

Damages Smamages

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In the late 1990's, First American's veterans of the land title industry detected a void in the commercial lending industry. While the concept of land title insurance was widely accepted as *the* risk management solution to buying and selling real estate, it seemed that interests secured by personal property were lacking a similar, industry-recognized standard of protection.

A ruling that proved to bolster this opinion was the one ultimately made by the Washington State Supreme Court in re: *Puget Sound, L.L.C. v Unisearch, Inc.* After having received a UCC search from their service provider: Unisearch, Inc., the then Factors of Puget Sound made a loan to their borrower: The Benefit Group, Inc. When The Benefit Group later defaulted on the loan, "Factors" discovered a priming lien against their borrower that had not been disclosed on Unisearch's search report.

Citing negligence in their failure to report liens against a slight name variance, Factors of Puget Sound initiated legal action against Unisearch. After an initial decision in favor of Unisearch, followed by a reversal – the Washington State Supreme Court ultimately decided that Unisearch was liable only for the cost of the service billed to Factors: \$25.00.

Unisearch argued that their limitation of liability disclaimer that appeared on all search reports and invoices was in line with industry standards. All service providers of this nature utilized similar language in their correspondence with clients in an effort to clearly communicate their intent to accept liability *only* for the fees billed for the service. Notwithstanding the gravity of the lending decisions being made based on the results of UCC search reports, service companies were typically charging \$20 to \$30 for any one search service – certainly not enough to withstand accepting liability for the default on a major commercial loan.

Since the Unisearch ruling, the limitation of damages disclaimer has become the mantra of nationwide service companies and Secretary of State filing offices alike. The risk of inaccuracies has been shifted to the shoulders of the lender and the buyer and not those supplying the due-diligence data.

For years, First American has offered UCC searches with optional insurance coverage. Today, we are lifting the standard damages provision from *all* search reports and replacing it with an *acceptance* of liability provision for inaccuracies leading to damages up to \$10,000.00. We are proud of the expertise of our search specialists, and we stand behind the results we provide.

The UCC Division was founded on the concept of risk-shifting solutions for commercial lenders. Today, we have moved beyond the constraints of a traditional search provider and toward the goal of being the commercial industry's #1 resource for due-diligence. We look forward to your next order!

Excerpts from Competitors' damages provisions:

Liability limited to amount of fees only. All name searches indexed as given. [Company] is not responsible for variations.

Although meticulous care has been taken in conducting this service, no liability is assumed.

Reasonable care is exercised in all search requests. The responsibility for the accuracy of the public records rests with the filing officer; liability is limited to amount of fee.

Information provided as is without any warranty of any kind. [Company] disclaims all warranties, express or implied. We accept no responsibility for errors and/or omissions. In no event shall [Company] be liable for any damages whatsoever.

First American's provision:

The information contained herein is public record information which as been retrieved by First American Title Insurance Company, UCC Division (the "Company"), from sources believed to be reliable, including but not limited to state/local governments and various suppliers. Although the Company makes no expressed or implied warranties or guarantees as to the accuracy or completeness of this reporting, the Company accepts liability for loss due to inaccuracies in the information contained herein in an aggregate amount not to exceed \$10,000.00. In no event, will the Company, have any liability with respect to the information contained herein in excess of the above stated amount.

For coverage in *excess* of \$10,000 – our Insured Search™ and Eagle 9® policies are available!