

MISSOURI SUPREME COURT

Appeal No. SC 88762

Lisa L. Rokusek
Jennifer Human,
Appellants,

v.

Security Title Insurance Company,
Security Title Insurance Agency
Respondents

**Appellants' Substitute
Reply Brief**

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POINTS RELIED ON

- I. The Missouri Secretary of State's Interpretation of the Notary Statute is Fatal to Security Title's Case. (Responds to Security Title's Point IIC).**

Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984);

Wimberly v. Labor & Industrial Relations Comm'n, 688 S.W.2d 344 (Mo. banc 1985);

United States v. Riverside Bayview Homes, 474 U.S. 121 (1985);

Kidd v. Pritzel, 821 S.W.2d 566 (Mo.App. 1991).

- II. Security Title's overcharge was "official misconduct" and proximately caused appellants' damage. (Responds to Security Title's Points IIA and IIB).**

Warder v. Henry, 23 S.W. 776 (Mo. 1893);

- III. The argument concerning the Secretary of State's interpretation of the statute and the argument concerning the \$1 per signature charge is properly before this Court. (Responds to Security Title's Points IIC and III).**

State v. Biddle, 599 S.W.2d 182, (Mo. banc 1980).

IV. Security Title was unjustly enriched in charging \$12 for notarizing ten signatures that it did not record in a journal. (Responds to Security Title's Point IV).

Gales v. Weldon, 282 S.W.2d 522 (Mo. 1955).

V. Appellants' MMPA claim survives because: 1) Security Title provided no evidence that it was under the direction and supervision of the Department of Insurance; 2) the claim is not preempted; and 3) appellants suffered an ascertainable loss. (Responds to Security Title's Point V).

State v. Winfield, 5 S.W.3d 505 (Mo. banc 1999);

Commerce Bank of Kansas City v. Missouri Dep't of Finance, 762 S.W.2d 431 (Mo.App. 1988).

ARGUMENT

I. The Missouri Secretary of State's interpretation of the Notary Statute is fatal to Security Title's case. (Responds to Security Title's Point IIC).

Security Title spent much effort trying to convince this Court to ignore the Missouri Secretary of State's interpretation of the notary statute. It did so because it knows that the interpretation is fatal to its case. The best that Security Title can do on the merits is to summarily claim that the handbooks, which include the Secretary's interpretation, "merely paraphrase[] what is contained in Section 486.350(1)." (Security Title brief at 32). It is wrong. Whatever ambiguity may exist in §486.350(1) does not exist in the Secretary's interpretation.

A. Missouri Secretary of State's interpretation is the same as plaintiffs' interpretation.

Section 486.350(1), RSMo, states: "The maximum fee in this state for notarization of each signature and the proper recording thereof in the journal of notarial acts is two dollars for each signature notarized." Appellants think that the statute is unambiguous and requires notaries to notarize signatures and record them in their journals to charge \$2. Security Title, on the other hand, believes that the coda "for each signature notarized" renders the statute ambiguous in that a notary may "charge two dollars for each signature notarized" regardless of recoding the signature in the journal. Appellants will address why their statutory

construction is correct in section II of this brief. They will now, however, rebut Security Title's assertion that the Secretary's interpretation merely paraphrases the statute.

Since at least 2002, the Missouri Secretary of State has instructed all Missouri notaries that: "The notary is allowed by law to charge a fee of \$2.00 for each signature notarized and RECORDED IN THEIR NOTARY JOURNAL." (Appendix at 23)(emphasis in original). There is *no* possible ambiguity here. Notaries must notarize signatures and record them in their journal to charge \$2. There is no other possible interpretation. The Secretary's interpretation does not paraphrase the statute. It removes any possible ambiguity that may have existed in the statute. It is impossible to rewrite this sentence to make it any more clear that notaries must do both acts to charge \$2.

The current version of the Secretary's handbook is perfectly consistent with the prior version. While it removed the capitalization from the prior version (presumably because the point had been made sufficiently clear in the past), the mandate is still the same. It instructs notaries that they may "charge two dollars for each signature on a document and the proper recording of the notarization in their journal." (Appendix at 29). This version is no less clear than the prior version. Notaries must do both acts to charge \$2. Whatever ambiguity may have existed because of the coda in the statute disappears under the Secretary's interpretation.

