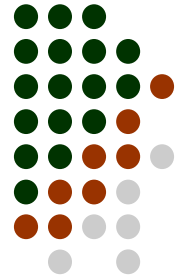




# Virginia Poverty Law Review



## Punitive Damages Awarded Against Bank for Fair Credit Reporting Act Violations

By Deborah Elkins  
Virginia Lawyers Weekly



A Richmond bank has to pay \$80,000 in punitive damages - 80 times the compensatory damage award - on a car buyer's claim that the bank violated the Fair Credit Reporting Act when it reported to credit agencies derogatory information about the buyer's payment history.

The buyer detailed a history of frustration with the defendant bank.

The bank failed to provide any coupon payment book after the loan was consummated and had repeatedly rejected the buyer's efforts to make payments on the loan. A vehicle title provided to the buyer showed no liens related to any loans. But the bank demanded payment in full, with interest and penalties, after it belatedly discovered that it actually had the loan on its books. The bank repossessed the vehicle and sold it at auction.

Although the car buyer's actual damages were small, the bank's "egregious misconduct" was enough for the jury to levy the \$80,000 penalty.

Rex Saunders sued the bank, BB&T, and several credit reporting agencies about the reporting of derogatory credit information by BB&T to the agencies following Saunders' nonpayment of the BB&T loan. Saunders settled his claims against the agencies, but the claim against the bank was tried to a jury in late November before U.S. Magistrate Judge Dennis W. Dohnal.

BB&T settled Saunders' wrongful repossession and defamation claims before trial, so the jury heard only his claim that the bank, as a furnisher of credit information, willfully violated the Fair Credit Reporting Act, 15 U.S.C. Sect. 1681s-2(b) and Sect. 1681n, when it reported incorrect information on his loan payment history.

In his claim for actual damages, the car buyer said that he could not obtain a loan on favorable terms for an addition to his house and had to pay cash. But he failed to document any dollar amount of loss.

After a two-day trial, the jury returned a verdict for Saunders, awarding

\$1,000 in statutory damages and \$80,000 in punitives. The bank asked the court to reduce the punitive damage award to no more than \$4,000, or four times the amount of the statutory damages.

Last week, Dohnal denied the bank's motion for remittitur.

Dohnal's opinion in Saunders v. Equifax Information Services LLC (VLW 007-3-003) tackles recent U.S. Supreme Court case law dealing with the proper ratio between compensatory and punitive damages.

Dohnal had instructed the jury that there had to be some "rational relationship between punitive damages," and the plaintiff's actual damages from the FCRA violations.

The four-times-the-compensatory-award formula cited by BB&T comes from Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991), the 1991 case in which the U.S. Supreme Court said that a punitive-damage award of more than four times the amount of the compensatory award might be close to the line of

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### How we can help

- Consumer Law—Jay Speer, Jay@vplc.org
- Elder Law—Kathy Pryor, Kathy@vplc.org
- Health Law—Jill Hanken, Jill@vplc.org
- Housing Law—Jim Naggles, Jim@vplc.org
- Immigration Rights/Multiculturalism—Cristina Rebeil, Cristina@vplc.org
- Family Law—Christie Marra, Christie@vplc.org
- Public Benefits Law—Ty Jones, Ty@vplc.org

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## Punitive Damages Awarded for Fair Credit Reporting Act Violations

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"constitutional impropriety."

But Dohnal noted that the Supreme Court has nonetheless upheld punitive damage awards of 5:1, 118:1 and 526:1. And unlike some other federal consumer protection statutes, the FCRA has no cap on punitive damages for private individuals, he wrote.

The judge said the jury obviously rejected the bank's defenses that the adverse credit information was "factually accurate" and that any mistakes in processing and administering the loan were negligent, not willful.

The bank's conduct was "likely reckless, but not intentionally malicious or deceitful," Dohnal wrote.

That conduct nevertheless was reprehensible because it was not "an isolated instance of human error which BB&T promptly cured.

"Rather, the bank caused great financial and emotional strain to a consumer" when it failed to properly "book" the loan, repeatedly denied the existence of its contract with Saunders, rebuffed his repeated attempts to pay on the loan, and then, when Saunders did not promptly pay off the loan with interest and penalties, repossessed and sold the vehicle and reported the bad-credit information without saying Saunders disputed the claim.

