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,

(3) really stupid defendants who could have caused a great deal of harm by their action but who actually caused minimal harm."

The court then laid out guidelines and wrote that for really stupid defendants punitive damage awards might be limited to five times compensatory damages, with exceptions. For really mean defendants (those who act intentionally in committing mean-spirited and harmful acts), the courts wrote that punitive damage awards five hundred times compensatory damages are not necessarily unconstitutional. In a dissenting opinion, Chief Justice McHugh wrote, "Unfortunately, by suggesting the use of such subjective and nontechnical terms as really stupid and really mean, the majority has offered no practical guidance to attorneys or judges in analyzing punitive damages cases." It is this lack of allegedly "meaningful safeguards" that the United States Supreme Court is being asked to consider.

Interpretation of Pollution Exclusion in Favor of Insurer

Hybud Equipment v. Sphere Drake Insurance 597N.E.2nd 1096 (Ohio 1992)

Hybud Equipment Corporation collected and transported to a landfill the waste material of various entities. Hybud and others were sued by a property owner, the United States Environmental Protection Agency, and the State of Ohio because pollutants leaked from the landfill. Sphere Drake Insurance was requested to provide a defense and refused to do so. The refusal was bottomed on the contract language contained in the comprehensive general liability policy which was in effect from June 30, 1986, until June 30, 1987.

The standard pollution exclusion provided, "This insurance does not apply ... to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkaloids, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or other water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental." The trial court held that Sphere Drake was required under the language of the policy to provide a defense and indemnify its insureds.

The case was appealed to the ninth appellate district, which affirmed the judgment of the trial court. The case was then appealed to the Ohio Supreme Court. The Ohio Supreme Court wrote, "We conclude that Sphere Drake was not under an obligation to defend the insureds in the three underlying actions because the claims in those actions were excluded from coverage by the pollution exclusion in each of the two policies. Accordingly, the judgments of both the trial and appellate courts are reversed."

The Ohio Supreme Court made some interesting comments. The court wrote that in applying rules to its construction of written contracts, "we have stated that the most critical rule is that which stops this court from re-writing the contract when the intent of the parties is evident, i.e., if the language of the policy's provisions is clear and unambiguous, this court may not resort to construction of that language.... Thus, in reviewing an insurance policy, words