B. The Secretary's interpretation is binding unless there is no basis for the interpretation.

Security Title claims that the Secretary's interpretation is irrelevant. To the contrary, it is almost binding precedent. In its most important administrative law opinion, the United States Supreme Court addressed the deference that a court should give to administrative agencies concerning the agency's interpretation of statutes it administers. *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The opinion's constitutional underpinning is the separation of power among the executive branch (administrative agency's interpretation), legislative branch (statutory authority), and judicial branch (legal deference). In balancing these three elements, the Court noted that if the intent of Congress is not absolutely clear from the face of the statute, "the court does not simply impose its own construction on the statute...." *Id.* at 843. "Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Id.* "The Court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Id.*

Here, the Missouri Secretary of State is entrusted with regulating notaries. §486.205, RSMo. In fact, all notaries must "read the Missouri notary

public handbook” issued by the Secretary. §486.225.6, RSMo. As the United States Supreme Court explained, the issue is whether the Secretary’s interpretation is based on a permissible construction of the statute. As will be shown in Section II of this brief, there is little doubt that the Secretary’s interpretation is the best interpretation. But there is *no* doubt that the Secretary’s interpretation is a permissible construction of the statute. Because “permissible construction” is the key to deference and there is no question that the Secretary’s interpretation is permissible, there is no need to go further. The Court should adopt the Secretary’s interpretation and hold that to collect \$2 notaries must notarize a signature and record it in their journal. The Court need not address the policy arguments and statutory interpretation issues in Section II of this brief.

Even though *Chevron* has federal, constitutional underpinnings, it is no less applicable in Missouri state courts. Less than one year after *Chevron*, the Missouri Supreme Court ratified its analysis and made it binding law in Missouri. *Wimberly v. Labor & Industrial Relations Comm’n*, 688 S.W.2d 344, 350 (Mo. banc 1985)(*Chevron* deference “is no less applicable to state courts.”); *State ex rel. Webster v. Dep’t of Revenue*, 825 S.W.2d 916, 931 (Mo.App. 1992)(Missouri agency interpretation is given *Chevron* deference). As this Court recently reminded us, “the interpretation and construction of a statute by an agency charged with its administration is entitled to great weight.” *State ex rel. Sprint Missouri v. Public Service Commission of Missouri*, 165 S.W.3d 160, 164 (Mo.

banc 2005). Therefore, *Chevron* deference applies to the Secretary's interpretation of the notary public statute in this case.

Security Title incorrectly states that *Chevron* deference only applies to “rules promulgated as the result of the exhaustive rulemaking procedures required by Missouri law....” (Security Title brief at 31). But in *United States v. Riverside Bayview Homes*, 474 U.S. 121, 131 (1985), the United States Supreme Court did not give *Chevron* deference to an agency regulation promulgated under rulemaking authority. Instead, it gave *Chevron* deference to an agency's interpretation of a statute concerning its jurisdiction over certain types of wetlands. Likewise, in *Chemical Mfrs. Ass'n v. Natural Resources Defense Council*, 470 U.S. 116 (1985) the United States Supreme Court instructed that *Chevron*' deference is due not only to administrative rulemaking but also to policy judgments. In that case, the Court did not defer to an EPA regulation but rather deferred to an EPA judgment about its authority over toxic material. *Id.* at 125. It is therefore not surprising that Missouri courts have given *Chevron* deference to administrative interpretations that do not go through formal rulemaking. “Review is limited to the question of whether the interpretation, *whether by regulation or otherwise*, is reasonable, in light of the language, policies and legislative history of the act.” *Kidd v. Pritzel*, 821 S.W.2d 566, 574 (Mo.App. 1991)(emphasis added)(interpreting *Chevron* and *Riverside Bayview Homes*).

Security Title's claim that the Secretary's interpretation "has *no precedential value*, especially with respect to any legal conclusions" misapplies the law. (Security Title brief at 31 n.3). All of the authorities it cites are in the context of appellate oversight of administrative decisions. In that context, Security Title correctly cites *State ex rel. 401 North Lindberg Associates v. Ciarlegio*, 807 S.W.2d 100, 105 (Mo.App. 1990) for the proposition that an "administrative decision has no precedential value for appellate courts." This, of course, has to be the rule otherwise binding precedent would eviscerate appellate review. Imagine if a lower court's opinion were binding precedent on a higher, reviewing court. Appellate review would be meaningless if a reviewing court were bound by the precedent of whatever forum it was reviewing. The Missouri Court of Appeals decisions have no precedential value for the Missouri Supreme Court in the same way that administrative decisions have no precedential value for appellate courts. But this fact tells us nothing about the deference that Missouri courts should give to administrative interpretations of statutes with which the legislature has entrusted it. That deference is guided by *Chevron*.

