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Business Litigation Update

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Ninth Circuit Overturns $140 Million Class Action Verdict Against CenturyLink

In a significant decision on September 22, 2026, the Ninth Circuit Court of Appeals reversed a $140 million class action jury verdict in a Fair Credit Reporting Act (FCRA) case. The plaintiffs in *Lydia Bultemeyer v. CenturyLink, Inc.* claimed that CenturyLink violated the FCRA by accessing their consumer reports after the plaintiffs chose and customized an internet service option, provided contact and personal information, and accepted CenturyLink's terms and conditions but before the plaintiffs reviewed pricing information and completed the checkout process.

The class representative Bultemeyer opted not to complete the checkout process and subsequently learned that CenturyLink accessed her consumer report, a process that for CenturyLink occurred nearly instantaneously after a potential customer provided personal and contact information and accepted CenturyLink's terms and conditions. CenturyLink defended the process, arguing that it helped prevent identity theft and allowed CenturyLink to determine, based on a potential customer's credit score, whether a deposit was required.

In relevant part, the FCRA permits a user to access a consumer report if the user has a legitimate business need for the information in connection with a transaction initiated by a consumer. Plaintiffs filed suit, alleging that because the checkout process was incomplete when CenturyLink accessed their consumer reports, CenturyLink accessed those reports before a transaction was "initiated," in violation of the FCRA. A jury agreed and awarded each class member $500 in actual damages and $2,000 in punitive damages. Given the size of the class, the total award exceeded $140 million.

The Ninth Circuit Court of Appeals reversed. The Court did not decide whether plaintiffs had "initiated" a transaction under the FCRA and, instead, concluded that CenturyLink was protected by the safe harbor recognized by the Supreme Court in *Safeco Ins. Co. of Am. v. Burr*. Pursuant to *Safeco*, CenturyLink was not liable under the FCRA if its reading of the Act was objectively reasonable. To prevail under a *Safeco* defense, CenturyLink had to demonstrate (1) its reading of the FCRA had a foundation in the Act's text; (2) it construed the FCRA without guidance from the courts of appeals; and (3) no authoritative agency guidance warned CenturyLink away from its interpretation.

The Court held that CenturyLink satisfied all three elements. First, the Court acknowledged that the FCRA does not define what is required to "initiate" a transaction. The Court did not opt to define the phrase, but it held that CenturyLink's interpretation was reasonable. Second, the Court found that no appellate decision has addressed the question of when a transaction was initiated. Third, the Court concluded that there was no authoritative guidance from administrative agencies on this issue. Accordingly, CenturyLink was entitled to judgment as a matter of law, and the Court overturned the jury's verdict.

The Ninth Circuit's holding in *Bultemeyer* avoided the threshold question of what it takes for a consumer to "initiate" a transaction under the FCRA. But *Bultemeyer* reiterated the viability of the *Safeco* defense and may serve as helpful authority for businesses trying to understand when they have a permissible purpose to access a consumer report.

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