



### **LEGAL PULSE NEWSLETTER: THIRD QUARTER 2018**

Welcome to the Legal Pulse Newsletter. The Legal Pulse examines legal liability trends affecting real estate professionals. In this edition, we review recent case decisions and legislative activity from the third quarter of 2018 in the areas of Agency, Property Condition Disclosure and RESPA. In addition, we also examined court decisions and legislative/regulatory action from the past twelve months relating to Technology issues and Third Party Liability.

The most commonly addressed Agency issues this quarter were Breach of Fiduciary Duty and Dual Agency. An issue that arose in several cases concerned a real estate representative's duty to disclose information pertaining to the sale of a property. In one case, the court found that the real estate representative's misrepresentation that a property included the adjacent garden lot, was a violation of his duty to the client. In the legislative context, North Carolina made a number of changes to its broker-in-charge (BIC) regulations. The amendments relate to broker advertisement and requirements for designation as a BIC.

In a Property Condition Disclosure case from this quarter, the court considered a licensee's liability for failure to disclose a faulty septic system. In that case, the court held the licensee was not liable because the buyers failed to demonstrate that they justifiably or actually relied upon the alleged misinformation. With respect to legislation, North Carolina modified its Residential Property and Owners' Association Disclosure Statement to eliminate questions regarding radon mitigation systems. Oregon revised the required Seller's Property Condition Disclosure form to include information regarding whether a residence built before 1974 is bolted to its foundation.

Consistent with previous quarters, the RESPA cases examined referral fee and kickback schemes. Yet again, a court was presented with allegations of an improper kickback scheme which was dismissed due to the statute of limitations. In a New Jersey case, the court declined to consider borrower's RESPA claims on the basis that they were more pertinent to the borrower's pending appeal of the state foreclosure action.

This quarter, we also review cases and statutory/regulatory activity from the past twelve months relating to Technology and Third Party Liability issues. The Technology cases address copyright and trademark disputes involving real estate professionals, while the statutory and regulatory materials focus on legislation and/or regulation related to drones, cyber fraud, advertising on electronic media, data breaches, and other relevant issues. Notably, in one Kansas case, the court held a real estate representative liable for allegedly sending false wiring instructions to the buyer, causing the loss of the buyer's purchase money. With respect to Third Party Liability, most of the cases involved claims against inspectors and appraisers. In most of the cases over the past year, the third parties were found not to be liable to the sellers or purchasers who brought a claim.

For the details, read the summaries below, and check out the tables at the end showing cases and liability figures to learn more about recent trends in issues affecting real estate professionals.

## I. AGENCY

The Agency cases discussed below address breach of fiduciary duty and dual agency. In the first case, the licensee was found liable for damages based on the licensee's misrepresentations regarding the inclusion of a garden lot in the property purchased. In the second case, the court determined that the licensee was liable for damages where the licensee deliberately lowered the purchase price of the seller's property for their own benefit.

### A. Cases

1. **Briggs v. Kidd & Keavy Real Estate Co., LLC**, No. 340713, 2018 WL 4603900 (Mich. Ct. App. September 25, 2018)

Buyers consulted real estate representative regarding the purchase of a home that included a garden lot. After closing on the home, buyers learned that the sellers had sold the garden lot to their neighbors the year before. The transaction was orchestrated by seller's real estate representative, who failed to update the listing and remove the pictures of the garden lot. Buyers alleged their real estate representative misrepresented the property in violation of their fiduciary duty. Real estate representative contended that buyers had plenty of information at their disposal that would have shown the property excluded the garden lot.

In a bench proceeding, trial court entered judgment in buyer's favor and awarded damages in the amount of \$100,000. On appeal, the court noting that the merger clause in the purchase agreement would not defeat the claims for fraud and negligent misrepresentation, and that the Buyers were justified in relying on the real estate representative's misrepresentations that the garden lot was included. The appellate court affirmed the judgment.

