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UPDATE ON CREDIT INSURANCE ISSUES AND DEVELOPMENTS: AN INDUSTRY UNDER SIEGE

I. Introduction

American consumers owe more than $1.5 trillion, exclusive of mortgage debt. [1] Approximately fourteen percent of that debt--$212 billion--is covered by credit insurance. [2] In the year 2000, Americans paid roughly $6 billion in credit insurance premiums in conjunction with consumer and mortgage debt. [3] In short, the credit insurance market is big business--and therefore a big target for consumer advocates, the plaintiffs' bar, and the media. In fact, a whole new vocabulary of terms has sprung up, including "packing," "padding," "flipping," "stripping," "churning," "post-claim underwriting," and "clean sheeting." [4]

Credit insurance has come under attack for having loss ratios which are "too ***239** low," premiums and commissions which are "too high," and for its use of single premiums. Plaintiffs typically allege that the sale of credit insurance to them violated the Truth in Lending Act (TILA) [5] and/or state unfair trade or consumer protection laws. They also typically include allegations that their lenders breached alleged fiduciary duties, and duties of good faith and fair dealing. Cases are filed both on behalf of single plaintiffs and as class actions.

Simply put, the credit insurance industry is under siege in legislatures and courtrooms around the country. This article describes some of the recent attacks, including some that proved successful and some that failed. [6] While every action presents unique facts and circumstances, the lessons learned from these cases should guide those in the financial and credit insurance industries in their attempts to implement effective compliance measures.

II. State Legislation

Credit insurance, particularly single premium credit insurance, has come under attack in recent legislative sessions. The trend may have started with North Carolina's now famous predatory lending law, [7] but it has spread across the country. In addition to recent amendments to the Home Ownership and Equity Protection Act (HOEPA), [8] taking effect in October 2002, several states have enacted legislation in the past few years which in some way prohibits or restricts lenders from offering single premium credit insurance. [9] The most common approach, adopted in a number of states, is to prohibit the financing, either directly or indirectly, of the premium for most types of credit insurance. These states, for example Colorado, generally provide an exception for premiums that are paid on a monthly basis. [10]

A somewhat different approach, taken by the State of Connecticut, is to require that lenders offering single premium credit insurance also offer monthly outstanding balance insurance. The Connecticut statute provides as follows:

> Commencing January 1, 2002, any lender that makes a high cost home loan to a borrower and offers such borrower the option to purchase an individual or group credit life, accident, health, disability, or unemployment insurance product on a prepaid single premium basis shall also offer such borrower the option of purchasing such insurance product on a monthly premium basis. [11]

In addition, Connecticut also requires that lenders provide certain disclosures to borrowers regarding their right to cancel the credit insurance. Particularly, the notice of a borrower's right to cancel is required to be in at least twelve point type and must be sent separately by mail to the borrower no earlier than ten days and no later than thirty days after consummation of the loan. The notice also must disclose the type of insurance product purchased, the cost of that product, and the procedure for canceling that product. [12]

Florida also has taken a somewhat different approach although not as novel as Connecticut's. Florida requires that before any credit life insurance can be sold in connection with “a specific installment loan or home equity line of credit,” the creditor must obtain a written acknowledgement with respect to the following:

> • That the borrower understands that he or she has the option of assigning any other policy or policies that he or she owns or may procure for the purpose of covering such loan, and that the policy need not be purchased from the creditor in order to obtain the loan;

> • that the borrower understands that the credit life coverage may be deferred if, at the time of application, the borrower is unable to engage in employment or unable to perform normal activities of a person of like age and sex, if the proposed credit life insurance policy contains this restriction; and

> • that the borrower understands that the benefits under the policy will terminate when the borrower reaches a certain age and that the borrower's age is accurately represented on the application or policy. [13]

Finally, although Georgia expressly prohibits the financing of single premium credit insurance, the Georgia Administrative Code also provides certain limitations on truncated term coverage. Specifically, if credit insurance is truncated, then net decreasing-term insurance can be the only authorized coverage. [14] Further, the schedule must show the maturity date of the loan, and the following notice, using the same or essentially equivalent language, must appear in bold print on the face of the individual policy or certificate of insurance:

