

Insurance companies under fire in consumer credit case

By Pete Yost, The Associated Press

WASHINGTON - Two large insurers on Tuesday defended their decision not to tell customers about the ramifications of less-than-perfect credit as the Supreme Court debated the legal standard for finding the companies liable under federal law.

Under a federal appeals court ruling, Geico Corp. and Safeco Insurance Co. would have to notify nearly all of their customers that they aren't getting the best rates because their credit scores aren't the highest. The consumers sued Geico and Safeco because the companies used a less stringent policy and thus notified far fewer customers.

Congress passed the credit reporting act in 1970 to protect consumers from flaws in the system and improve the reliability of reports.

At issue is a decision a year ago by the 9th U.S. Circuit Court of Appeals in San Francisco that would make it easier for consumers to prevail when they sue corporations for failing to notify them.

The appeals court and lawyers for the consumers say the standard for proving violation of the law is reckless disregard of it. The companies say the standard for showing violation is higher: proving that the

companies knowingly broke the law.

Pending lawsuits against various insurance companies on behalf of consumers over the notification issue potentially involve billions of dollars, Maureen Mahoney, an attorney for GEICO and Safeco, told the justices.

If the court adopts the consumers' argument, there will be tens of millions of notices being sent out, Justice Stephen Breyer said.

Regarding the expansive notification views, "I don't understand where that comes from," Justice Samuel Alito said.

That is what the law requires, said Scott Shorr, an attorney for some consumers suing the companies.

The credit system's cornerstone is consumer monitoring of their credit reports for accuracy. Consumer groups say the insurance companies are weakening the system by looking for ways to avoid notifying customers when it uses a credit report in making a decision.

"Consumers who do not receive an adverse-action notice ... do not learn of their right to a free credit report to check its accuracy," a half-dozen advocacy groups said in court papers.

One consumer represented in the case, Ajene Edo of Portland, Ore., didn't qualify for Geico's coverage for low-risk customers. Instead, Geico offered to insure him, but as a moderate-risk customer.

The company says that credit scores are one of 15 factors in underwriting decisions and that Edo's credit scores were actually above average. But they weren't high enough under GEICO's system to lower his rate.

Edo's lawyers and the 9th U.S. Circuit Court of Appeals say the company used the wrong comparison.

The court said that customers should be notified whenever a consumer pays a higher rate because his credit rating is less than the top potential score.