2. **Pellet for Pellet v. Keller Williams Realty Corp.**, No. HHBCV116012338S, 2018 WL 3446642 (Conn. Super. Ct. June 27, 2018)

Seller brought suit against a real estate company and its individual licensees for breach of fiduciary duty and breach of the covenant of good faith and fair dealing, including a failure to disclose “dual agency”. The seller alleged that the real estate company set the list price for the property at \$318,000, when they knew, or should have known, that the fair market value of the property was substantially greater. The trial court issued a directed verdict in favor of the real estate company. On appeal, the court reversed and found the real estate company and licensees liable for breach of the covenant of good faith and fair dealing, and violation of the Connecticut Unfair Trade Practices Act, awarding sellers damages of \$19,080.

The real estate company and licensees requested the verdict be set aside. The court declined, noting that the verdict, finding the real estate company and licensees acted in their own best interest to make an unscrupulous profit on the sale of the seller’s property, they did not honestly set the sale or offering price of the property, they failed to inform the seller of the relationship between the proposed buyer and the real estate company, and they failed to exercise the degree of care, skill and expertise common to the profession of licensed real estate professionals. The verdict and damages awarded to the seller were affirmed.

3. **Krushke v. Newsome**, No. 2-17-0613, 2018 WL 3957116 (Ill. App. Ct. August 14, 2018)

Prospective buyer was injured when he fell from a ladder while inspecting the roof of a property he was interested in purchasing. The prospective buyer sued his real estate representative and the real estate corporation who listed the property on negligence and respondeat superior grounds.

The trial court granted the real estate corporation’s motion for summary judgment finding that the real estate representative was an independent contractor and the listing corporation had no control over how the real estate representative performed his job. On appeal by the prospective buyer, the court noted that the factors to be considered when distinguishing an employee from an independent contractor are: (1) the right to control the manner in which the work is performed; (2) the method of payment and whether taxes are deducted from the payment; (3) the level of skill required to perform the work; and (4) the furnishing of the necessary tools, materials or equipment. The appellate court affirmed, finding the real estate corporation was not liable for the actions of the real estate professional.

4. **Tamasco v. Rodd**, No. A-1574-16T2, 2018 WL 4055919 (Super. Ct. N.J. August 27, 2018)

Plaintiff, a licensed real estate broker, represented the buyer of a house. The real estate broker accompanied the lender's real estate appraiser to the property, presumably to ensure the appraiser had access to the site. While at the house, the real estate broker slipped and fell, seriously injuring her back. She then filed suit against the seller and the listing real estate broker for negligence, contending the listing real estate broker had an independent duty to keep the property clear of snow and ice.

The trial court disagreed, granting the listing broker's request for summary judgment. On appeal, the court held that the listing broker had no independent duty to keep the property clear of snow and ice because the buyer's representative was not injured at a time when the listing broker had control of the property, as would be the case during an open house event. The court affirmed summary judgment for the listing broker.

B. **Statutes and Regulations**<sup>1</sup>

*North Carolina*

North Carolina passed a number of regulations and statutes regulating advertising by real estate professionals. One regulation states that the identification of a broker on an advertisement may not be limited to contact information.<sup>2</sup> Another amends requirements for a broker to designate as a BIC for a sole proprietor, real estate firm, or branch office, requiring that a broker apply for BIC Eligible status by submitting an application on a form available on the Commission's website.<sup>3</sup>

C. **Volume of Materials Retrieved**

Agency issues were identified 22 times in 15 cases (*see* Tables 1, 2); Buyer Representation was the most commonly raised issued, while Dual Agency, Breach of Fiduciary Duty, and Vicarious Liability were addressed in cases this quarter. Eleven Agency regulations and one statute was retrieved (*see* Table 1).

## II. **PROPERTY CONDITION DISCLOSURE**

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<sup>1</sup> This third quarter update reviews legislative activity from the following jurisdictions: North Carolina and Oregon.

