

## Court Affirms Insurance Coverage in FCRA Suit for Willful Damages

AUGUST 18, 2015

In companion rulings, a New York court rejected Navigators Insurance Company's arguments that it had no obligation to defend or indemnify its insureds for putative class actions alleging violations of the Fair Credit Reporting Act (FCRA). While Navigators' errors and omissions policy covered liability for compensatory damages, it excluded coverage for fines and penalties as liability policies commonly do. Navigators argued that FCRA's option for statutory damages between \$100 and \$1000 for willful violations were excluded penalties; the insureds argued that these damages were compensatory, not punitive, in nature. Interpreting the FCRA statute, the court found that the statutory damages function primarily as compensation. The court first noted that statutory damages operate as a substitute for actual damages which are, by definition, compensatory. Second, statutory damages are an option precisely because actual damages sometimes may be difficult, if not impossible, to calculate. Finally, the court observed that the fact that FCRA separately provides for punitive damages supports its interpretation that statutory damages are compensable, and not punitive, in nature. Accordingly, Navigators not only had to indemnify the resulting settlements but had an obligation to defend the underlying actions from the outset.

**TIP: Whatever the statutory scheme involved in a claim or lawsuit against a company or individual insured, insurers commonly argue that statutory damages are non-recoverable penalties. Whether faced with a partial or complete denial of coverage, companies should refer insurers to case law stating otherwise or, at minimum, the relevant legislative history to underscore that the insurer is obligated to both cover any such damages or settlement as well as defense costs.**

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