RECENT COURT DECISIONS

Contributed by
Patrick F. Maroney
Florida State University

Fair Housing Act Bars Insurance Redlining

Nationwide Mutual Insurance Company v. Cisneros, 52 F.3d 1351 (6th Cir. 1995)

The Fair Housing Act authorizes the Department of Housing and Urban Development (HUD) to receive and investigate charges of discrimination in housing. HUD interpreted the Fair Housing Act (FHA) to prohibit discriminatory practices related to property insurance. HUD issued a regulation which provided that refusing to provide property or hazard insurance for dwellings or providing insurance differently because of race, color, religion, sex, handicap, familial status, or national origin was "prohibited sale and rental conduct."

Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company filed suit against the Secretary of the Department of Housing and Urban Development and others seeking a declaratory judgment and injunctive relief. The plaintiffs challenged the defendant's authority to regulate the issuance and cancellation of homeowners' insurance policies under the Fair Housing Act.

The district court entered an order finding the Fair Housing Act governed the business of property insurance and that McCarran-Ferguson did not preempt regulation of the business of insurance under the Fair Housing Act. At issue was the HUD regulation prohibiting discrimination in providing property or insurance for dwellings. Complaints had been filed with HUD alleging that Nationwide had refused to provide or reinstate residential insurance policies because of sex or race or place of residence.

The court of appeals upheld the district court and found that the FHA does govern the business of property insurance. The court also found that the McCarran-Ferguson Act did not preempt regulation of insurance under the Fair Housing Act. The court of appeals found that the plaintiff did not show that Congress had intended to preclude the application of the Act to insurance practices.

In his dissent, Judge Kennedy wrote that he believed Congress "did not intend for the Fair Housing Act to reach the activities of the insurance industry." Also, he thought it was important that "repeated attempts to amend the Fair Housing Act to expressly include insurance practices have failed, although the Act has been amended to prohibit other discriminatory practices" and, additionally, "the legislative history is devoid of references to the insurance industry.... I do not believe that Congress would have intended to include insurance practices without at least considering the limitations imposed by the McCarran-Ferguson Act."

McCarran-Ferguson is, in essence, an inverse preemptive statute. McCarran-Ferguson prohibits federal law from impairing state insurance laws unless the federal law specifically relates to the business of insurance. The court found that the Federal Housing Act does not specifically mention insurance; thus, it cannot be construed in such a way to invalidate any state law enacted to regulate the business of insurance.

Environmental Harm: Court Uses Subjective Test

ARCO Industries Corp. v. American Motorists Insurance Company, 531 N.W.2d 168 (Mich. 1995)

ARCO Industries is an auto parts manufacturer that dipped parts in volatile organic compounds (VOCs) during the manufacturing process. VOCs were also used to clean the plant floor which drained into an unlined seepage pond. Because of many spills, cleaning of the floor, and other activities, the contaminants found their way to the seepage pond and subsequently contaminated the ground water.

The State of Michigan filed suit against ARCO to compel remediation of the contamination and collect response costs. ARCO agreed to pay the state $450,000 and develop and implement a multi-million dollar ground water and soil remediation program. ARCO then filed suit against its insurer, seeking to compel the insurer to indemnify the company up to the aggregate limits of coverage of $3.5 million.

The trial court found in favor of ARCO, writing "there was no showing that there was an intention by anyone to contaminate." The appellate court reversed and an appeal was taken to the Michigan Supreme Court. The Michigan Supreme Court held that the court of appeals applied the incorrect legal standard to determine whether ARCO intended or expected to contaminate the environment. The supreme court wrote that the trial court had properly found that ARCO's employees did not intentionally release VOCs with the subjective intent or expectation to harm the environment.

The court discussed whether there was an accident and whether the the damages were intended or expected within the meaning of the provisions of the comprehensive general liability policy in effect at the time of the contamination. The court cited precedent which rejected the objective standard, which would deny coverage if the insured knew or should have known there was substantial probability that certain consequences would result from its actions.

The court found an "occurrence" which obligated the insurer to indemnify the insured where the "accident" resulted in damage that was neither expected nor intended from the standpoint of the insured. The dissent indicated that during the last two years of coverage, ARCO did intentionally discharge contaminants and did know the VOCs posed a danger to the environment. Thus, for that time period, there should be no coverage because the damage was expected and was not an accident.