<sup>2</sup> [21 NCAC 58A .0105 \(2018\)](#)

<sup>3</sup> [21 NCAC 58A .0110 \(2018\)](#)

One case this quarter pertained to Property Condition Disclosure. In that case, a North Carolina court determined a real estate company was not liable for failing to disclose a faulty septic system because the buyers failed to demonstrate that they justifiably or actually relied upon the misinformation.

A. Cases

1. **Apperson v. Intracoastal Realty Corp.**, 818 S.E.2d 202 (Ct. App. N.C. September 18, 2018)

Buyers sued real estate company for negligent misrepresentation, fraud, and unfair trade practices, alleging that the property's disclosure statement contained misleading information. The disclosure statement stated there were no issues with the drainage, grading, or soil stability of the property and that a new septic system was installed in 2014. The buyers later discovered that the septic system did not work and would need to be replaced; that the new septic system would have to be drained into a nearby creek; that this drainage would require permission from the State of North Carolina; and that without the permission and drainage, the septic system would be inoperable.

The trial court held that absent evidence that real estate company's statements were false, summary judgment was appropriate. The court on appeal held that the buyers failed to demonstrate that defendants breached a professional duty to plaintiffs and that the buyers failed to demonstrate that they justifiably or actually relied upon any alleged misinformation from defendants to their detriment. Summary judgment for the real estate company affirmed on appeal.

B. Statutes and Regulations

*North Carolina*

North Carolina modified its Residential Property and Owners' Association Disclosure Statement to eliminate questions regarding radon mitigation systems.<sup>4</sup>

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<sup>4</sup> [21 NCAC 58A .0114 \(2018\)](#)

## *Oregon*

An Oregon statute revised the required Seller's Property Condition Disclosure form to include information regarding whether a residence built before 1974 is bolted to its foundation.<sup>5</sup>

### C. Volume of Materials Retrieved

Property Condition Disclosure issues were identified once in case (*see* Tables 1, 2). One regulation and one statute regarding Property Condition Disclosure issues were retrieved this quarter (*see* Table 1).

## III. RESPA

Consistent with previous quarters, the two RESPA cases retrieved this quarter examined referral fee and kickback schemes. In one case, the borrowers alleged violations of RESPA, claiming the lender and purchaser failed to disclose the financial benefit to them resulting from the sale of the property and that the payments were designed to create a windfall. The court declined to consider the merits of these claims on the basis that that they were more pertinent to the borrower's pending appeal of the state foreclosure action. In the second case, the court determined that the borrower's RESPA claims based on alleged kickbacks and unearned fees was barred by the statute of limitations.

### A. Cases

1. **Mantovani v. Wells Fargo Bank, N.A.**, No: 18-cv-0886(PGS)(DEA), 2018 WL 3849907 (D. N. J. August 13, 2018)

Borrowers obtained mortgage loan from a lender but were unable to make payments. The lender subsequently brought a successful foreclosure action, and the property was sold. The borrowers then filed a complaint against the lender and purchaser alleging RESPA violations based on disproportionate gain. The borrowers claimed that the lender and purchaser failed to disclose the financial benefit to them resulting from the sale of the property and that the payments made between the lender and purchaser were misleading and designed to create a windfall.

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<sup>5</sup> [Or. Rev. Stat. § 105.464 \(2018\)](#)

The court declined to review the merits of the borrowers' claims, noting review of this issue was more appropriate in the pending appeal of the state foreclosure action was appropriate. Lender and purchaser's motion to dismiss granted.

2. **Myrick v. Bank of America**, No. 1:18-cv-00248, 2018 WL 3702463 (N.D. Ga. April 12, 2018)

Borrower entered in to a mortgage loan agreement with Bank of America for the purchase of a property. Upon default of this loan, Bank of America initiated foreclosure proceedings. The Borrower alleged that Bank of America violated RESPA by failing to disclose that it would gain a financial benefit from the borrower's loan. While the borrower failed to articulate the specific RESPA provision(s) allegedly violated, the allegations suggested that the borrower's claims stem from RESPA's prohibition on kickbacks and unearned fees.