> Notice: The life insurance benefit might not completely pay off your loan. If the term of your loan exceeds the term of insurance, the death benefit is only payable if death occurs during the term of the ***240** insurance. Total disability benefits will not be paid for any period of total disability continuing after the termination date shown in the schedule. [15]

Thus, various states have taken a number of different approaches in attacking single premium credit insurance. The most common approach is to prohibit the financing of the single premium for the credit insurance. Although this theoretically does not prohibit single premium credit insurance (since borrowers could pay cash for the single premium), it practically precludes borrowers from purchasing single premium credit insurance.

III. Debt Cancellation/Suspension Cases

The following cases discuss attacks against lenders who have offered additional protection through debt cancellation agreements or credit property insurance. These products serve to discharge the borrower's obligation to repay all or part of a debt if a specific event occurs. Some states treat certain lender-offered debt cancellation agreements as credit insurance, and some do not. However, under the TILA and Regulation Z, debt cancellation agreements and credit insurance are treated the same for disclosure purposes. [16] The following cases addressed allegations that lenders offering such products failed to comply with the applicable TILA disclosure requirements. These cases exemplify the positions other courts are taking in similar circumstances.

In *Rivera v. Grossinger Autoplex, Inc.*, [17] an automobile buyer in a credit sale brought a class action against the creditor, alleging violations of the TILA relating to the creditor's sale of “GAP” coverage. “GAP,” an acronym for Guaranteed Auto Protection, is a form of debt cancellation coverage which acts to cancel any loan deficiency that may remain if property insurance on a given automobile is insufficient to fully pay off the loan on that automobile in the event of a theft or destruction. In *Rivera*, the plaintiff bought a used car from the defendant, and entered into a financing agreement pursuant to the contract for sale. The financing agreement included an addendum that provided for GAP, and disclosed the GAP premiums as part of the amount financed, thereby subjecting the premiums to interest charges.

The buyer brought an action alleging that the creditor violated the TILA by failing to disclose the GAP as part of the finance charge, thereby not meeting the exclusionary requirements under Regulation Z and the TILA. [18] Specifically, the buyer alleged that the creditor had not disclosed: (1) that the insurance was voluntary; (2) that the insurance was not a prerequisite for obtaining credit; and (3) the terms of the insurance. Following the dismissal of the buyer's state law claims, the court certified a class of consumers to pursue the remaining TILA claims. The district court granted the creditor's motion for summary judgment, and the plaintiffs appealed.

On appeal in *Rivera*, the Seventh Circuit first noted that because the creditor included the GAP coverage in the amount financed and excluded the same from the finance charges assessed, it was obligated to comply with the disclosure requirements under 12 C.F.R. section 226.4(d)(3)(i). Specifically, the lender had to: (1) disclose whether the insurance was required, and the fee or premium for the initial term; (2) disclose the term of the coverage if the coverage was for less than the initial term; and (3) require the consumer to sign or initial an affirmative written request for the coverage. [19]

The court found that the terms of the addendum met TILA requirements as to the disclosure of voluntary insurance and conspicuous language. Furthermore, since the coverage was for the term of the loan, the term of the coverage was not required to be disclosed. Finally, the buyer's signature on the addendum of the clearly conspicuous agreement was an affirmative written request for the coverage. The Seventh Circuit ultimately affirmed the district court's award of summary judgment against the class and held that the defendant met the disclosure requirements under the TILA.

Lifanda v. Elmhurst Dodge, Inc., [20] another Seventh Circuit case, also concerned allegations of TILA violations made by a consumer, who as part of a purchase of a automobile, bought “auto theft registration” (ATR) protection. The plaintiff brought an action against the automobile dealership and the insurance company that issued the protection, alleging violations of the TILA by reason of a failure to include the ATR charge as part of the finance charge. The district court granted the dealership's motion to dismiss, and the consumer appealed.

On appeal, the Seventh Circuit addressed whether the charge for ATR protection fell within the definition of a finance charge under the TILA, and whether the creditor clearly and conspicuously disclosed the premium for ATR protection.