Finally, Security Title claims that the Secretary's interpretations should be "disregarded by the Court because they are not part of the record below." (Security Title brief at 30). This argument will be dealt with in Section III because Security Title repeats the exact same argument on the issue of whether charging \$1 per signature is properly preserved.

II. Security Title's overcharge was "official misconduct" and proximately caused appellants' damage. (Responds to Security Title's Points IIA and IIB.)

Security Title spends two pages of its 49-page brief justifying its interpretation of §486.350(1), RSMo., which would allow it to charge \$2 per notarized signature even if the signature is not recorded in a journal. It does this even though it acknowledges that the statute reads: "[t]he maximum fee in this state for notarization of each signature *and the proper recording thereof in the journal* of notarial acts is two dollars for each signature notarized." (emphasis added)(Security Title brief at 20). The only support for its interpretation is the Court of Appeal opinions in this case and the two companion cases.

The opinions of the Court of Appeals are not only non-binding, they were wrongly decided. That Court could not reconcile its opinions with the interpretation of the Secretary of State so it did the only thing that it could do. It completely ignored the interpretation and pretended that it did not exist. For all of the reasons previously discussed, this Court should follow the Secretary's interpretation.

To make matters worse, the Court of Appeals opinions are wrong even absent the Secretary's interpretation. Security Title relies on the Court of Appeals's misanalysis that "[i]f Plaintiff's argued interpretation of Section 486.350 were applied, the Notary Act would prohibit notaries from charging a fee for these

excepted acts, a result obviously not intended.” (Security Title brief at 21). The “excepted acts” are those few acts for which the Notary Statute does not require recording in a journal. See §486.260, RSMo. According to Security Title and the Court of Appeals, the fact that a small number of documents are excepted from being recorded in journals under §486.260, RSMo, necessarily means that the \$2 limitation in §486.350, RSMo, cannot be interpreted to require a notary to record a signature in a journal. In other words, the exceptions in §486.260, RSMo, dictate the interpretation of the \$2 limitation in §486.350, RSMo.

The problem with this argument is that it cuts in favor of appellants not Security Title. The \$2 limitation became effective January 1, 1978. The wording of the limitation has not changed at all since then. The exceptions in §486.260, RSMo, did not come into effect until 2004! The \$2 limitation did not mean one thing between 1978-2004 and another thing between 2004-today. The existence of exceptions in 2004 cannot inform the interpretation of the \$2 limitation in 1978. Because no exceptions existed when the \$2 limitation was enacted, Security Title and the Court of Appeals got it exactly wrong.

Furthermore, even under the current version of §486.260, RSMo, Security Title is still wrong in claiming that under appellants’ interpretation “notaries would be prohibited from receiving compensation for notarizing any ‘carve out documents’ under Section 486.350 if they **followed the law** (Section 486.260)

and refrained from recording such notarizations in a notary journal.” (Security Title brief at 22)(emphasis in original).

Notaries need not charge anything for their services and in fact, most do not. If notaries do not charge for services, then §486.260, RSMo., is unambiguous that the signature in a public document that is publicly recorded need not appear in a journal. If notaries charge for services then §486.350(1), RSMo., dealing with maximum charges applies and requires that the signature appear in the journal. This distinction makes perfect sense. When notaries do not charge for their services, the only important element is that the notaries properly notarize the signatures. This can be quickly verified by looking at the publicly-filed document. When notaries charge for their services, an additional element comes into play, i.e., did the notary overcharge the client? That cannot be verified by looking at the publicly-filed document because the price charged is not on the document. Rather, it can be verified by looking at the notarial journal that requires, among other things, that the amount of the charge appear in the journal. §486.260, RSMo. Thus, Security Title is incorrect that adopting appellants’ interpretation somehow forces notaries to choose between conflicting laws. In reality, notaries who do not charge clients need not record signatures of publicly recorded documents in journals. If, on the other hand, they choose to charge clients, they must record signatures in journals to allow the Secretary of

State, or anyone else interested in enforcing the price limit, to check compliance with the law. When notaries charge for their services, Missouri has an interest in ensuring that notaries do not overcharge. The recording requirement for notaries who charge for their services in §386.350, RSMo, is the only way to ensure compliance with the \$2 limitation.

Security Title spends the bulk of its space arguing that it did not “proximately cause” appellants’ damages and that its conduct did not constitute “official misconduct.”