The court found that the Borrower's allegations for violation of RESPA were insufficient as they failed to identify the referenced kickbacks; state that they were made in exchange for a referral or for "no, nominal, or duplicative services"; describe the financial burden the borrower suffered; or explain how any damage the borrower suffered was a result of Bank of America's acts or omissions. Additionally, the court found the allegations were time-barred and therefore dismissed borrower's claims.

#### B. Statutes and Regulations

##### *North Carolina*

A North Carolina regulation clarified that the premium rates charged for insuring against loss by reason of encumbrances and defective title and for insuring real estate closing services shall be based on the purchase price of the real estate being conveyed or the loan amount and shall not be established as flat fees. If a title insurer has also issued title insurance protecting a lender or owner against loss by reason of encumbrances and defective title, the insurer shall charge one undivided premium for the combination of the title insurance and the closing services insurance.<sup>6</sup>

#### C. Volume of Materials Retrieved

RESPA issues were identified 1 time in 1 case (see Tables 1, 2). One regulation was retrieved this quarter (see Table 1).

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<sup>6</sup> [N.C.G.S.A. § 58-26-1\(d\) \(2018\)](#)

## V. TECHNOLOGY

Technological issues of interest to real estate professionals cover a wide array of topics, such as cyber fraud, data breaches, and copyright and trademark issues. Over the past twelve months, a number of cases and legislative materials have addressed these technology-related issues. The technology cases retrieved over the past year focused on the unlawful use of intellectual property owned by others, with courts imposing large penalties for such unlawful use. In the first case discussed below, the court considered whether the licensee's use of the trademarked name of a real estate brokerage company constituted trademark infringement. Another notable case pertained to cyber fraud. In that case, a real estate representative was found liable for allegedly sending false wire instructions to the buyer, leading the purchaser to wire funds to an incorrect account.

### A. Cases

1. **Royal Palm Properties, LLC v. Pink Palm Properties, LLC**, No. 9:17-CV-80476-ROSENBERG, 2018 WL 1138304 (S.D. Fl. March 2, 2018)

Royal Palm Properties, LLC, a real estate brokerage company, utilizes a trademark: "Royal Palm Properties." After learning that another real estate company, Pink Palm Properties, LLC, was using the "Royal Palm Properties" trademark on its website, Royal Palm Properties, LLC brought suit, seeking to enforce its trademark rights. Pink Palm Properties responded with counter-claims, alleging that the trademark should be cancelled because Royal Palm Properties procured it by fraud.

The court held that Pink Palm's fraud allegations were time-barred, as the limitations period began the date the trademark was registered. Because the trademark was registered on November 27, 2012, Pink Palm Properties had until 2016 to pursue a fraud claim. Thus, the court dismissed Pink Palm Properties' claims that the trademark should be cancelled because it was procured by fraud.

2. **iShow.com v. Lennar Corp.**, No. 2:15-cv-01550, 2017 WL 4222716 (W.D. Wa. July 31, 2017)

iShow.com, a real estate home-design and construction company, alleged it adopted the trademark NEXTGEN in 2002, built a demonstration home which used the mark in 2003, and obtained federal trademark registration for NEXTGEN HOME EXPERIENCE in 2008. Lennar Corporation, a real estate construction company, owned federal trademark registration for NEXT GEN, which primarily focused on real estate management and brokering services, financial services. Upon learning about Lennar Corporation's registered trademark, iShow.com

brought claims asserting trademark infringement and false designation of origin, and sought a declaration that any claims of trademark infringement by Lennar Corporation were barred.

