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SUPREME COURT CRACKS DOWN ON FRIVOLOUS INSURANCE SUITS

(*Safeco Insurance Co. of America v. Burr*, No. 06-84)
(*GEICO General Insurance Co. v. Edo*, No. 06-100)

The U.S. Supreme Court issued a ruling today that cracks down on frivolous lawsuits filed by plaintiffs' attorneys against the insurance industry -- suits alleging technical violations of the Fair Credit Reporting Act (FCRA) but seeking billions of dollars in damages.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in two consolidated insurance cases, *Safeco Ins. Co. of America v. Burr* and *GEICO General Ins. Co. v. Edo*. WLF argued that the plaintiffs' lawyers do not claim that their clients suffered any real damages for alleged violations of FCRA disclosure provisions, and were simply trying to extort settlements from deep-pocketed defendants. The Supreme Court agreed with WLF that the plaintiffs could not show that any alleged violations were committed "willfully" and that the suits must be dismissed in the absence of such a showing. The Court also agreed with WLF that, in the *GEICO* case, no violations of the FCRA were committed at all.

"The point of the FCRA is to protect consumers from false information contained in their credit records," said WLF Chief Counsel Richard A. Samp after reviewing the Supreme Court's decision. "Insurance companies are particularly inappropriate targets of these lawsuits because none of them are in the business of compiling credit reports on consumers, and none of the plaintiffs contend that their credit records -- which were supplied to the defendants in connection with the plaintiffs' applications for insurance -- contain any inaccurate information," Samp said.

Adopted in 1970, the FCRA is a law designed to allow consumers to find out what information is in their credit reports and to correct errors. To ensure that consumers are alerted when their credit reports contain negative information, the FCRA requires companies (such as insurers) that use credit reports in connection with pricing their products to notify a consumer whenever they take "adverse action" against the consumer "based on" information contained in the consumer's credit report. If a user negligently fails to provide such notice, the consumer can sue to recover any actual damages. If the failure is deemed "willful," the consumer is entitled to recover $100 without regard to whether he has actually been damaged and can also seek to recover punitive damages.

Plaintiffs' lawyers recently began seeking to exploit the $100 statutory damages provision in an effort to "shake down" large insurance companies. There will always be instances in which there is disagreement over whether an insurance company's response to a request for insurance should be deemed "adverse action" that triggers the FCRA's notification requirements. In those instances in which an insurance company decides that no "adverse action" based on information contained in a credit report has been taken, plaintiffs' lawyers will file on behalf of one of the affected insurance policy holders, alleging that the insurance company "willfully" failed to send notice, and then seek to have the case certified as a class action. If a large class is certified, the potential damages can run into the billions of dollars.

In one of the cases before the Court, Edo (the insurance applicant) had a better-than-average credit record, and there was nothing "negative" in his report. After checking Edo's credit report, GEICO offered him automobile insurance at a standard rate, albeit the applicant would have qualified for a slightly lower rate if he had had a "perfect" credit score. GEICO determined that no "adverse action" notice needed to be sent to Edo because the rate offered to him was the same rate that he would have been offered if GEICO had never checked his credit report. The U.S. Court of Appeals for the Ninth Circuit disagreed, siding with Edo's argument that an insurance company engages in "adverse action" whenever it offers an applicant anything other than its top rate and the offer is based at least in part on a credit report. The appeals court also adopted an expansive interpretation of what constitutes a "willful" violation, thereby potentially exposing insurance companies to ruinous damages awards. The U.S. Supreme Court reversed, finding that GEICO's actions did not trigger the FCRA's notification requirement at all, and that any FCRA violation by Safeco was not "willful" because it was based upon a reasonable interpretation of the notification requirements.

The Court agreed with WLF that no adverse action "based on" a credit report occurs when (as was true in GEICO's dealings with Edo) the insurance rate is no higher than it would have been if no credit report had been checked. The Court noted that under the Ninth Circuit's interpretation, millions of "adverse action" letters would be sent to consumers with good credit, and that the letters would lose their ability to provide meaningful "alerts" once consumers began routinely ignoring them.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. To that end, WLF has frequently appeared in the federal courts to support tort reform efforts.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org