

TITLE INSURANCE**MORRIS AGREEMENT RULED UNENFORCEABLE IN MECHANICS' LIEN DISPUTE***by Michael R. Scheurich*

A "Morris agreement" between a title insured and mechanics lien claimants was unenforceable, because the agreement wasn't an arms-length transaction, and the settlement left the insured without any risk of personal liability, the Arizona Court of Appeals ruled in [*Fidelity National Title Insurance Company v. Centerpoint Mechanic Lien Claims, LLC*](#). In doing so, the court passed on the opportunity to decide whether title insurance policies can be subject to a "Morris agreement."

In a "Morris agreement" – a type of settlement that derives from the Supreme Court of Arizona's 1987 decision in [*United Services Automobile Ass'n v. Morris*](#) – an insured independently settles with a third-party claimant, assigning to the claimant his rights against his insurer, who agreed to defend the insured while reserving its right to challenge coverage under the insured's policy.

In *Centerpoint*, the agreement in question was between the insured title holder and a mechanics' lien claimant that was actually controlled by the insured, and essentially removed all of the insured's liability. In effect, the court noted, the agreement allowed the claimants to "seek reimbursement under the insurance contract, and if appropriate, to pursue a potential bad faith claim based on [the insurer's] allegedly improper reservation of rights. Given these circumstances, the settlement agreement ... was not a compliant *Morris* agreement."

Fidelity had also argued that, as a matter of law, a title insurance policy holder may not enter a *Morris* agreement. Fidelity and *amicus curiae* American Land Title Association asserted that, unlike the *third-party* insurance claim at issue in *Morris*, a title policy provides insurance for a *first-party* property loss, meaning a loss caused by alleged title defects that could lessen the value of the insureds' property. Unfortunately, the court refused to address this argument because even assuming *Morris* applies to title insurance claims, the settlement agreement was not a compliant *Morris* agreement.

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