The argument concerning proximate cause is illogical. Appellants’ damages are the amount that Security Title overcharged them for notarial services. No one, other than Security Title, could have caused that damage. Security Title tries to confuse the proximate cause issue by contending that appellants’ damages are something other than the overcharges. It attempts to equate appellants’ damages with damages from erroneous notarizations in real estate transactions in those cases. In those cases, the plaintiffs were trying to undo their real estate transactions because of mistakes by notaries. For a variety of reasons, the courts found that the notaries mistakes did not cause the plaintiffs damages therefore plaintiffs were not allowed to undo their real estate transactions. In this case, however, appellants accept the validity of the underlying real estate transactions and all of its ramifications. Thus, Security Title’s long litany of cases concerning proximate cause and notary misconduct

are not relevant. The plaintiffs in those cases were challenging the validity of the underlying transaction. Appellants are not. Nobody other than Security Title caused Security Title to overcharge appellants therefore appellants' damages were proximately caused by Security Title.

Security Title's argument about the statutory definition of "official misconduct" fares no better. As relevant to this appeal, the statutes define official misconduct in two ways. First, §486.350(5), RSMo, provides that a "notary who charges more than the maximum fee specified ... is guilty of official misconduct." Second, §486.200(6), RSMo, defines official misconduct as the unauthorized, unlawful or injurious performance of a duty. Under either definition, Security Title is guilty of official misconduct.

Security Title's interpretation of §486.350(5), RSMo, merely begs the question. It claims that the statute "operates to proscribe charges in excess of the maximum fee for notarized signatures - \$2.00 for each signature notarized - and to establish that any charges in excess of \$2.00 constitute 'official misconduct.'" (Security Title brief at 24). In other words, Security Title did not commit official misconduct because it charged \$2 per signature which, it contends, is not in excess of the maximum fee specified. The statute, however, does not define official misconduct as charging more than \$2 per signature. It defines official misconduct as charging "more than the maximum fee specified." This begs the question: What is the maximum fee specified under the facts of this

case? As explained earlier it cannot be \$2 per signature. As explained later, it cannot be more than \$1 per signature. As such, Security Title charged more than the maximum fee specified and thus committed official misconduct.

This Court can stop its “official misconduct” analysis without addressing the other statutory definition because Security Title’s conduct so neatly falls into charging more than the “maximum fee specified.” But, Security Title is also guilty of official misconduct as defined in the general definition section of the notary statutes in §486.200(6), RSMo. This statute defines “official misconduct” as performed a duty in “an unauthorized, unlawful, abusive, negligent, reckless or injurious” way. By charging more than it was statutorily allowed, Security Title performed its duties in an unauthorized and unlawful manner that injured appellants. Security Title cannot escape the plain, ordinary meaning of this statutory definition.

Security Title claims that its failure to keep a journal cannot be considered official misconduct because the only statutory provision (§486.260, RSMo.) that requires notaries to keep a journal does not also specifically list failure to keep a journal as official misconduct. (Security Title brief at 25). The absence of a specific provision in §486.260, RSMo., that says that failure to keep a journal is official misconduct should not be surprising. The legislature had already defined official misconduct as the unauthorized, unlawful or injurious performance of a duty in the “general definitions” portion of the Missouri Notary Public Act.

§486.200(6), RSMo. Anything that a notary does that is unauthorized, unlawful or injurious in the performance of its duties is official misconduct. Including a provision in §486.260, RSMo., again defining official misconduct would have been unnecessary. After all, the legislature defines a term in the “definition” section of a statute so that it does not have to redefine the term every time that it applies.

Citing *Warder v. Henry*, 23 S.W. 776 (Mo. 1893), Security Title claims that only “substantial compliance” with the notary statutes is necessary. That case did not deal with recording duties, maximum charges or even the modern Notaries Public Act – enacted in 1939 and dramatically updated in 1977 – so that ancient case has no relevance here. Furthermore, even if substantial compliance were all that was required, Security Title performed only half of what the statute required it to do to charge \$2 per signature. That is hardly substantial. Finally, as Security Title acknowledges, there cannot be substantial compliance if some goal of the statute is undermined. (Security Title brief at 26). As explained above, recording in a journal is key to Missouri’s ability to ensure compliance with the statutory, maximum-fee limitation. The failure to record, therefore, undermines one of the goals of the statute.

III. The argument concerning the Secretary of State's interpretation of the statute and the argument concerning the \$1 per signature charge is properly before this Court. (Responds to Security Title's Points IIC and III).

