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TOP WOMEN LAWYERS



Harriet Posner

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Los Angeles

Practice type: Litigation

Specialty: Commercial

Getting the opportunity to appear before the Texas Supreme Court was for Posner, “a cool experience.”

It — and the court’s ruling in favor of her client last year — was the highlight, she said, of a case that has implications for how homeowners’ premiums are set nationwide.

Posner obtained a victory for her client, the Farmers Group Inc., in a class action alleging that the company’s use of credit scores in pricing insurance violates federal anti-discrimination statutes.

The plaintiffs’ suit against Farmers, filed in 2005, was dismissed by a California federal judge two years later in a ruling that was reversed by a 9th U.S. Circuit Court of Appeals panel in 2009. *Ojo v. Farmers Group Inc.*, 565 F.3d 1175 (9th Cir. 2009).

After granting Farmers’ request for en banc review, the 9th Circuit certified the case for appeal before the Texas Supreme Court.

“The underlying theory was that minorities have lower credit scores and the use of credit scores in setting prices for insurance policies has had a disparate impact on minorities,” Posner said.

But under federal law, she said if the state already has addressed an insurance matter, plaintiffs can’t bring a federal claim.

The plaintiff said that the price-setting issue was unclear under Texas state law, Posner said, but the Texas Supreme Court disagreed. *Ojo v. Farmers Group Inc.*, 356 S.W.3d 421, 54 Tex. Sup. Ct. J. 1068 (Tex. May 27, 2011).

“So long as race isn’t used as a factor in setting insurance scores,” she said, “it is permissible.”

Posner said that these types of cases “for awhile, were very much in vogue,” but now seem to have “disappeared from the landscape.”

“We chipped away at the base of what makes these cases appealing to plaintiffs’ lawyers,” she said. “We put the final nail in the coffin.”

— Pat Broderick