Under the TILA, property damage and liability insurance premiums and fees from debt cancellation agreements are specifically listed as finance charges. Since the ATR protection would reimburse the consumer if the vehicle was stolen, the court concluded that it was property insurance. While a prior Seventh Circuit decision had held that GAP coverage was not a finance charge under the TILA,[21] the *Lifanda* court held that the ATR protection was clearly insurance which was expressly covered under the TILA definition of a finance charge. Moreover, the court noted that the recent amendments to the TILA would also ***241** include GAP within the definition of finance charge under the TILA.

Under the TILA and Regulation Z, premiums for insurance against loss or damage may be excluded from the disclosure requirements if the consumer is informed that the insurance may be obtained from a person of the consumer's choice, and the consumer is notified of the amount of the premium and the term of the insurance.[22] However, the language of the agreement in *Lifanda* did not provide clear and conspicuous notice that ATR protection could be obtained elsewhere.

Furthermore, in *Lifanda* the terms of the insurance coverage were in very small, barely legible, type. Also, while the defendants alleged that the purchase order set forth the premium under the category Vehicle Theft Registration, nothing in the disclosure documents identified it as a premium, or identified the Vehicle Theft Registration as insurance. Finally, the ATR charge was not separately listed in the contract, but rather was included in the cash price of the vehicle. The Seventh Circuit held that it could not state as a matter of law that the documents clearly and conspicuously disclosed the premium and the term of the ATR protection, or that the protection could be purchased elsewhere. Accordingly, the court reversed the district court's dismissal of the action, and remanded it to the district court.

IV. Traditional Credit Insurance

A. General Cases

In addition to charges of violations under the TILA, lenders and insurers who offer credit insurance products have defended numerous other allegations under state and federal laws in connection with alleged misconduct through the sale of credit insurance. While plaintiffs' allegations that creditors had forced them to purchase the credit insurance are often rebuffed by the clear contractual language disclosing the voluntary nature of the insurance, these lawsuits show that even a well-drafted form will not ensure that the creditor is not forced to defend its conduct.

In *Smith v. Tower Loan of Mississippi, Inc.*,[23] for example, the borrowers brought a class action for declaratory, injunctive, and monetary relief against the creditor and affiliated insurers, asserting violations of the TILA, the Fair Debt Collection Practices Act, the Mississippi Small Loan Regulatory Act, antitrust laws, and fraud. The parties subsequently sought approval of a settlement.

The plaintiffs alleged that the defendants engaged in practices designed to defraud their customers, by deceptively forcing them to purchase credit insurance, and that the defendants engaged in insurance packing. Further, the plaintiffs alleged that the defendants encouraged their borrowers to pay off their loans prior to the maturity dates, resulting in calculation of insurance and interest refunds in a way disadvantageous to the customer.

The court addressed a variety of issues. Did the creditors sell the property insurance at excessive rates and based on an inflated value of the loan collateral? Did the creditor owe the borrowers a fiduciary duty? Alternatively, did the creditor violate the covenants of good faith and fair dealing? Finally, did the creditor's conduct constitute a violation of the TILA?

Ultimately, the *Tower Loan* court held that: (1) the filed-rate doctrine barred allegations that the defendants charged excessive rates for the credit insurance and challenges to the rates and terms of the governmentally-approved insurance contracts; (2) the creditors did not owe the borrowers a fiduciary duty; (3) the implied covenant of good faith and fair dealing would not apply to allegations of misconduct in contract formation; and (4) there is no TILA violation if the purchase of the insurance is voluntary.

Under the filed-rate doctrine, any filed rate, *i.e.*, a rate approved by a governmental regulatory agency, is *per se* reasonable and unassailable in judicial proceedings brought by rate payers. Therefore, since these rates were government-approved, they were per se reasonable.

Moreover, under Mississippi case law, creditors and their borrowers are not typically in a fiduciary relationship. While a relationship may rise to the level of a fiduciary relationship if the borrowers have a special reason to place special trust and confidence in their lender, no such relationship existed under the circumstances.