"[I]t is difficult to contemplate a more egregious set of circumstances in such a context than were present here," Dohnal said.

And the \$80,000 award was not disproportionate where the jury awarded the maximum amount of statutory damages even though the consumer did not quantify his loss. Although the car buyer suffered "only" economic harm, he was a "vulnerable victim," the judge wrote.

"To hold that a ratio of 4 to 1 in the FCRA context is constitutionally questionable where a jury's punitive damages award is premised entirely on a maximum statutory damages award would defeat the intent of Congress in enacting the FCRA," Dohnal concluded.

Saunders was represented by Newport News lawyer Leonard A. Bennett, and Richmond lawyer Alan D. Wingfield represented BB&T.

## Senate Approves \$22 Million Increase for LSC in FY 2007

Legal Services Corporation  
News Alert:

On February 14, 2007, the United States Senate approved HJ Res 20, an appropriations continuing resolution containing **\$348.5 million for LSC in FY 2007**, a \$22 million increase over LSC's FY 2006 budget. The funding level contained in the resolution represents an approxi-

mate mid-point between the \$338.8 million approved by the House, and the \$358.5 million approved by the Senate Appropriations Committee for LSC's FY 2007 budget in the summer of 2006.

HJ Res 20 was approved by the House of Representatives on January 31, and will now go to the President for approval. LSC is currently operating at FY 2006 levels under

an appropriations continuing resolution that expired on February 15. LSC received \$326.5 million in FY 2006.

HJ Res 20 does not specify how the \$348.5 million appropriated to LSC should be divided among the sub-accounts, but LSC expects that approximately \$330 million will go to basic field programs.

## LSC Holds Technology Initiative Grant Conference

Legal Services Corporation  
News Alert:

On January 17-19, 2007, LSC hosted its 7th Annual Technology Initiative Grant (TIG) Conference in Austin, Texas.

This year's conference, which served as the official launch of projects funded by 2006

TIG grants, was a success despite a severe ice storm that effectively shut down Austin's airport. A number of presenters and guests were temporarily stranded in neighboring cities, and some were not able to attend at all.

LSC President Helaine M. Barnett, whose flight to Austin

was cancelled due to the inclement weather, welcomed the attendees via video. She congratulated the recipients of 2006 TIG grants for "submitting excellent proposals that were selected for funding from among very stiff competition. The LSC grant reflects our investment in

(cont'd on page 3)



## LSC Holds Technology Initiative Grant Conference

(cont'd from page 2)

your success."

President Barnett went on to announce that LSC has received a grant from Google to participate in the **Google Ads** program. Working with the company behind the popular search engine, LSC will create an ad campaign for all the statewide legal assistance websites it helps fund. The campaign will provide a four-line ad, specific to each state or territory, that will display on the right-hand side of Google's search results page whenever specific search terms are entered. LSC will be

working with Google and members of the legal services community to identify and select the most relevant search terms. In announcing the grant, Google stated: "We are pleased to be able to offer a grant to the Legal Services Corporation and assist in their mission of helping more poor Americans gain equal access to the judicial system."

Ms. Barnett also announced LSC's plan to develop a **Technology Advisory Committee** to help LSC develop a strategic vision for LSC's technology investments. The committee will be comprised primarily of technology experts from

within the legal services community, although other members might include staff of technology companies, LSC's partner organizations, and other funders.

This year's conference featured the first-ever "Lawyer Track," which is aimed at providing legal services attorneys with information on technologies and products to make their work easier and more efficient. The Lawyer Track featured information sessions on topics like providing navigational assistance on statewide websites, document assembly programs, and case management systems.



## The Looming Foreclosure Disaster

*Article courtesy of the Center for Responsible Lending and Jay Speer (VPLC)*

"If current trends continue, it is quite possible that subprime mortgages could cause the largest loss of African-American wealth in American history."

This quote is from testimony before the Senate Committee on Banking, Housing and Urban Affairs given by Martin Eakes, CEO of Self-Help ([www.self-help.org](http://www.self-help.org)), which consists of a credit union and a non-profit loan fund. For the past 26 years, Self-Help has focused on creating ownership opportunities for low-wealth families, primarily through financing home loans. Self-Help has provided over \$4.5 billion of financing to over 50,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across the country, with an annual loan loss rate of under one percent.

