

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:01CV-342-H

MARY L. BORIS

PLAINTIFF

V.

CHOICEPOINT SERVICES, INC.

DEFENDANT

JURY INSTRUCTIONS

MEMBERS OF THE JURY:

Now that you have heard all the evidence and the argument of the attorneys, it is my duty to give you instructions regarding the law that you must follow in deciding this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. Do not to single out one instruction alone as stating the law but you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits

which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

In this case it is Plaintiff's responsibility to persuade you that Plaintiff's claim is more likely true than not. If Plaintiff fails to persuade you on every essential element of Plaintiff's claim, then you should find for the Defendant on that claim.

Now I will explain the law which applies to this case that you must consider and I will give you guidance on how to apply that law.

INSTRUCTION NO. 1

The Fair Credit Reporting Act requires that a company such as ChoicePoint Services, Inc., must follow reasonable procedures to assure maximum possible accuracy regarding information contained in a consumer's insurance claim history report.

In order to prevail on a claim of noncompliance with this requirement, Ms. Boris must prove each of the following elements:

- (1) Inaccurate information was included on her claim report; and
- (2) The inaccuracy was due to the ChoicePoint's failure to follow reasonable procedures to assure maximum possible accuracy; and
- (3) Ms. Boris suffered injury; and
- (4) Ms. Boris' injury was caused by the inclusion of the inaccurate entry.

If you find each of the above elements present, you should enter a verdict for Ms. Boris on Question No. 1 on the Verdict Form. If you fail to find any one, you should enter a verdict for ChoicePoint on Question No. 1 on the Verdict Form.

“Reasonable care or reasonable procedures,” as used in this Instruction, means such care as the jury would expect an ordinarily prudent company to exercise under similar circumstances. The lack of reasonable care therefore can mean the failure to do something which a reasonably prudent consumer reporting agency would do, or the doing of something which a reasonably prudent consumer reporting agency would not do under the circumstances which you find existed in this case. A company does not violate its duty of reasonable care merely because its claim history reports contained inaccurate information. A company does violate its duty of reasonable care if it fails to follow reasonable procedures to assure maximum possible accuracy.

It is for you to decide what a reasonably careful company would do or not do under the facts of this case.

Turn to Instruction No. 2.

INSTRUCTION NO. 2

The Fair Credit Reporting Act requires that a company such as ChoicePoint must take reasonable care to reinvestigate the truth of a consumer claim report once Ms. Boris puts it on notice that information contained in her report may be inaccurate. In order to prevail on this claim, Ms. Boris must prove that ChoicePoint failed to take reasonable care to meet any one of the following reinvestigation requirements:

- (a) As part of any investigation, ChoicePoint must review and consider all relevant information submitted by Ms. Boris. After removing or correcting inaccurate information on Ms. Boris' claim report, ChoicePoint may not reinsert into that claim file previously deleted information unless the insurance company furnishing the information certifies that it is complete and accurate.
- (b) If ChoicePoint does reinsert any information in the file, it must notify Ms. Boris in writing within 5 business days. That notification must include:
 - 1. A statement that the disputed information has been reinserted;
 - 2. The business name, address, and telephone number of any entity which furnished the information; and
 - 3. A notice that Ms. Boris has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information.
- (c) ChoicePoint must maintain reasonable procedures designed to prevent the reappearance of information previously deleted.

In order to prevail on a claim of noncompliance with any one of these requirements, Ms.

Boris must also show both that she suffered an injury and that her injury was caused by ChoicePoint's failure to follow any one of the reinvestigation procedures.

If you find that ChoicePoint's failure to exercise reasonable care caused it to breach any of the requirements set forth above, you should enter a verdict for Ms. Boris on Question No. 2 on the Verdict Form.

If you find that ChoicePoint followed reasonable care, you should enter a verdict for ChoicePoint on Question No. 2 on the Verdict Form.

The definition of "reasonable care or reasonable procedures" as used in these in this instruction is the same as I gave you under Instruction No. 1.

If you find for Ms. Boris on Instruction No. 1 or Instruction No. 2, turn to Instruction No. 3. Otherwise, turn to Instruction No. 4.

INSTRUCTION NO. 3

If you find for Ms. Boris on Question No. 1 or Question No. 2, you may award compensatory damages to Ms. Boris only for injuries caused by ChoicePoint's failure to exercise reasonable care. You may award Ms. Boris compensatory damages for injuries caused by ChoicePoint. Ms. Boris has requested damages for injury to her reputation and for emotional distress, both in the past and in the future. In order to be entitled to emotional distress damages, Ms. Boris must show that she has suffered mental anguish, humiliation, embarrassment, or stress, as a consequence of ChoicePoint's conduct rather than other causes. In determining Ms. Boris' damages you may not consider any expenses she incurred as a result of her stomach injuries and abdominal pain.

In awarding compensatory damages, if you decide to award them, you must be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficulty lead you to engage in arbitrary guesswork. On the other hand, the law does not require a plaintiff to prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstances permit.

Please enter the amount of your verdict for compensatory damages in Question No. 3 on the Verdict Form.

INSTRUCTION NO. 4

Regardless of whether you found for Ms. Boris under Instruction No. 1 or Instruction No. 2, if you find from the evidence that ChoicePoint willfully failed to follow reasonable care to assure maximum possible accuracy of the information contained in her insurance claim history reports or willfully failed to follow reasonable procedures in conducting a reinvestigation, then you should find in favor of Ms. Boris on Question No. 4 of the Verdict Form.

For the purposes of this instruction, “willfully,” means knowingly and intentionally committing an act in conscious disregard for the rights of others. Malice and evil motive are not required to make a finding that ChoicePoint willfully failed to follow reasonable procedures.

Please enter your verdict on Question No. 4 of the Verdict Form.

INSTRUCTION NO. 5

If you have found for Ms. Boris, under Question No. 4, you may in addition to any damages awarded by your response to Question No. 3, award her punitive damages.

The awarding of punitive damages is within your discretion. You are not required to award them. Punitive damages are appropriate only for especially shocking and offensive misconduct. If you decide to award punitive damages, you must use sound reason in setting the amount; it must not reflect bias or sympathy toward any party. But the amount can be as large as you believe necessary to fulfill the purpose of punitive damages.

Please enter your verdict of punitive damages, if any, in Question 5 of the Verdict Form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

Question No. 1:

Plaintiff _____

Defendant _____

Question No. 2:

Plaintiff _____

Defendant _____

Question No. 3:

Compensatory Damages: \$ _____

Question No. 4:

Plaintiff _____

Defendant _____

Question No. 5:

Punitive Damages: \$ _____

FOREPERSON

Date: _____