Lincoln argued that the Plan limited benefits for mental illness of any type or cause, and thus, the Plan excluded the cause of an illness as a relevant factor in determining the applicability of the limitation to a given mental condition. In essence, Lincoln argued that because the mental disorder has an organic cause that fact cannot be used as a reason for excluding his condition from the mental illness limitation's coverage. The plaintiff's position was that the son did not suffer from a "mental illness" and therefore the limitation was inapplicable. The court sided with the plaintiff's argument on this point.

Lincoln's third contention was that mental illness ought to be defined as a condition whose primary observable symptoms are behavioral. The Court found that it was faced with competing definitions of mental illness and thus wrote, "We have no trouble agreeing with the district court's finding that the term mental illness as used in the Plan is ambiguous."

The court held that the ambiguous contract should be construed against the drafter of the contract. The court also found that the district court correctly adopted the state law rule of contract interpretation as part of the federal common law of ERISA. The court cited precedent which held that when ERISA is silent on an issue, the federal court must fashion federal common law rules to govern ERISA suits. In making such rules, the courts are to look to the federal statutes for guidance and also state law that is not inconsistent with the federal statutes.

Chief Judge Bauer, in his dissent, agreed that insurance coverage and exclusions must be written in a manner calculated to be understood by the average plan participant. However, he found that the policy clearly limited coverage "for care of mental illness or care of nervous conditions of any type or cause." Thus, he found a fair reading of the problems faced by the plaintiff led to the conclusion that the son suffered from a mental illness or nervous disorder.

Fair Housing Act Can Apply to Insurer's Practice of Redlining

National Association for the Advancement of Colored People v. American Family Mutual Insurance Company, 978F.2d. 287 (7 Cir. 1992).

The issue in this case, as framed by the circuit court, was, "Is redlining in the insurance business a form of racial discrimination violating the Fair Housing Act?"

Plaintiffs brought suit against the defendant alleging "redlining," that is, declining to write insurance for people who live in certain geographic areas or charging higher rates for those persons. The Fair Housing Act prohibits discrimination in the provision of services in connection with the sale of a dwelling. The district court found the Fair Housing Act did not apply to the property and casualty insurance business. Plaintiff appeals and the circuit court reversed and held that the Fair Housing Act did apply to discriminatory denials of insurance and discriminatory pricing because such redlining activities effectively preclude ownership of housing because of the applicant's race.

The court also held that the McCarran-Ferguson Act did not preclude application of the Fair Housing Act to allegations of redlining. The court also found that the Fair Housing Act did not specifically relate to the business of insurance, and thus would not supersede any law enacted by any state for purposes of regulating the business of insurance.

The circuit court remanded the case to the district court. The circuit court discussed the burden of proof but left the question unsettled. The court discussed disparate treatment as distinguished from disparate impact. In a disparate treatment case, the plaintiff must establish that the defendant intentionally discriminated on account of race. The court noted, "American Family stated, in its memorandum concerning appellate jurisdiction, that the dismissed Fair Housing Act claim would, if it were viable, be subject to proof under a disparate impact formula, rather than under the intentional racial discrimination test applicable to all the counts remaining in the district court." The court noted that American Family attempted to "recant" and that this concession may have been "imprudent" but that the retraction comes too late.

United States Supreme Court Will Review West Virginia Supreme Court Decision on Punitive Damages

TXO Production v. Alliance Resources 419s.e.2nd 870 (W. Va. 1992)

The West Virginia Supreme Court found that TXO Production intentionally brought a frivolous suit against Alliance Resources. The court wrote that the real intent of the suit was to obtain a reduction in royalty payments under an oil and gas lease. Alliance Resources countersued alleging that the TXO action constituted slander of title. Slander of title is publication with malice of false statements derogatory to another's title resulting in special damages as a result of the diminished value in the eyes of other (third) parties.

At the trial court, a judgment was entered against TXO in the amount of $19,000 in compensatory damages and $10,000,000 in punitive damages. TXO appealed, and one of the grounds for appeal was that the punitive damages awarded violated due process as outlined in *Haslip v. Pacific Mutual Life Insurance Company,* which had been decided by the United States Supreme Court in 1991. The West Virginia Supreme Court affirmed the lower court and did not reduce the judgment. An appeal from a decision of the highest state court when a federal constitutional issue is involved is to the United States Supreme Court, which has agreed to hear this case.In discussing the question of punitive damages, the West Virginia court wrote, "Originally, punitive damages were awarded only to deter malicious and mean-spirited conduct. However, the punitive damages definition of malice has grown to include not only mean-spirited conduct, but also extremely negligent conduct that is likely to cause serious harm. Generally, then, we can distinguish between the 'really mean' punitive damages defendant, and the 'really stupid' punitive damages defendant." The court then went on to write, "Generally, the cases fall into three categories. (1) really stupid defendants; (2) really mean defendants; and,