



November 28, 2011

HIGH COURT DECLINES TO REVIEW OVERLY RESTRICTIVE PROTECTIVE ORDER

(State Farm Mutual Automobile Insurance Co. v. Bedell)
U.S. Supreme Court

The U.S. Supreme Court declined today to review a West Virginia state court's extraordinarily broad protective order that would frustrate the efforts of insurance companies to monitor and report insurance fraud. The denial of review was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case urging the review, and ultimate reversal, of the protective order.

In its brief filed in *State Farm Mutual Automobile Insurance Co. v. Bedell*, WLF argued that the First Amendment does not allow a trial court to enter a protective order purporting to regulate the retention or dissemination of information that a party obtained independently of discovery in the pending litigation. WLF filed the brief on its own behalf and on behalf of its client, the Allied Educational Foundation.

"The Court missed a valuable opportunity in this case to set aside the trial court's extraordinarily broad protective order, which was issued without attempting to balance or even contend with the insurer's First Amendment interests," said WLF Senior Litigation Counsel Cory Andrews after reviewing the Court's order denying review. "As the Court has previously made clear, such an order regulating information obtained *outside* of the discovery process is a content-based prior restraint on speech that should be subject to heightened scrutiny," Andrews said.

The case centered on a protective order entered in a routine personal injury lawsuit arising out of an automobile accident in West Virginia. West Virginia insurance regulations (which parallel similar laws across the country) protect nonpublic health information against improper use and dissemination to third parties while authorizing the use of such information to investigate and prosecute suspected instances of fraud. These regulations impose an affirmative obligation on insurers like State Farm to report suspected fraud to the West Virginia Insurance Commissioner's Fraud Unit.

Though contractually obligated to turn over her medical records in connection with her claim, the plaintiff refused to do so. The West Virginia courts required the plaintiff to produce these records, but only upon the entry of a broad protective order that

precluded State Farm from using the records in connection with its otherwise-authorized fraud-fighting duties. The order conflicts with the retention and reporting obligations for insurance companies under both state and federal laws.

In its brief urging the Court to grant discretionary review, WLF argued that the Supreme Court's recent decision in *Sorrell v. IMS Health, Inc.* emphasized that the creation and dissemination of information are "speech" within the meaning of the First Amendment. Because insurance companies enjoy a First Amendment right to use truthful health information obtained lawfully to fulfill their valid fraud-fighting obligations, especially when those obligations are imposed by state and federal law, WLF argued that the protective order below must be subjected to heightened scrutiny.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free speech rights, both of individuals and of the business community.

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For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.