Uninsured Motorists: Retroactive Application of Statute Not Allowed

State Farm Mutual Automobile Insurance Company v. LaForet, 20 FLW S173, April 20, 1995

Veronica LaForet was injured while traveling as a passenger in a car driven by her husband. She collected personal injury protection benefits and medical payments benefits. She then sued the tortfeasor who was insured by Travelers. Travelers paid its $10,000 liability policy limit. Mrs. LaForet then pursued an uninsured motorist claim against State Farm, her insurance carrier. She asked for the $200,000 policy limit. State Farm offered $40,000. The case proceeded to trial where the jury returned a verdict of $400,000. This amount was reduced to $200,000 by the court, because that was the available limit of uninsured motorist coverage.

Subsequently, LaForet filed a bad faith claim. In the meantime, the Florida legislature amended Section 627.727(10) F.S. in 1992 and expanded the damages available in a bad faith action brought under Section 624.155 F.S. The statutory amendment provided that damages recoverable from an uninsured motorist insurer in a bad faith action would include the total amount of claimant's damages including any amount in excess of policy limits. The legislature was responding to a Florida Supreme Court decision which had limited recovery in such cases to the policy limits.

The legislature also provided that the legislation was remedial in nature and thus retroactive to the effective date of Section 624.155 F.S., which was 1982. A lower court applied the amended statute and awarded the LaForets the excess judgment of $200,000 plus $65,753 in interest, $241,756 attorney's fees, and $8,776 in costs.

The supreme court reversed and found that the amended law could only apply prospectively. The supreme court found that the statute's retroactive application would impose a new penalty. The supreme court noted that, under the new statute, an insurer found to have acted in bad faith in a first-party action would be liable for (1) damages caused by the bad faith including interest, attorney's fees, and costs, (2) the entire amount of the in excess judgment without regard to proximate causation, and (3) a penalty of punitive damages when the bad faith is found to be willful or reckless. The court rejected the argument that this amendment was merely a remedial clarification.

Misrepresentation on Application Precludes Coverage

International Surplus Lines v. WYO. Coal Refining Systems, 52 F.3d 901 (10th Cir. 1995).

The Western Research Institute ("Research Institute") entered into a contract with Wyoming Coal Refining Systems ("Coal Refining Systems") to perform research concerning optimal conditions for a coal refining process. During the course of the project, Coal Refining Systems and the Research Institute had disagreements concerning obligations under the contract. In March and April of 1991, Coal Refining Systems threatened the Research Institute with litigation. Additionally, Coal Refining Systems refused payment because the project was not finished until August 1991 and was behind schedule. There existed a continuing disagreement between the parties concerning Coal Refining Systems' dissatisfaction with the performance of the Research Institute.

In August 1991, the Research Institute purchased a liability insurance contract from Surplus Lines Insurance Company. Coal Refining Systems instituted suit against the Research Institute seeking equitable relief in December 1991. The complaint was later amended to include a claim for monetary damages and intentional misrepresentations. The lawsuit resulted in a default judgment being entered against the Research Institute in state court.

At the time litigation commenced between the Research Institute and the Coal Refining Systems, the insurer denied coverage. The insurer subsequently brought suit in federal court, based upon diversity jurisdiction, seeking a declaratory judgment that it had no obligation to cover the claim against the Research Institute. The Research Institute cross-claimed for bad faith. The district court granted summary judgment for the insurer and appeal was taken to the court of appeals.

The appellate court affirmed the district court and found that the insured's misrepresentation on the application concerning the probability of a client's claim against the insured precluded coverage for the client's suit.

The court wrote that the Research Institute knew that Coal Refining Systems was unhappy with its work. Additionally, Coal Refining Systems had explicitly threatened litigation. The court found that Research Institute had a duty to disclose these facts on the insurance application and that any reasonable person would have been aware of the possibility of the claim.

The application asked the insured to disclose "any fact, circumstance or situation which said person has reason to suppose might afford valid grounds for any future claim." In response, the Research Institute indicated "none." The court found it important that the application form specifically excluded from the proposed insurance, coverage for such claims.

The policy also excluded any claim for a remedy other than money damages. Since the original complaint merely requested injunctive relief, the court found that the insurer had not acted in bad faith and that the Research Institute had not presented any evidence on the issue of the insurer's bad faith.