

Credit card holders' lawsuit over disability insurance revived

(Reuters) - A federal appeals court has revived a proposed class action by New York credit card holders accusing several insurance companies of selling them disability policies endorsed by the late actor Christopher Reeve that were void under state law.

In a decision on Thursday, a three-judge panel of the 2nd U.S. Circuit Court of Appeals said a lower court erred in finding that the consumers lacked standing on the grounds that they did not suffer a concrete harm.

The credit card holders alleged that they paid premiums for illegal and void policies, which is all that is needed to establish that they were harmed, Circuit Judge Richard Wesley, writing for the panel said. He was joined in the opinion by Circuit Judges Rosemary Pooler and Peter Hall.

"Obviously, this is a big victory in the case," said **Roger Mandel**, who represents the credit card holders.

Lawyers for the defendants could not be reached.

Filed in 2015 in Manhattan federal court, the lawsuit accused Maryland-based HealthExtras and several insurance companies it worked with, including American International Group and Transamerica Financial Life Insurance, of selling disability policies that had not been approved by New York insurance regulators.

HealthExtras partnered with major credit card issuers such as Citigroup, American Express and Capital One to gain access to credit card holders and marketed the insurance in flyers included in their monthly statements, the complaint said. The credit card issuers were not named as defendants.

Marketing materials included a picture of "Superman" movie star Christopher Reeve, who was paralyzed in a 1995 horse-riding accident, reminding readers that sometimes "lives change in an instant."

The insurance was sold to consumers nationwide, including thousands of New York residents, between 2000 and 2014, as a purported low-cost group policy offered to credit card holders. Credit card holders, however, do not qualify for group insurance under New York law, which limits such coverage to employers, labor unions and similar groups, the complaint said.

Alleging fraud and violations of a New York state law barring deceptive practices, the credit card holders are seeking compensatory damages and restitution of premiums they paid.

In a motion to dismiss, the insurance companies argued that the plaintiffs lacked standing because they did not show that they suffered a concrete harm. Under New York's so-called "savings statute," technically void insurance policies are enforceable against an insurer, and the plaintiffs would have been covered if they had filed claims, the defendants said.

U.S. District Judge Paul Gardephe in Manhattan agreed, dismissing the lawsuit in 2016 for lack of standing.

On appeal, lawyers for the plaintiffs said they were injured by buying virtually worthless insurance based on misrepresentations that it was valid. The savings statute only applies when a consumer seeks coverage for an illegal policy and cannot be invoked by insurance companies to defend against lawsuits, they said.

The 2nd Circuit agreed.

Defendants' argument that the savings statute would require them to honor the policies is actually a challenge to the merits of plaintiffs' claims, something courts cannot weigh in a decision on standing, the appeals panel said.

The case is *DuBuisson v. Stonebridge Life Insurance*, 2nd U.S. Circuit Court of Appeals, No. 16-2536.

Credit card holders' lawsuit over disability insurance revived

For the plaintiffs/appellants: **Roger Mandel** Law Office; Golomb & Honik; Aughtman Law Offices; Hemmings and Stevens

For the defendants/appellees: Paul Weiss Rifkind Wharton & Garrison