Security Title does not think that the Secretary of State's interpretation of the statute is properly before this Court. Unlike cases where a court is asked to consider new evidence or new issues, the Secretary's interpretation is cited as support for an argument that was before the trial court on an issue that was also before the trial court. The issue before the trial court was how much notaries may charge for notarizing signatures that they did not record in their journals. (L.F. 74-83). Appellants' argument was that notaries could only charge \$2 per signature if they notarized the signature *and* recorded it in their journal. (L.F. 76). The Secretary's interpretation is support for that argument.

Appellate courts routinely consider new cases and legal authority. Parties rarely rely exclusively on authorities cited to the trial court. In fact, there is no requirement that parties cite any authority to the trial court in a motion to dismiss or a motion for summary judgment. The only requirement that authority be cited exists at the appellate level. *Compare* Rules 55.27 and 74.04 to Rule 84.04. Appellants' inclusion of the Secretary's interpretation as it appears in its Handbooks is no different than citing legal authority. Appellants are simply informing the Court of an important legal interpretation, not introducing new evidence or issues.

But even if this Court were to determine that appellants did not properly bring the interpretation before the Court, it should take judicial notice of it. For example, in *State v. Biddle*, 599 S.W.2d 182,193 n.12 (Mo. banc 1980) this Court took judicial notice of federal statutes and then went further and took “notice of the Department of Treasury, Bureau of the Mint ‘Annual Report: Calendar Year Coinage Statement 1975-1976’” *Id.* at 193 n. 14. If this Court may take judicial notice of a federal agency’s report, it can certainly take notice of a Missouri agency’s handbook.

Security Title also asks this Court to ignore appellants’ argument that a \$1 per signature interpretation is better than a \$2 per signature interpretation because it supposedly was not before the trial court. As mentioned earlier, Security Title thinks that the best interpretation of the statute is that it may charge \$2 per signature while appellants think that the best interpretation is that it may charge zero dollars per signature. Those were the primary positions raised at the trial court. What happens if this Court disagrees with both parties and thinks that the best interpretation is \$1 per signature? Is the Court then relegated to writing an opinion accepting the “least wrong interpretation” as espoused by the parties or does it not render an opinion at all? Of course not. It writes an opinion explaining why the \$1 per signature interpretation is superior to the other two interpretations.

Security Title's argument assumes that the issue before this Court is whether it forfeited all of its compensation because it failed to record signatures in a journal. It thinks that if this Court disagrees that it should forfeit all of its compensation, it is automatically allowed to charge \$2 per signature because appellants did not argue that \$1 per signature was the proper fee. Appellants can easily turn this same argument against Security Title by framing the issue as whether Security Title may collect \$2 per signature that it failed to record in a journal. If the Court disagrees that Security Title is entitled to collect \$2 per signature then this Court should automatically rule that it is not entitled to collect anything because Security Title did not argue the \$1 per signature is the proper fee. The real issue, however, is how much may notaries charge for notarizing signatures that they do not record in their journals. That is the issue that the trial court addressed and that is the issue before this Court. All arguments that shed light on that issue should be considered.

Security Title's suggestion also encourages bad jurisprudence. Unlike many purely private cases, this case affects more people than just the parties. It affects every notary in Missouri. There are about a half dozen cases pending in the St. Louis County Circuit Court waiting for the resolution of this appeal. Security Title is asking this Court to turn a blind eye to certain of appellants' arguments and legal authority. This Court's interest should be reaching the correct decision. This requires taking into account all possible interpretations of

the statute. There is no question that this case properly raises the issue of how much a notary can charge for notarizing signatures without recording them in a journal. It defies common sense to ask that this Court not use the best tools at its disposal to make the best decision possible, especially when its decision affects many more people than the parties.

IV. Security Title was unjustly enriched in charging \$12 for notarizing ten signatures that it did not record in a journal. (Responds to Security Title's Point IV).

Appellants rest on their arguments concerning preemption because common law liability predates the Missouri Notary Public Act and malfeasance may be redressed through common law remedies even if the statute creates the duty that has been violated. *See, e.g., Gales v. Weldon*, 282 S.W.2d 522 (Mo. 1955).

In discussing the unjust enrichment claim, Security Title has disavowed its statement at the Court of Appeals that “Appellants received exactly what they bargained for – notarized signatures – at a reasonable price.” (Security Title Court of Appeals brief at 26-27). It eliminated the statement because it recognizes that appellants did not bargain for services at a reasonable price. They bargained for a service at a *legal* price and they did not get what they bargained for. The legislature limits a notary's fees. If notaries want to charge more than what the legislature has set, or if they want to do less, i.e., not record

signatures in a journal, to collect \$2 per signature, the legislative doors are open.