Lennar Corporation claimed that iShow.com never sold a home other than demonstration home, whereas Lennar sold over 4,200 homes with the NEXT GEN mark. Lennar further claimed that that after learning of iShow.com's desire to expand and compete with Lennar, they sent a cease and desist letter explaining that they were not preventing iShow.com from using the trademark at trade shows and in the demonstration home market. The case proceeded to trial where a jury found Lennar Corporation liable for trademark infringement and awarded iShow.com \$5,494,615 in damages.

3. **Stross v. Redfin Corporation**, 730 Fed. Appx. 198, (5th Cir. April 9, 2018)

Plaintiff, a professional photographer and licensed real estate broker, brought action against an online real estate brokerage company, alleging that the real estate brokerage company infringed on photographer's copyrights when it used over 1,800 photographs uploaded by the photographer to an MLS forum used for posting real estate property listings.

The trial court granted summary judgment for the brokerage firm on the basis that photographer's infringement claim was barred because the photographer was not a party to, nor a third-party beneficiary of, the agreement in which MLS granted the brokerage company license to use the content uploaded to the MLS forum. On appeal, the court held that the photographer's copyright infringement claims were distinct from any contractual claims under the agreement between the MLS and the brokerage company, and therefore were not barred. The appellate court reversed and remanded the case back to trial court.

4. **Bain v. Platinum Realty, LLC**, No. 16-2326-JWL, 2018 WL 3105376 (D. Kan. Jun. 25, 2018)

Purchasers wired money to a bank account controlled by an unknown party based on an email received from the real estate representative containing the wiring instructions. Purchasers asserted claims against the real estate representative for breach of fiduciary duty, negligence, and negligent misrepresentation, and sought to recover damages in the amount of \$196,622.67, the amount wired to the wrong account.

The court rejected the real estate representative's argument that she did not email the fake wiring instructions and therefore did not make the false representation, noting that there was at least some evidence that the real estate representative sent the email. After completion of

trial, the jury awarded damages based on an assignment of 85% fault to real estate representative and 15% fault to the purchasers. Following the jury verdict, the real estate representative sought judgment as a matter of law. Finding the evidence sufficient to support the verdict, the court denied the real estate representatives request for judgment as a matter of law.

B. Statutes and Regulations

*Data Breach – Alabama, Arkansas, Colorado and Louisiana*

Alabama enacted the Data Breach Notification Act of 2018 which contains thorough and detailed measures required to secure data, defines the types of sensitive data that falls under the Act, details how to report a data breach and identifies the entities that are required to conform to the Act.<sup>7</sup>

A recently enacted Arkansas law limits an employer's access to an employee's social media accounts for official work-related investigations only.<sup>8</sup>

A Colorado regulation provides requirements the destruction of personal data and the reporting of data breaches. Covered entities that maintain paper or electronic documents during the course of business that contain personal identifying information must develop a written policy for the destruction or proper disposal of those paper and electronic documents containing personal identifying information. Further, a covered entity that maintains, owns, or licenses computerized data that includes personal information about a resident of Colorado must, when it becomes aware that a security breach may have occurred, conduct in good faith a prompt investigation to determine the likelihood that personal information has been or will be misused. The covered entity must provide notice to the affected Colorado residents unless the investigation determines that the misuse of information about a Colorado resident has not occurred and is not reasonably likely to occur.<sup>9</sup>

Louisiana has enacted regulations similar to those enacted in Colorado relating to maintaining and destroying personal data and the steps to be taken in case of a data breach.<sup>10</sup>

*Drones – Connecticut and Louisiana*

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<sup>7</sup> [Ala. Code 1975 §§ 8-39-1 through 12](#)

<sup>8</sup> [A.C.A. § 11-2-124](#)

<sup>9</sup> [C.R.S.A 6-1-713, 716](#)

<sup>10</sup> [LSA-R.S. 51: 3073, 3074](#)

As more and more individuals own and use drones (also referred to as unmanned aircraft), for both professional and personal purposes, a number of states have passed laws in the past year relating to the use of drones. Some of the laws address general requirements for use of drones. For instance, the Connecticut statute provides that each municipality must enact or enforce an ordinance or resolution that regulates the ownership, possession, purchase, sale, use, transportation or operation of any commercial unmanned aircraft.<sup>11</sup>

The Louisiana legislature also passed laws regulating the operation of drone aircraft and providing the state with the exclusive jurisdiction to regulate all unmanned aircraft systems and all unmanned aerial systems.<sup>12</sup>

### *Cyberfraud*

No cyber fraud statutes or regulations were retrieved.

