



## Riker Danzig Team Defeats Class Certification in Major Title Insurance Case

Riker Danzig's Title Insurance team defeated a class action in the final stage of a long and hard-fought litigation brought against our clients, the Fidelity National Title family of insurers.

In Chassen, et al. v. Fidelity National Financial, Inc., et al., the putative class of plaintiffs claimed in 2009 that they were overcharged by their settlement agents (title agencies and closing attorneys) to record deeds and mortgages in connection with New Jersey real estate purchases and refinancings from 2003 until the present. Despite having never sought recovery of those purported overcharges from the settlement agents themselves, plaintiffs looked to recover in excess of \$164 million in claimed damages on behalf of the alleged class. The putative class sought in excess of \$100 million from our clients alone.

After 2 ½ years and significant discovery and motions, the U.S. Supreme Court issued its decision in AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011), that allowed Fidelity National and the other defendant-insurers to seek to compel plaintiffs to arbitrate their claims individually rather than as a class. Shortly after that decision, Fidelity National and the other defendants filed motions compelling plaintiffs to individually arbitrate their claims. The District Court ultimately granted the motions, but certified the issues for interlocutory appeal to the Third Circuit.

Riker Danzig partner Michael O'Donnell led the team in defending the Fidelity National companies, and argued the case before the Third Circuit, which affirmed the District Court's order in a precedential decision compelling individual arbitration under the title insurance policies. This sent four out of the five named plaintiffs to individual arbitration before the AAA, where their claims were summarily rejected in a no cause award. A single named plaintiff remained as the sole putative class representative before the District Court as its policy had an Arbitration Endorsement making arbitration subject to both parties' consent. After additional discovery on a revised class, the District Court denied plaintiff's motion for class certification on November 10, 2020, finding that the class claims failed to establish commonality or predominance. Significantly, the District Court rejected Plaintiff's argument that a closing attorney is always the agent of the title insurer simply because a Closing Service Letter was issued.

Also playing critical roles on the defense team over the last decade were Derrick Freijomil and Jonathan Sandler, along with significant contributions from Bethany Abele, Jorge Sanchez, Michael Crowley and Anthony Lombardo.

The *AmLaw Litigation Daily* gave Michael O'Donnell, Derrick Freijomil and Jonathan Sandler a shout-out in its "Litigator of the Week" column on November 20, 2020 regarding this case. The weekly column, which highlights the big wins of the week nationwide, commended them for beating back the class certification bid.

The decision was also covered in [The Legal Description](#).

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