

WISCONSIN SUPREME COURT
FRIDAY, SEPTEMBER 16, 2011
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a Milwaukee County Circuit Court decision, Judge Richard J. Sankovitz, presiding.

2008AP1830 [MBS-Certified Pub. Accountants v. Wis. Bell](#)

This case arises from a class action lawsuit over the practice of “cramming” in which a telephone company deceptively inserts relatively small, unauthorized charges into a telephone bill. As part of its review, the Supreme Court examines the voluntary payment doctrine and statutory damage claims under §§ 100.207, 100.18, and §§ 946.80-946.88 (Wisconsin Organized Crime Control Act or WOCCA).

Some background: The petitioners, MBS-Certified Public Accountants, LLC (MBS) and Thomas H. Schmitt, CPA, d/b/a Metropolitan Business Services claim that several telecommunications companies, including Wisconsin Bell Inc., d/b/a AT & T Wisconsin, ILD Telecommunications, Inc., d/b/a ILD Teleservices, Americatel Corporation and Local Biz USA, Inc., and US Connect, LLC, engaged in cramming.

The petitioners filed a class action complaint on behalf of all Wisconsin consumers who have been wrongfully charged on their telephone bills through cramming. The complaint alleges that this practice has proven to be a highly effective means of stealing money from the customers and that the unauthorized charges were inserted into local telephone bills in a vague and confusing manner. The defendants moved to dismiss the claims on multiple grounds, including the voluntary payment doctrine. The circuit court determined the voluntary payment doctrine barred recovery and granted the motion to dismiss. MBS appealed.

The Court of Appeals affirmed. The Court of Appeals said the voluntary payment doctrine places upon a party who wishes to challenge the validity or legality of a bill for payment the obligation to make the challenge either before voluntarily making the payment or at the time of voluntarily making the payment. See Putnam v. Time Warner Cable of Southeastern Wis., 2002 WI 108, 255 Wis. 2d 447, 649 N.W.2d 626. The Court of Appeals said that the voluntary payment doctrine presupposes wrongful conduct by the payee.

MBS argued the nature of cramming schemes is to insert charges into the customer’s bills with the expectation they will not notice the charges or be misled into believing the charges were imposed for requested services. MBS argued that to bar the customers from the remedy precisely because the cramming scheme worked as it was intended would frustrate the legislative purpose.

MBS asks the court to determine whether the voluntary payment doctrine bars damages under Wisconsin Statutes, or the legislature specifically created private rights of action for victims of prohibitive practices. It also inquires whether individuals must pay illegal fees under protest to preserve their right to bring a statutory claim, even though the statutes in question do not include a protest requirement. Finally, MBS asks whether an

exception to the voluntary payment doctrine prevents violators of §§ 100.18, 100.207, and WOCCA from the benefits of that doctrine to escape liability for statutory damages.

Wisconsin Bell contends the Court of Appeals properly applied Putnam. It says that Putnam, following more than a century of well-established law, foreclosed the very argument made here when Putnam applied the voluntary payment doctrine to a damages claim against Time Warner under Wisconsin's Deceptive Trade Practices Act, § 100.18.

The respondents contend that because the petitioners repeatedly and without protest paid their bills with knowledge of the charges plainly set forth, the voluntary payment doctrine is available to Wisconsin Bell as a defense under §§ 100.207, 100.18 and 946.83. The respondents say that because the telephone bills are clear and unambiguous, the petitioners fail to state a claim against Wisconsin Bell. Further, Wisconsin Bell argues, it did not generate the allegedly unauthorized charges and therefore the complaint fails to state a claim.

A decision by the Supreme Court is expected to clarify the exceptions to the voluntary payment doctrine as set forth in Putnam and Butcher v. Ameritech Corp., 2007 WI App 5, 298 Wis. 2d 468, 727 N.W.2d 546.