#### C. Volume of Materials Retrieved

No Technology issues were identified in this quarter. Over the past twelve months, Technology issues were identified 14 times in 14 cases (*see* Table 4 and 5). Six statutes and 5 regulations regarding Technology issues were retrieved in the past twelve months (*see* Table 4).

## VI. **THIRD-PARTY LIABILITY**

In this section, we examine the liability of inspectors, appraisers, and other third parties involved in real estate transactions. Many of these cases involve claims against appraisers. As demonstrated in the cases below, courts frequently consider whether the appraiser's duty extends to the purchaser of a property, and whether the complaining party could reasonably rely, and did in fact rely, on the appraisal. In another case, the court examined the duty of an escrow agent to the purchaser of a property

#### A. Cases

1. **Deutsch v. Imperial Realty Appraisal, LLC**, No. 3762 EDA 2017, 2018 WL 3372633 (Super. Ct. Pa. July 11, 2018)

Co-owner of property initiated an action for breach of contract and negligence, alleging that the appraisers were liable for inaccurate property appraisals performed in connection with an earlier partition action between co-owner and his former business partner. In a bench proceeding, the trial court concluded the appraisal was reasonable and appropriate.

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<sup>11</sup> [Conn. Public Act No. 17-52](#)

<sup>12</sup> [LSA-R.S. 2:2](#)

On appeal, property co-owner contended that the appraisers lacked the necessary licensure and legal authority to independently perform appraisals of non-residential property without the statutorily required supervision of the Certified General Appraiser, and therefore were negligence per se. The appellate court affirmed the trial court's finding that the appraisers were properly supervised, and that the appraisal was reasonable and appropriate. The court ordered partition based on the appraiser's valuation of the properties.

2. **Ilkowitz v. Durand**, No. 17-CV-733, 2018 WL 1595987 (S.D.N.Y. March 27, 2018)

Homebuyers asserted claims against all parties involved in the purchase of a home, including the seller, seller's real estate representative, seller's attorney, the buyer's real estate broker, the title insurer, and the inspector, alleging failure to disclose the presence of lead in the home.

The court dismissed claims against the seller's attorney as she was not acting as an agent for the buyer, and granted summary judgment for the title insurer on the basis that there was the title insurer had no duty to determine whether the home was contaminated.

3. **Grogan v. Uggiam**, No. M2014-01961-SC-R11-CV, 2017 WL 5614594 (Tenn. November 21, 2017)

Plaintiff was a guest in a recently purchased home where she suffered severe injuries after the railing on a deck collapsed. Plaintiff sued the home inspector and franchisor for the injuries sustained, alleging they negligently gave false information to homeowner regarding safety of the railing on the deck

The trial court granted summary judgment for the home inspector, finding that the home inspector did not owe or assume duty of care toward guest, and thus home inspector was not liable for performing allegedly negligent inspection. The appellate court affirmed summary judgment.

