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BLOGS
Antitrust

Nebraska Supreme Court Provides Its First Interpretation of State Antitrust Act Provision in Credit Report Reseller Dispute

Late last month, the Supreme Court of Nebraska affirmed a jury verdict in favor of credit reporting agency Experian Information Solutions, in a lawsuit brought against it by mortgage credit report reseller, Credit Bureau Services, alleging violations of Nebraska’s unusual antitrust act. *Credit Bureau Servs., Inc. v. Experian Info. Solutions, Inc.*, 2013 Neb. LEXIS 47 (Neb. Mar. 22, 2013). Evidence was adduced at trial that as part of its “Project Green,” Experian increased, over the course of several years, the minimum monthly purchase requirement for mortgage-related information. Plaintiff CBS contended that Experian implemented Project Green to drive out of business a number of resellers, including CBS, and that Experian’s conduct violated Section 59-805 of Nebraska’s Antitrust Act, which makes it unlawful “to do any act for the purpose of driving out of business any other person engaged therein.”

On appeal, CBS challenged the district court’s instructions to the jury regarding the elements required to find in favor of CBS on its claim under Section 59-805. The Nebraska Supreme Court, noting that it had not previously enumerated the elements of a cause of action based on the allegation that a defendant acted with purpose of driving the plaintiff out of business under § 59-805, disagreed with CBS’ interpretation that the act prohibits all conduct of a defendant that has the effect of driving an entity out of business. The court held that the statute “reaches intentional predatory conduct which has no purpose other than to drive another entity out of business” and the phrase “any act for the purpose of driving out of business” requires that the offending act be purposive.

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