Martin Eakes also said:

"Our analysis of subprime mortgages made in recent years shows that 2.2 million families will lose their home to foreclosure—foreclosures that were, for the most part, predictable and entirely avoidable through more responsible lending practices..."

"Why does a foreclosure epidemic in the subprime mortgage market matter? First, subprime mortgages are no longer a niche market; they have become a significant share of all new mortgages made in America, now making up well over 20 percent of all home loans originated and currently representing \$1.2 trillion of mortgages currently outstanding. Second, homeownership is the best and most accessible way most families have to acquire wealth and economic security. If home loans are actually setting citizens back rather than helping them build for the future, there are serious ramifications for local economies and the nation as a whole. The problem is particularly serious for communities of color, since more than half

of African-American and 40 percent of Latino families who get home loans receive them in the subprime market."

Among the civil rights leaders and consumer advocates testifying, several key themes emerged:

- Foreclosures in the subprime market have reached dangerously high levels, hurting individual families and entire neighborhoods.
- The dominant product in the subprime market is the "exploding" adjustable-rate mortgage, which, combined with lax loan underwriting, is driving record level of foreclosures that are devastating low-wealth families.
- While lenders and borrowers once had a common interest in sustainable home loans, today there is a disconnect, since brokers and lenders limit their liability by selling loans to inves-

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## The Looming Foreclosure Disaster

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tors. Today homeowners have the most to lose by far.

- Mortgage brokers present themselves as experts and mentors, but they have no fiduciary duty to serve the best interests of consumers—unlike lawyers, investment advisors and Realtors.
- Abuses in the sub prime market are a major civil rights issue, since African-American and Latino families receive the highest share of sub prime

mortgages—even though the Federal Reserve Board and others have presented evidence indicating that people of color are often over-charged based on their qualifications.

Witnesses for the hearing included two prominent civil rights leaders, the Reverend Jesse Jackson of the Rainbow Push Coalition and Hilary Shelton of the National Association for the Advancement of Colored People. Other witnesses were Jean Constantine-Davis (AARP), Douglas

Duncan (Mortgage Bankers Association), Harry Dinham (National Association of Mortgage Brokers), and our own Martin Eakes (Self Help and the Center for Responsible Lending). Two consumers, Delores King and Amy Womble (from Chicago and Pittsboro, N.C., respectively), also provided compelling testimony describing how they received abusive sub prime loans that quickly became unaffordable. Both women are now in danger of losing homes they have owned for years.

## Shriver Center Sets National Agenda

*From the Sargent Shriver National Center on Poverty Law*

The Sargent Shriver National Center on Poverty Law has been helping poor people in courtrooms and setting policies at the state and national level for forty years, but now is a time when the country may be ready for deep and broad change.

The Shriver Center's newly named president, John Bouman, explains why now is the time for such change: "Woken by the powerful public images of deep-seated American poverty revealed during the Gulf Coast disasters, and tired of the widening of the income gap between rich and poor and the intensifying threats to the middle class, most people in America are ready for leadership to end poverty. That national readiness is creating a political change, evidenced in part by the elections last

fall."

The Shriver Center's national policy agenda, to be released this month, outlines 12 poverty issues that are ripe for policy change at the state and national level and shows how such policy change can be accomplished.

The Shriver Center is calling on policymakers to (1) strengthen the legal foundation for civil rights and racial justice, (2) establish affordable quality health care for all, (3) guarantee economic safety for people who need jobs, (4) create redemptive opportunities for people with criminal records, (5) increase economic mobility through lifelong education, (6) advance low-wage workers by making work pay, (7) link economic development to workforce development opportunities, (8) create asset-building initiatives for financial stability and growth, (9) expand low-

income housing in economically diverse communities, (10) protect access to the American dream for immigrants and refugees, (11) ensure economic opportunity and safety for women and girls, and (12) invest in the public good through fair budget and tax policies.

"Significant leadership on all 12 of the issues identified in the Shriver Center's national agenda would constitute a well-rounded, aggressive program to attack poverty," Bouman says. This is the first step in many toward the Shriver Center's renewed focus on national policy.

For an update, go to [www.povertylaw.org](http://www.povertylaw.org).

