situations involving the size of the property or its rights. Additional issues addressed include Structural Defects, Roof, and Insects and Vermin. (*See* Table 2.) One statute and one regulation addressing Property Condition Disclosure issues were retrieved.

---

21 *Id.*, 2015 VT 48, ¶ 10.

22 *Id.*, 2015 VT 48, ¶ 13.

23 Va. Code § 55-519(B)(10) (2015) (Chs. 79, 269 (2015); SB 775, HB 1642).

III. RESPA HIGHLIGHTS: FIRST QUARTER 2015

A. Cases

This section examines a class-action settlement in a case involving a captive-reinsurance scheme (*Moore*), and a case involving RESPA regulations for good-faith estimates and state-law claims against a lender (*Sarno*).

1. *Moore v. GMAC Mtge.* (Federal Court for the Eastern District of Pennsylvania, Sept. 19, 2014) (reported during the first quarter of 2015)

- GMAC Mortgage and other lenders agreed to pay $6.25 million in a class action settlement alleging kickbacks and fee splits from private mortgage insurers to whom defendants' referred business in violation of RESPA § 8.

In a class action lawsuit, a group of borrowers alleged that GMAC Mortgage and two other lenders accepted kickbacks and fee splits from private mortgage insurers which received referrals from them.[24] The court approved a $6.25 million class action settlement. The settlement fund permitted each plaintiff to recover about $51.[25] The court acknowledged that this amount was lower than awards made in recent cases, but noted that the defendants were not in a comparably stable financial condition.[26]

2. *Sarno v. Wells Fargo Bank N.A.* (California Court of Appeals, Jan. 23, 2014)

- Although a good-faith estimate must set forth the interest rate for a mortgage, RESPA regulations allow the lender to decide how long the offered rate will last and the lender may change the rate if the borrower does not "lock" it on time.

Sarno[27] is a rare case involving a claim relating to a lender's good-faith estimate (GFE). After Sarno applied for a mortgage loan, the lender provided him with a GFE quoting an interest rate of 4.25%. The GFE clearly set forth the deadline for locking that rate. It also stated, however, that the rate

---

24 *Moore v. GMAC Mtge.*, No. 07-4296, 2014 U.S. Dist. LEXIS 181431 (E.D. Pa. Sept. 19, 2014).

25 *Id*., 2014 U.S. Dist. LEXIS 181431, at **13-14.

26 *Id*. (citing, *inter alia*, *Liguori v. Wells Fargo & Co.*, No. 08-479, 2013 U.S. Dist. LEXIS 189337 (E.D. Pa. Feb. 7, 2013) (awarding $173 per class member)) (LEXIS citation is actually refers to *Hoffman v. Wells Fargo & Co.*, No. 5:08-cv-00479-PD (E.D. Pa. Feb. 7, 2013)).

27 *Sarno v. Wells Fargo Bank N.A.*, No. B246952, 2014 Cal. App. Unpub. LEXIS 454, 2014 WL 255708 (Jan. 23, 2014).

was "available through N/A." Sarno did not lock in the rate by the deadline. His closing was postponed for several weeks, during which the interest rate rose to 4.625%. Sarno accepted the increased rate, closed the loan, and then tried to negotiate the rate back down to 4.25%. A year later, he brought a lawsuit asserting several state-law causes of action. Each cause of action was based on the theory that the GFE was a binding agreement to lend at 4.25% and that rate was available indefinitely (based on the "available through N/A" language in the GFE). According to the court, the RESPA regulations provide that the stated rate is available until the date set by the loan originator.[28] The court rejected Sarno's contention that the 4.25% rate was available indefinitely, because interpreting "available through N/A" would make "an extraordinary contract, and one with potentially harsh and inequitable consequences for both parties."[29] The appellate court affirmed an order dismissing the case.

B. Statutes and Regulations

No statutes or regulations addressing RESPA issues were retrieved.

C. Volume of Materials Retrieved

RESPA issues were identified in the case law seven times. (*See* Table 1.) The research focused on claims arising as a result of the settlement process, rather than claims arising in the context of foreclosure. Most cases addressed Kickback issues. (*See* Table 2.) No statutes or regulations addressing RESPA issues were retrieved.

IV. EMPLOYMENT HIGHLIGHTS: SECOND QUARTER 2014 TO DATE

A. Cases

This section examines an opinion analyzing a broker's refusal to transfer the salesperson's listings to his new sponsoring broker (*Gang*) and a case addressing a broker's direct liability for its own negligence and its possible indirect liability for negligent acts of independent-contractor salespersons (*Polio*).

