

## Gramm-Leach-Bliley Act Does Not Prohibit Production of Information Regarding Non-Parties

Since the passage of the Gramm-Leach-Bliley Act ("GLBA"), lawyers defending insurance companies have asserted that non-public personal information concerning other non-party insureds is protected from disclosure.

In *Ex parte Mutual Savings Life Ins. Co.*, 2004 WL 2260475 (Ala. Oct. 8, 2004), and *Ex parte National Western Life Ins. Co.*, 2004 WL 2260308 (Ala. Oct. 8, 2004), the Alabama Supreme Court held that, under the "judicial process" exception within the GLBA, the trial court could order the defendant to disclose its customers' non-public personal information without providing notice to those customers and an opportunity to opt out of the disclosure of that information.

The court began its analysis by recognizing that there was no dispute that the insurance company defendants were bound by the GLBA, that the information sought by the plaintiffs in those cases was "nonpublic personal information," and that the parties seeking the discovery were "non-affiliated third parties." For that reason, the court explained that the sole issue was whether one of the exceptions to the GLBA allowed the defendant insurance companies to disclose the requested information to the plaintiffs.

The court's analysis focused on the exception in 15 U.S.C. §6802(e)(8), which allows the disclosure of infor-

mation in the following circumstances:

[T]o comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena, or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

The court rejected the plaintiff's argument that disclosure is appropriate under the exception allowing compliance "with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons by Federal, State, or local authorities," on the basis that a subpoena or other request made by a private plaintiff in a civil action would not fall within the scope of that language.

The court held, however, that the exception in §6802(e)(8) authorizing the disclosure of non-public personal information "to respond to judicial process" does apply to allow the disclosure of non-public information. The court further opined that the phrase "judicial process" encompasses a court order compelling discovery in a civil case.

In explaining its holding in *National Western Life*, the court recog-

nized that persuasive arguments had been made that interpreting the "judicial process" exception to include court orders compelling discovery in civil cases is seemingly out of proportion to the more narrow exceptions listed in §6802(e) and possibly with the generalized policy stated in §6801. The court concluded, however, that there was no justifiable way to read the "judicial process" language other than applying the plain meaning of those words.

The court did hold that a court ordering the discovery of customers' non-public personal information should include a comprehensive protective order to guard the customers' privacy.

Significantly, the court's opinions in these cases are specific to court ordered production of non-public personal information, rather than generally allowing the discovery of this information without a court order compelling production.

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