- B. **Statutes and Regulations**

#### *North Carolina*

North Carolina enacted several statutes pertaining to third-party liability. One statute eliminates the exemption for property worth less than \$10,000 from the requirement that an appraisal of real estate or an interest in real estate made before acquisition of the property be

made by a real estate appraiser licensed or certified by the State.<sup>13</sup> Another statute exempts a person who prepares a right-of-way claim report from appraiser licensing requirements.<sup>14</sup>

Also in North Carolina, a statute states that where an appraisal of real estate or an interest in real estate is required by law to be made before acquisition of the property, the appraisal shall be made by a real estate appraiser licensed or certified by the State.<sup>15</sup>

Finally, North Carolina a statute confirms that a registered trainee or licensed or certified real estate appraiser may render appraisals for or on behalf of a partnership, association, corporation, firm, or group, provided the appraisal report is prepared by a licensed or certified real estate appraiser or by a registered trainee under the immediate personal direction of the certified real estate appraiser and is reviewed and signed by that certified appraiser.<sup>16</sup>

C. Volume of Materials Retrieved

Third-Party Liability issues were identified 6 times in 6 cases in this quarter. (see Tables 1, 2). Over the past twelve months, Third-Party Liability issues were identified 13 times in 13 cases (see Table 4 and 5). Four statutes regarding Third-Party Liability were retrieved in the past twelve months.

**VII. VERDICT AND LIABILITY INFORMATION**

A. Agency Cases

Liability was determined in 16 Agency cases, and the licensee was liable in only two<sup>17</sup> of those cases (see Table 3).

B. Property Condition Disclosure Cases

Liability was determined in two of the Property Disclosure cases reviewed this quarter with no liability to the licensee. (see Table 3).

C. RESPA Cases

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13 [N.C.G.S.A. § 146-22.2 \(2018\)](#)

14 [N.C.G.S.A. § 93E-1-3 \(2018\)](#)

15 [N.C.G.S.A. § 146-22.2 \(2018\)](#)

16 [N.C.G.S.A. § 93E-1-3 \(2018\)](#)

17 *Briggs v. Kidd & Keavy Real Estate Co., LLC*, No. 340713, 2018 WL 4603900 Mich. App. Sept. 25, 2018) (discussed above in Agency section); *Pellet for Pellet v. Keller Williams Realty Corp.*, No. HHBCV116012338S, 2018 WL 3446642 (Ct. Super. Ct. June 27, 2018) (\$19,080 in compensatory damages + \$75,000 in punitive damages + \$108,025.60 in attorneys fees).

Liability was determined in one RESPA case reviewed this quarter, and the licensee was found liable<sup>18</sup>. (see Table 3).

D. Technology

Liability was determined in 8 cases involving Technology issues over the past twelve months and the licensee was found liable in four of those cases<sup>19</sup> (see Table 6).

E. Third-Party Liability

Liability was determined in 8 cases involving Third-Party Liability, and the licensee was found liable in only 1 case.<sup>20</sup> (see Table 6).

VII. TABLES

**Table 1**  
Volume of Items Retrieved for Third Quarter 2018  
by Major Topic

Major Topic	Cases	Statutes	Regulations
Agency	16	2	10
Property Condition Disclosure	2	1	1
RESPA	3	2	0

**Table 2**  
Volume of Items Retrieved for Third Quarter 2018 by Issue

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18 *Frank A. and Shelly Palombaro, Jr., Plaintiffs, v. Emery Federal Credit Union, Defendant.*, No. 1:15-cv-792, 2018 WL 4635973 (S.D. Ohio September 27, 2018) (\$2,700,000).

19 (NOTE: All of the following cases and jury verdicts were retrieved in the past twelve months (4Q 2017, 2Q 2018, 3Q 2018, or 3Q 2018), even though some of the cases were decided in 2017 or early 2018. This is due to a lag in jury verdicts being uploaded into the system and the fact that we retrieve jury verdicts on an annual basis) *Bain v. Platinum Realty, LLC*, No. 16-2326-JWL, 2018 WL 3105376 (D. Kan. June 25, 2018) (discussed above in Technology section); *iShow.com v. Lennar Corp.*, No. 2:15-cv-01550, 2017 WL 4222716 (W.D. Wa. July 31, 2017) (discussed above in Technology section); *RE/MAX, LLC v. Robert Goodman Realty, LLC et. al.*, No. 1:17-CV-0526 (GTS/CFH), 2018 WL 3031845 (N.D.N.Y. June 19, 2018) (\$273,964.46); *VHT, Inc. v. Zillow Group, Inc.*, No. 2:15CV01096, 2017 WL 1682833 (W.D. Wash. February 9, 2017) (\$8,272.328).