---

[28] *Id.* at **7–11.

[29] *Id.* at **16–17.

1. *Gang v. RE/MAX Champions Real Estate, Inc.* (Ohio Court of Appeals, Oct. 20, 2014)

- A broker could not refuse to transfer salesperson's listings to a new firm when it had previously allowed the transfer of listings by other salespeople.

In *Gang*,[30] a broker franchise refused to allow one of its independent-contractor salespersons to transfer his listings to a new broker. The salesperson's contract with the broker contained conditions that had to be met before any listings could be transferred to a new broker. Specifically, the salesperson had to pay any fees due to the broker, obtain releases from each client that released the broker from responsibility for the listing, and provide a written statement from the new broker accepting the listings.[31] When the defendant broker refused to release 60 of the salesperson's 65 listings, the salesperson sued for breach of contract and tortious interference with a business relationship. At trial, the salesperson presented testimony from other former salespeople for the defendant broker who had been permitted to transfer their listings to a new broker without paying fees due or receiving permission.[32] One salesperson testified that it was industry custom to withdraw listing without doing formal transfers or paying fees due, despite the written terms of the salesperson's contract with the broker.[33] The verdict was affirmed on appeal.

2. *Polio v. First Niagara Bank* (Connecticut Superior Court, Sept. 3, 2014)

- A listing broker is generally not directly liable to prospective buyers for injuries caused by a defect or dangerous condition on listed property, though it may be indirectly (vicariously) liable for the negligence of a salesperson if there is evidence the broker has the right to control the salesperson's conduct.

---

30 *Gang v. RE/MAX Champions Real Estate, Inc.*, No. 14-CA-08, 2014-Ohio-4656, 2014 Ohio App. LEXIS 4548 (Ct. App. Oct. 20, 2014).

31 *Id.* ¶ 13.

32 *Id.* ¶¶ 16–19.

33 *Id.* ¶ 18.

In *Polio*,[34] a prospective buyer fell on the stairs during an open house. The prospective buyer brought a lawsuit alleging that the listing broker controlled, possessed, managed or maintained the property. The listing broker argued that he did not possess or control the property and that it was not responsible for his salesperson's negligence in conducting the open house. In granting the listing broker's motion with respect to its direct liability, the court noted that a listing broker generally does not owe a prospective buyer a duty of care with respect to defects or dangerous conditions on a listed property. An exception to the general rule recognizes direct liability when the broker has possession or control over the property. The court also concluded that the listing broker had not established that the salesperson was an independent contractor and so could be vicariously liable for the salesperson's conduct.

B. Statutes and Regulations

Statues and regulations addressing Employment are not covered by the *Legal Pulse*.

C. Volume of Materials Retrieved

Employment issues were encountered in three cases in the first quarter of 2015. (*See* Tables 1, 2.) Nine cases were collected in the second, third and fourth quarters of 2014. Employment issue with the highest volume of cases is Independent Contractors (8), followed by Wrongful Termination (2) and Wage and Hour Issues (2). Statutes and regulations addressing Employment are not included in the *Legal Pulse*.

---

34 *Polio v. First Niagara Bank*, No. NNHCV126029495S, 2014 Conn. Super. LEXIS 2184 (Conn. Super. Ct. Sept. 3, 2014). *See also Annarella v. Pugliese*, No. A-4722-12T3, 2014 WL 4636347 (N.J. Super. Ct. App. Div. Sept. 18, 2014) (salesperson used "tainted sill" to fill a wetland on property the salesperson owned; although broker could not be directly liable for the salesperson's deception, it could be vicariously liable if plaintiff could show broker controlled or supervised salesperson). *Cf. Richardson v. Church of God Int'l*, No. 1:13-cv-21821, 2014 WL 4537780 (S.D. W. Va. Sept. 11, 2014) (sponsoring broker was potentially liable for salesperson's misrepresentations about "uninhabitable" property, pursuant to state statute, W. Va. Code § 30-40-17, which makes a sponsoring broker a direct supervisor of each affiliated licensee).

V. VERDICT AND LIABILITY INFORMATION

A. Agency Cases

Liability was determined in five Agency cases, and the licensee was found liable in three. (*See* Table 3.) Two cases ended with damage awards.[35]

B. Property Condition Disclosure Cases

Liability was determined in six Property Condition Disclosure cases, and the licensee was found liable in one.[36] (*See* Table 3.)