If they violate the law and charge more than what they are entitled to charge, they have been unjustly enriched. Collecting more than what one is legally entitled to charge is not only unjust, it is illegal.

It takes real chutzpah for Security Title to argue that a victim of its overcharged services is guilty of unjust enrichment when the only party that violated the law is Security Title. The argument that appellants, not Security Title, were unjustly enriched does not even pass the smell test.

V. Appellants' MMPA claim survives because: 1) Security Title provided no evidence that it was under the direction and supervision of the Department of Insurance; 2) the claim is not preempted; and 3) appellants suffered an ascertainable loss. (Responds to Security Title's Point V).

Security Title never argued and the trial court never found that Security Title was under the direction and supervision of the Department of Insurance. (L.F. 68-69, 114). Thus, this issue is not before the Court. *State v. Winfield*, 5 S.W.3d 505, 515 (Mo. banc 1999).

Security Title exclaims boldly that the “more specific Notary Public Act and the more general MMPA **are repugnant and cannot be harmonized.**” (Security Title brief at 43)(emphasis in original). Yet, Security Title does not point to a single provision of the Notary Public Act that contradicts any provision of the MMPA. The Notary Public Act does not prohibit Missouri residents from doing

anything that the MMPA allows. Nor does the Notary Public Act allow Missouri residents to do anything that the MMPA prohibits. Rather, Security Title is relegated to arguing that the two statutes are repugnant because the *remedies* that each allow are different, e.g., Attorney General intervention, punitive damages, attorney's fees, etc. (Security Title brief at 46). But this is not a repugnancy. If it were, the MMPA would be useless. If the remedies had to be the same, a party would never use the MMPA in conjunction with another cause of action because the MMPA would be of no benefit. Yet the MMPA itself explicitly endorses its use with other causes of action. Section 407.120, RSMo., entitled "Provisions of this chapter no bar to other civil actions," states that the MMPA "shall not bar any civil claim against any person who has acquired any moneys or property, real or personal, by means of any practice declared to be unlawful by this chapter." No Missouri court has ever interpreted repugnancy in the way that Security Title is attempting to do.

Incredibly, Security Title still contends that "*Dover* [its principal preemption authority] does not **require** a repugnancy between statutes...." (Security Title brief at 45)(emphasis in original). Missouri courts have already flatly rejected that interpretation. "The rule in *Dover v. Stanley*, however, assumes a repugnancy between the statutes." *Commerce Bank of Kansas City v. Missouri Dep't of Finance*, 762 S.W.2d 431, 436 (Mo.App. 1988). Security Title is fighting a battle that was lost in 1988.

Finally, Security Title claims that appellants did not suffer an “ascertainable loss” because it “services were reasonably valued at \$12.00 for ten signatures.” (Security Title brief at 48). Again, the legislature (not Security Title) sets the reasonable value of a notary’s service. If this Court concludes that Security Title could only charge zero or \$1 per signature then Security Title’s charge was unreasonable and appellants suffered a concomitant ascertainable loss.

CONCLUSION

For all of these reasons, this Court should reverse the trial court's granting of Security Title's summary judgment motion on all three counts. It should remand the case to the trial court for prosecution on its merits.

Respectfully submitted

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MISSOURI SUPREME COURT

LISA L. ROKUSEK,)
JENNIFER HUMAN,)
Appellants,)

v.)

) Appeal No.: SC88762
)

SECURITY TITLE COMPANY,)
SECURITY TITLE INSURANCE)
AGENCY)
Respondents.)

ATTORNEY'S CERTIFICATE AND CERTIFICATE OF SERVICE

Pursuant to Rule 84.06(c), the undersigned certifies:

1. The substitute reply brief of appellants Lisa L. Rokusek and Jennifer Human complies with the requirements of Rule 55.03.
2. The brief complies with the limitations contained in Rule 84.06(b).
3. The brief contains 5360 words, *including* the cover, table of contents, table of authorities, points relied on, and signature block, all of which are permitted to be excluded from the count.
4. Electronic copies of the brief, in both WordPerfect and Adobe PDF format, are on the enclosed floppy disk, and both the disk and the files have been scanned for viruses and are virus-free.
5. Two copies of the brief, a copy of this certificate, and a duplicate of the floppy disk filed with the Court, have been served on each of the following

named counsel of record for respondent at the following addresses of record this
11th day of December, 2007, by mailing the same by U.S. Mail, first-class
postage prepaid:

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