20 *Moskowitz v. Herrmann*, No. SC 731/2017, 2018 WL 4291557, 60 Misc. 3d 1230(a) (City Court, Middletown, NY September 6, 2018) (\$5000).

<b>Issue</b>	<b>Cases</b>	<b>Statutes</b>	<b>Regulations</b>
Agency: Dual Agency	3	0	0
Agency: Buyer Representation	7	0	0
Agency: Designated Agency	0	0	0
Agency: Transactional/Nonagency	0	1	0
Agency: Subagency	0	0	0
Agency: Disclosure of Confid. Info.	0	0	0
Agency: Vicarious Liability	1	0	0
Agency: Breach of Fiduciary Duty	7	0	0
Agency: Disclosure of Financial Ability	0	0	0
Agency: Agency Disclosure	0	0	1
Agency: Minimum Service Agreements	0	0	0
Agency: Pre-listing Marketing of Properties	0	0	0
Agency: Teams	0	0	0
Agency: Coming Soon Listings	0	0	0
Agency: Other	5	10	1
PCD: Structural Defects	1	0	0
PCD: Sewer/Septic	1	0	0
PCD: Radon	0	0	1
PCD: Asbestos	0	0	0
PCD: Lead-based Paint	0	0	0
PCD: Mold and Water Intrusion	0	0	0
PCD: Roof	0	0	0

<b>Issue</b>	<b>Cases</b>	<b>Statutes</b>	<b>Regulations</b>
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	0	0	0
PCD: Boundaries	0	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
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	0	0
Property Condition Disclosure: Other	0	0	0
RESPA: Disclosure of Settlement Costs	0	0	0
RESPA: Kickbacks	1	0	0

Issue	Cases	Statutes	Regulations
RESPA: Affiliated Business Arrangements	0	0	0
RESPA: Marketing Service Agreements	0	0	0
RESPA: Other	1	1	0

**Table 3**

Liability Data for Third Quarter 2018

Topic	Liable	Not Liabile	% Liabile	% Not Liabile
Agency	2	14	12.5%	87.5%
Property Condition Disclosure	N/A	2	N/A	100%
RESPA	1	N/A	100%	N/A

**Table 4**

Volume of Third Party Liability and Technology Items Retrieved in Past Twelve Months (October 2017-September 2018)

Major Topic	Cases	Statutes	Regulations
Technology	14	7	5
Third Party Liability	13	3	0

**Table 5**

Volume of Third Party Liability and Technology Items Retrieved in Past Twelve Months by Issue (October 2017-September 2018)

Major Topic	Cases	Statutes	Regulations
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Technology: State Internet Advertising Rules	0	0	4
Technology: Social Networking	0	1	1
Technology: Privacy	0	0	0
Technology: Anti-Solicitation Laws	0	0	0
Technology: Data Breaches	0	3	0
Technology: Cyber Fraud	2	0	0
Technology: Drones	1	2	0
Technology: Copyright	8	0	0
Technology: Other	3	0	0
Third Party Liability: Appraisers	3	3	0
Third Party Liability: Inspectors	2	0	0
Third Party Liability: Other	8	2	0

**Table 6**

Liability Data for Technology and Third Party Liability Cases in the Past Twelve Months (October 2017-September 2018)

<b>Topic</b>	<b>Liabe</b>	<b>Not Liabe</b>	<b>% Liabe</b>	<b>% Not Liabe</b>
Technology	4	4	50%	50%
Third Party Liability	1	7	12.5%	87.5%