C. RESPA Cases

Liability was determined in five RESPA cases, but none ended with a finding of liability against a licensee. (*See* Table 3.)

D. Employment Cases

None of the employment cases encountered in the first quarter of 2015 ended with a finding of liability. (*See* Table 3.) During the three preceding quarters, only one case ended with a finding of liability and an award of damages against a licensee. (*See* Table 3.)[37]

---

35 *See Haena v. Martin*, No. C066180, 2015 Cal. App. Unpub. LEXIS 170 (Cal. Ct. App. Jan. 12, 2015) (discussed in Agency Highlights section above; damages award of $363,380 affirmed); *Helmke v. Service First Realty, LLC*, No. 1 CA-CV 14-0078, 2015 Ariz. App. Unpub. LEXIS 230 (Ariz. Ct. App. Feb. 26, 2015) (discussed in Agency Highlights section above; damages award of $222,740.33 affirmed).

36 *See Helmke v. Service First Realty, LLC*, No. 1 CA-CV 14-0078, 2015 Ariz. App. Unpub. LEXIS 230 (Ariz. Ct. App. Feb. 26, 2015) (discussed in Agency Highlights section above; damages award of $222,740.33 affirmed).

37 *See Gang v. RE/MAX Champions Real Estate, Inc.*, No. 14-CA-08, 2014-Ohio-4656, 2014 Ohio App. LEXIS 4548 (Ct. App. Oct. 20, 2014) (discussed in Employment section above; damage award of $68,000).

Table 1
Volume of Items Retrieved for First Quarter 2015
by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	10	2	6
Property Condition Disclosure	7	1	1
RESPA	7	0	0
Employment	3	N/A	N/A

Table 2
Volume of Items Retrieved for First Quarter 2015 by Issue

Issue	Cases	Statutes	Regulations
Agency: Dual Agency	1	0	0
Agency: Buyer Representation	3	0	0
Agency: Designated Agency	0	0	0
Agency: Transactional/Nonagency	0	0	0
Agency: Subagency	0	0	0
Agency: Disclosure of Confid. Info.	0	0	0
Agency: Vicarious Liability	0	0	0
Agency: Breach of Fiduciary Duty	5	0	2
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	0
Agency: Minimum Service Agreements	0	0	0
Agency: Pre-listing Marketing of Properties	0	0	0
Agency: Other	1	2	4

Issue	Cases	Statutes	Regulations
PCD: Structural Defects	2	0	0
PCD: Sewer/Septic	0	0	0
PCD: Radon	0	0	0
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	0	0	0
PCD: Mold and Water Intrusion	0	0	0
PCD: Roof	1	0	0
PCD: Synthetic Stucco	0	0	0
PCD: Flooring/Walls	0	0	0
PCD: Imported Drywall	0	0	0
PCD: Plumbing	0	0	0
PCD: HVAC	0	0	0
PCD: Electrical System	0	0	0
PCD: Valuation	0	0	0
PCD: Short Sales	0	0	0
PCD: REOs & Bank-owned Property	0	0	0
PCD: Insects/Vermin	1	0	0
PCD: Boundaries	3	0	0
PCD: Zoning	0	0	0
PCD: Off-site Adverse Conditions	0	0	0
PCD: Meth Labs	0	0	0
PCD: Stigmatized Property	0	0	0

Issue	Cases	Statutes	Regulations
PCD: Megan's Laws	0	0	0
PCD: Underground Storage Tanks	0	0	0
PCD: Electromagnetic Fields	0	0	0
PCD: Pollution/Env't'l Other	0	1	0
PCD: Other	0	0	1
RESPA: Disclosure of Settlement Costs	3	0	0
RESPA: Kickbacks	4	0	0
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Other	0	0	0
Employment: Wrongful Termination	1	N/A	N/A
Employment: Personal Assistants	0	N/A	N/A
Employment: Independent Contractors	1	N/A	N/A
Employment: Wage & Hour Issues	1	N/A	N/A

Table 3
Liability Data for First Quarter 2015

Topic	Liable	Not Liable	% Liable	% Not Liable
Agency	2	3	40%	60%
Property Condition Disclosure	1	5	17%	83%
RESPA	0	5	0%	100%
Employment	0	0	0%	0%