SUPREME COURT OF ALASKA

State, Department of Commerce, Community & Economic Development, Division of Insurance v. Progressive Casualty Insurance Co.

165 P.3d 624 (Alaska 2007) · No. No. S-12188 · Decided August 17, 2007

SUMMARY

The Alaska Supreme Court held that Progressive's proposal to use consumers' frozen credit scores when renewing personal insurance policies violated Alaska Statute 21.36.460(d)(1). The court also held that the statute was not preempted by the federal Fair Credit Reporting Act. The court reversed the superior court and remanded for reinstatement of the Alaska Division of Insurance's order.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Eastaugh, Justice; Fabe, Chief Justice; Bryner, Justice; Carpeneti, Justice
JURISDICTION	Alaska
DECIDED	August 17, 2007
DOCKET	No. S-12188
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Division of Insurance rejected Progressive's proposed re-marketing rule, which would have used consumers' frozen credit scores at policy renewal. The superior court, acting as an intermediate appellate court, reversed the division's order. The Division appealed to the Alaska Supreme Court.
STANDARD OF REVIEW	Because the superior court acted as an intermediate appellate court in an administrative matter, the Alaska Supreme Court directly reviewed the agency's decision. The court applied independent judgment to the agency's statutory interpretation because the interpretation did not implicate agency expertise or fundamental policy determinations, while giving some weight to the agency's interpretation, particularly if longstanding.

PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; binding precedent in Alaska.
PARTIES	State of Alaska, Department of Commerce, Community and Economic Development, Division of Insurance v. Progressive Casualty Insurance Company, Progressive Specialty Insurance Company, Progressive Northwestern Insurance Company

TOPICS

insurance coverage · statutory interpretation · administrative law · consumer protection · federalism

PRACTICE AREAS

insurance · administrative law · consumer protection · federal preemption

QUESTIONS PRESENTED

1. Whether Progressive's proposal to use consumers' frozen credit scores at policy renewal constituted again underwriting or rating based in whole or in part on credit history in violation of Alaska Statute 21.36.460(d)(1).
2. Whether Alaska Statute 21.36.460(d)(1) was preempted by the federal Fair Credit Reporting Act.

HOLDINGS

1. An insurer's use of a consumer's frozen credit tier in deciding whether to renew a personal insurance policy and at what rate constitutes again underwriting or rating at renewal based in part on the consumer's credit history. Progressive's proposal therefore violated Alaska Statute 21.36.460(d)(1), unless the consumer waived the statutory prohibition at that renewal.
2. Alaska Statute 21.36.460(d)(1) is not preempted by the Fair Credit Reporting Act. The state law requires consumer consent before an insurer may use credit at renewal, but does not conflict with or obstruct the purposes of the federal statute.

KEY QUOTATIONS

> *"An insurer's decision to offer a consumer the option to renew her policy is, by definition, an "underwriting decision.""* (629)

> *"Because the FCRA does not provide insurers with an absolute right to use credit for underwriting purposes, AS 21.36.460's restriction on credit score usage could not trigger an enforcement action under the FCRA."* (633)

FACTUAL BACKGROUND

Progressive proposed assigning new-policy customers to underwriting risk groups using credit tiers and non-credit factors, while using a frozen credit tier at subsequent renewals. The Division of Insurance concluded that continued use of the frozen credit score at renewal constituted underwriting or rating based in part on credit history and therefore violated Alaska Statute 21.36.460(d)(1). Progressive argued that merely maintaining a customer's existing credit tier was not a new underwriting or rating decision and that the state statute was preempted by the federal Fair Credit Reporting Act.

PROCEDURAL HISTORY

Progressive submitted a proposal to the Alaska Division of Insurance for assigning underwriting risk groups at policy initiation and renewal. The division rejected the proposal, and on remand its director reaffirmed that the proposal violated Alaska Statute 21.36.460(d)(1) and other Insurance Code provisions. The superior court reversed the director's order, and the Alaska Supreme Court directly reviewed the agency decision, reversed the superior court, and remanded for entry of the division's order.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Reverse the superior court order that reversed the Division of Insurance's order and remand for entry of the division's order.

CASES CITED

- Gwich'in Steering Comm. v. State, Office of the Governor, 10 P.3d 572, 577 (Alaska 2000)
- Nat'l Bank of Alaska v. State, Dep't of Revenue, 642 P.2d 811, 815 (Alaska 1982)
- Gov't Employees Ins. Co. v. Graham-Gonzalez, 107 P.3d 279, 284 (Alaska 2005)
- Muller v. BP Exploration (Alaska) Inc., 923 P.2d 783, 787-88 (Alaska 1996)
- Grimm v. Wagoner, 77 P.3d 423, 427 (Alaska 2003)
- Kodiak Island Borough v. Exxon Corp., 991 P.2d 757, 761 (Alaska 1999)
- State v. Pub. Safety Employees Ass'n, 93 P.3d 409, 415 (Alaska 2004)
- Wilting v. Progressive County Mut. Ins. Co., 227 F.3d 474, 476 (5th Cir. 2000)
- Barnett Bank of Marion County, N.A. v. Nelson, 517 U.S. 25, 27-28, 38-41 (1996)
- Wis. Pub. Intervenor v. Mortier, 501 U.S. 597, 604-05 (1991)
- State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005)
- Totemoff v. State, 905 P.2d 954, 958 (Alaska 1995)
- Native Vill. of Eklutna v. Alaska R.R. Corp., 87 P.3d 41, 56 (Alaska 2004)
- Credit Data of Ariz., Inc. v. State of Ariz., 602 F.2d 195, 198 (9th Cir. 1979)
- Davenport v. Farmers Ins. Group, 378 F.3d 839, 842-43 (8th Cir. 2004)
- Jones v. Rath Packing Co., 430 U.S. 519, 540 (1977)
- Interior Reg'l Hous. Auth. v. James, 989 P.2d 145, 149 (Alaska 1999)
- In re J.R.B., 715 P.2d 1170, 1172 (Alaska 1986)