## Payday Lending in the 2007 General Assembly – From 13 to 1

By Helen O'Beirne, Responsible Lending Coordinator, VaPERL

VaPERL entered the 2007 Virginia General Assembly with a clear goal – repeal the Payday Loan Act. Dozens of advocates spend hours working diligently to refine and implement the strategy that would lead us to success. Nonetheless, months of painstaking preparation could never have prepared us for the rollercoaster that lay ahead.

First, we obtained patrons of repeal bills. Our longtime leader and ally Delegate John O'Bannon, III recruited Delegate Jennifer McClellan to submit similar legislation after his HB 619 failed in a special out-of-session meeting in December. This team helped round out our bi-partisan push. Soon thereafter, Delegate William Howell buttressed our efforts with his own repeal bill. And we finally leveraged support in the Senate when Majority Leader Senator Walter Stosch and Senator Mamie Locke sought to repeal the Payday Loan Act. VaPERL was pleased that so many legislators understood the extent of the problem and wanted to take the best and straightest path toward a solution.

However, a handful of other General Assembly members had other ideas. Delegates Harvey Morgan and Glenn Oder each put forth their own reform bills with the best intentions but doubts about repeal's chance in the Commerce & Labor Committee. Delegates Rosalyn Dance and Mark Sickles both gave their best shot at reform, but skirted around the crux of the issue, the debt trap. Delegates David Nutter and John

Cosgrove both introduced favorable bills, but neither were true repeal.

VaPERL was especially disappointed when Delegate Lee Ware, Jr. and Senator Richard Saslaw introduced their own versions of "reform." These identical bills seemed to come directly from the industry, doing nothing to address the cycle of debt inherent in payday lending. Now we would have to work FOR the repeal bills and AGAINST the multiple reform bills.

The senate story is a quick read: the Senate Commerce & Labor Committee voted overwhelmingly to pass Senator Saslaw's industry bill, failing to hear the repeal bills at all. Despite Senator Locke's attempts to amend it on the Senate floor to include strong consumer protections (like an interest rate cap), SB 1014 flew through the Senate. Senator Locke accurately labeled SB 1014 as a "Band-Aid on a bullet hole."

The House of Delegates, on the other hand, has been far more enmeshed in the issue. Unfortunately, the fate of the repeal bills was similar – they never received a full hearing this session. Instead, the House Commerce & Labor Committee took up the reform bills only, hearing from each patron about the best way to handle their varying objectives. Ultimately, Delegate Ware emerged as the chief patron of an extremely weak reform bill, still very similar to Senator Saslaw's legislation.

In a surprising twist, an effort to amend the industry bill to include a 72% interest rate cap passed the floor of the House 55 to 39 in a bipartisan show of support! What was originally a very bad bill had transformed into lan-

guage VaPERL could wholeheartedly get behind. But the industry knew this all too well. They convinced Delegate Ware to strike his own bill on its third reading, leaving Senator Saslaw's bill as the last chance standing to address the payday loan problem in Virginia.

Back in the House Commerce & Labor Committee, SB 1014 passed 15-7 with no anti-debt trap provisions. It quickly moved back to the House floor, where it also passed easily with no protective amendments (72-27). However, there it met with a powerful and compelling oppositional speech by Delegate Kenneth Melvin. He called payday lending a "pox" on Virginia, telling colleagues that he "knows a moral imperative when he sees one."

With the General Assembly session winding down, now SB 1014 will move onto the next step – the Governor's desk. Since Governor Kaine has worked closely with advocates since the start of the issue, he is well informed and poised to add strong consumer protections to the bill in the form of amendments. Governor Kaine has often said that the Payday Loan Act provided an unjust exception. He favors adding a 36% APR cap to the law for payday lenders.

However, the buck does not stop there. Both chambers must approve of Governor Kaine's amendments. If they do not and keep the bill as is, the Governor will have one last chance to veto the bill – leaving Virginians with nothing for the year. It's hard to say at this point how the final chapter will play out!



Photo courtesy of flickr user motleye

## Payday Lending in the 2007 General Assembly – From 13 to 1

(cont'd from page 5)

The fate of predatory payday lending in Virginia has certainly taken a turn for the worse. With the help of

VaPERL, its partners, and the media, the public is now engaged in the discussion. We've raised awareness, and if something sub par gets

through the General Assembly this year, we will definitely be back in the 2008 session!

