06-100 GEICO GENERAL INSURANCE CO. V. EDO

DECISION BELOW:435 F3d 1081

LOWER COURT CASE NUMBER: 03-35695, 04-35279

QUESTIONS PRESENTED:
The Fair Credit Reporting Act ("FCRA" or the "Act") requires a user of consumer credit information to notify a consumer when the consumer has been treated adversely on the basis of his or her credit information. To enforce this requirement, Congress provided two tiers of civil remedies. Under § 1681o of the Act, if a consumer shows that a user's failure to send an adverse-action notice was negligent, the consumer is entitled to recover actual damages. But under § 1681n of the Act, if the consumer makes a higher showing and proves that the user's failure to send an adverse-action notice was "willful," the consumer is entitled to recover statutory damages between $100 and $1,000 (in lieu of actual damages) and punitive damages.
A conflict exists between the Fourth, Fifth, Sixth, Seventh, and Eighth Circuits, and the Third and (now) Ninth Circuits over the mens rea required for a "willful" violation of FCRA. Separating itself from any other circuit to have decided the issue and compounding the circuit split, the Ninth Circuit held that a company may be deemed to have acted recklessly—and thereby willfully under the Act—if the company relied, even in good faith, upon an interpretation of the Act that a court later determines to be "unreasonable [],“ "implausible," "creative," or "untenable," even if that interpretation was derived from a legal opinion that the company sought for the very purpose of ensuring compliance with the law.
Two questions are presented:
1. Whether the Ninth Circuit's construction of "willfully" under § 1681n of FCRA impermissibly permits a finding of willfulness to be based upon nothing more than negligence, gross negligence, or a completely good-faith but incorrect interpretation of the law, and upon conduct that is objectively reasonable as a matter of law, rather than requiring proof of a defendant's knowledge that its conduct violated FCRA or, at a minimum, recklessness in its subjective form?
2. Whether the Ninth Circuit improperly expanded § 1681m of FCRA by holding that an "adverse action" has occurred and notice is required thereunder, even when a consumer's credit information has had either no impact or a favorable impact on the rates and terms of the insurance that would otherwise have been offered or provided?

CERT. GRANTED 9/26/2006

CONSOLIDATED WITH 06-84 FOR ONE HOUR ORAL ARGUMENT.