

Fair Lending**U.S. Solicitor General's Office Will Join SCOTUS Argument on ECOA and Guarantors**

**T**he U.S. Solicitor General's office will join the argument in a U.S. Supreme Court case testing whether a federal anti-bias law protects spouses who guarantee loans they didn't apply for (*Hawkins v. Community Bank of Raymore*, U.S., No. 14-cv-00520, *motion granted*, 8/28/15).

The justices Aug. 28 granted a motion by the SG to participate as a friend of the court in a case involving Valerie Hawkins and Janice Patterson.

They alleged discrimination by Community Bank of Raymore in Raymore, Mo., under the Equal Credit Opportunity Act.

The case is an appeal from an August 2014 ruling by the U.S. Court of Appeals for the Eighth Circuit, which held for the bank (103 BBR 380, 8/12/14).

The justices agreed to hear the case in March.

**ECOA Violation Alleged.** Unlike many ECOA cases, which center on complaints that consumers were wrongly excluded from the credit process, Hawkins and Patterson said they were wrongly included.

Hawkins and Patterson are married to Gary Hawkins and Chris Patterson, the two members of PHC Development, LLC, a Missouri limited liability company.

Although neither Valerie Hawkins nor Janice Patterson have a legal interest in PHC, all four signed personal guaranties to secure loans to PHC by the bank.

When the loans went into default, the bank sought payment from Valerie Hawkins and Janice Patterson as guarantors.

**Reg B Rejected.** They sued the bank, alleging marital status discrimination under ECOA and saying the bank required them to execute the guaranties only because of their marital relationships.

A district court ruled for the bank, and the Eighth Circuit affirmed.

Although ECOA protects credit applicants from discrimination, the Eighth Circuit said a loan guarantor is not an "applicant" under the statute.

Among other points, the Eighth Circuit court rejected a Federal Reserve Board rule, Regulation B, that takes a different view.

The rule, now administered by the Consumer Financial Protection Bureau (CFPB), says guarantors are "applicants" protected by ECOA, even if they did not actually apply for the loan.

In May, the SG's office filed a brief in support of Hawkins and Patterson, saying Regulation B protects guarantors from bias under ECOA.

"The regulation recognizes that when a creditor requires an individual to guarantee her spouse's debt obligation solely because the couple is married, both the primary borrower and the guarantor spouse qualify as 'applicants' who suffer discrimination in violation of the Act," the brief said.

**Broad Impact Seen.** Valerie L. Hletko, a partner with Buckley Sandler in Washington, D.C., Aug. 31 said the case is important on several levels.

First, she said, is the Eighth Circuit's holding that Regulation B goes too far by including spousal guarantors, who did not themselves apply for credit, as applicants.

"If lenders cannot obtain guaranties from the spouses of married business owners (or are vulnerable to challenges about the validity of those guaranties) their ability to value the assets of commercial debtors is impaired," Hletko said in an Aug. 31 e-mail to Bloomberg BNA. "This is different in kind from the policy behind protecting full access to credit for married women," she said.

Hletko also said the ruling shows that courts are being less deferential to agency discretion under a two-step inquiry established by a 1984 U.S. Supreme Court ruling involving Chevron Corp.

The Solicitor General's involvement will also have an impact, according to Hletko.

"The participation of the Solicitor General suggests that the government will promote both a broad interpretation of Regulation B and robust *Chevron* deference more generally," she said.

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*The Eighth Circuit's ruling is at [http://www.bloomberglaw.com/public/document/Valerie\\_J\\_Hawkins\\_Individually\\_Janice\\_A\\_Patterson\\_Individually\\_Pl](http://www.bloomberglaw.com/public/document/Valerie_J_Hawkins_Individually_Janice_A_Patterson_Individually_Pl). The government's May brief is at <http://op.bna.com/bar.nsf/r?Open=cbre-9zjw2m>.*

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