## Affordable Housing Strategies Must Respond to Local Market Conditions, but Still Serve the Families Who Are in Greatest Need

*Research courtesy of the Urban Institute*

Just about everyone interested in federal housing policy today recognizes that the same strategies don't make sense for every community. Variations in housing market conditions, history, and political realities call for more tailored solutions. For example, producing new assisted housing makes sense where the population is booming and affordable housing is scarce. But in weaker markets, a combination of vouchers and subsidies for housing rehabilitation may offer the better answer.

As the federal government's commitment of resources for housing assistance shrinks, more responsibility has shifted to states and localities—and to the nonprofit organizations and private developers with whom they work. A growing number of federal

housing programs provide considerable flexibility to states and cities about how to use federal dollars, and HUD's consolidated planning process requires that they routinely assess housing needs and articulate strategies for meeting them. The 1990s saw significant growth in the capacity of nonprofit community-based developers, including community development corporations (CDCs). But most localities are struggling to design and fund programs that effectively respond to their residents' complex and changing housing needs, and few have been able to join effectively with neighboring jurisdictions to craft regional strategies.

In communities across the country, lack of income remains the principal barrier to affordable housing. HUD's most recent analysis of worst-case housing needs finds that about 80 percent of the hous-

ing problem is not inadequacy or overcrowding, but affordability. And there is evidence to suggest that stable, affordable housing can help families build their incomes. Although only one-third of former or current welfare recipients with incomes below the poverty line had housing assistance in 1999, those with housing help had higher employment rates and incomes than those without it. Despite the clear connections between income policy and housing policy, questions about federal housing assistance barely entered the mid-1990s debate over welfare reform, and many local housing policy discussions are divorced from critical questions about job readiness, the Earned Income Tax Credit, child care, and health insurance.

## Job Opportunity at Virginia Legal Aid Society

**ATTORNEY:** use legal skills to solve problems for low-income families, children, and the elderly in housing, health care, public benefits, economic self-sufficiency, education, consumer purchases, and family relations. Salary DOE. EOE. Excellent benefit package including health/dental insurance, LRAP. Spanish-speaking ability a very

strong plus.

Position available in Farmville, a university community with low cost of living and many attractions, one hour southwest of Richmond. See [www.vlas.org](http://www.vlas.org) and [www.co.prince-edward.va.us](http://www.co.prince-edward.va.us).

Send resume, references and writing sample to Debra

Crowder, Virginia Legal Aid Society, PO Box 6200, Lynchburg VA 24505; e-mail [debrac@vlas.org](mailto:debrac@vlas.org).



# March 2007

Sun	Mon	Tue	Wed	Thu	Fri	Sat
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

## Schedule of Events

- March 15 – **A Thrifty Lesson In Consumer Law**, Fairfax Bar Pro Bono Program; Fairfax, VA
- March 16 – **Preventing Critical Financial Mistakes During Divorces**, National Business Institute; Richmond, VA
- March 22-24 – **2007 Equal Justice Conference**, American Bar Association and National Legal Aid & Defender Association; Denver, CO
- March 31 – **Children’s Rights Workshop**, Legal Aid Justice Center; Richmond, VA

## 2007 Equal Justice Conference

*Information courtesy of the American Bar Association. The conference will take place in Denver, CO from March 22-24.*

The title and theme of the 2007 Equal Justice Conference is **Justice in a Changing, Diverse World: Preserving the Rule of Law Through Inclusive, High Quality Legal Services to the Disadvantaged.**

The Equal Justice Conference brings together all components of the legal community to discuss equal justice issues as they relate to the delivery of legal services to

the poor and low-income individuals in need of legal assistance. The emphasis of this Conference is on strengthening partnerships among the key players in the civil justice system. Through plenary sessions, workshops, networking opportunities and special programming, the Conference provides a wide range of learning and sharing experiences for all attendees.

Pro bono and legal services program staff, judges, corporate counsel, court administrators, private lawyers, paralegals, and many others attend this event. The main

Conference will celebrate the ongoing collaboration between pro bono and legal services, explore additional partnerships that must be created, the resources that must be tapped, and the new issues facing clients.



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Virginians for over 25 years***

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