

Insurance Expert: Supreme Court Case Foreshadows Problems of Federal Oversight

INDIANAPOLIS (Aug. 24, 2007) – A brief filed by the U.S. Department of Justice in a recent Supreme Court case provides disconcerting clues about how the federal government might regulate the business of insurance, according to a new report issued by the **Washington Legal Foundation**. The report, *Safeco v. Burr: How Does Ruling Reflect on Federal Role in Insurance?*, was written by Robert Detlefsen, vice president for public policy at the National Association of Mutual Insurance Companies (NAMIC).

In the study, Detlefsen examines *Safeco v. Burr*, a 2007 Supreme Court case that decided how certain elements of the Fair Credit Reporting Act apply to insurers. While the case was ultimately decided in favor of the defendant insurers, it underscores the apparent lack of understanding of the insurance industry by some members of the federal judicial and executive branches.

“The case provides a glimpse into how the federal government might go about regulating the business of insurance if it had the authority to do so,” Detlefsen wrote. “At bottom, none of the federal entities that examined this case seem to understand the complex interplay of risk variables that define the insurance underwriting process.”

The case involves insurers’ use of credit scoring as a tool to set rates. Detlefsen says the justices, including those who ruled in favor of the defendants, don’t seem to fully comprehend some of the basic facts of insurance.

“Insurers set premiums based on the level of risk they assume, which they determine based on their analysis of dozens of risk variables. The goal is to ensure that similar risks are treated similarly; it is not to create a zero-sum game that pits insurers against insureds. But apparently the U.S. Justice Department thinks otherwise,” the report says. “Its brief declares that ‘if an insurance company opts to use the credit reporting system and enjoy its benefits, it must also comply with the FCRA’s obligations.’ The implication that policyholders do not also enjoy the benefits of accurate pricing based on actuarially sound risk analysis betrays a glaring misunderstanding of the insurance enterprise.”

Detlefsen notes that the ruling comes as Congress is considering legislation that would establish an optional federal charter and allow insurers to be regulated by the federal government.

“Though hailed as a victory for insurers, *Safeco v. Burr* raises troubling questions about the approach that federal officials would bring to insurance regulation,” Detlefsen wrote. “For proponents of a federal insurance regulatory regime, *Safeco v. Burr* should serve as a cautionary tale.”

“*Safeco v. Burr: How Does Ruling Reflect on Federal Role in Insurance?*” can be downloaded at <http://www.wlf.org/upload/08-24-07detlefsen.pdf>.

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