The court also held that since all of the plaintiff's allegations stemmed from contract formation, a claim of breach of the implied covenant of good faith and fair dealing which concerns performance of the contract was inappropriate. Moreover, regarding alleged violations of the TILA, the court stated that there is no requirement for inclusion of credit life or credit disability insurance premium costs in the disclosed APR when an insurance purchase is not a condition of the credit. Furthermore, when the clear language of the credit documents disavows any customer obligation to purchase credit insurance, the plaintiffs cannot argue that the lender represented that credit insurance was a condition to the credit. Since the purchase of the credit insurance was voluntary, there was no violation of the TILA.

In *Benson v. American Heritage Life Insurance Co.*, [24] the plaintiff borrowers claimed that the defendants misrepresented to them that they needed to obtain credit life and disability insurance in order to obtain their respective loans. The plaintiffs accused the defendants of "packing" their loans with credit life insurance and disability insurance in order to increase the amount financed and to profit from undisclosed commissions earned by agents of the lender. The case came before the court on the defendants' motion for summary judgment. The *Benson* court granted the defendants' motion for summary judgment as to all ***242** of the plaintiffs' claims, except for the claims of one plaintiff who had not executed a TILA disclosure statement. Further, the court held that the plaintiffs' claims, which had accrued more than three years before the lawsuit was filed, were time barred.

The first issue the court addressed concerned whether the plaintiffs were bound by the TILA disclosure statements they executed in connection with their loans. The statements expressly stated that credit life insurance was not required in order to obtain the loan. Under Mississippi law, signatories to contracts have a duty to read the contracts they execute, and knowledge of the contents of the contract will be imputed to the parties who sign the contract. The court found that even if the plaintiffs were led to believe that the purchase of insurance was required to obtain the loans, the plaintiffs could not rely on such a misrepresentation, since the clear terms of the contracts stated that the purchase of insurance was not required.

Since knowledge of the contents of a contract are imputed to the signatory, the plaintiffs would not be able to assert that the terms were misrepresented. Furthermore, the plaintiffs' assertions of misrepresentation were parole evidence, which is not admissible to add to, subtract from, vary, or contradict the clear contractual terms. Accordingly, the court held that the plaintiffs were bound by the TILA disclosure statements they had executed, and could not claim that they did not know the insurance was voluntary.

The *Benson* court next addressed whether the fact that the loan transactions occurred quickly resulted in an exception to the doctrine of imputed knowledge. The only non-statutory exception to the Mississippi rule of imputed knowledge comes from the Supreme Court of Mississippi case of *Turner v. Terry*. [25] In *Turner*, the court held that where one party fraudulently induced another party to enter a contract, the negligence of the second party cannot bar equitable relief in the form of reformation or recession.

However, the *Benson* court held that the fraud or mistake exception from *Turner* could not be applied in *Benson* because the only terms relating to the purchase of credit insurance appeared on the face of the disclosure statements, and such documents clearly stated that credit insurance was not required. Furthermore, since five of the six plaintiffs affirmatively signed the lines which stated that they wanted credit insurance, and left blank the line that they did not want credit insurance, the court was unable to find that they had been fraudulently induced to enter the contract.

Finally, the *Benson* court addressed whether to toll the statute of limitations as to the plaintiff's claims under a theory of fraudulent inducement or the continuing tort doctrine. The court held that the statute of limitations on the plaintiffs' claims was not tolled under the doctrines of fraudulent inducement or continuing tort, and therefore the claims were time-barred if not filed within three years after the purchase of the credit insurance. The court stated that the statute of limitations is only tolled under a doctrine of fraudulent inducement if the parties claiming fraudulent inducement demonstrate both some affirmative act designed to prevent, and which does actually prevent, discovery of the claim; and even though the plaintiffs acted with due diligence, they were not able to discover the claim. In the alternative, the continuing tort doctrine tolls the statute of limitations when the plaintiffs prove continual unlawful acts, not just continual ill effects from an original violation. Since the court determined that the plaintiffs were made aware that they did not have to purchase insurance to obtain their loans, the court held that no such affirmative acts of misconduct existed to support either tolling theory.

In *Agnew v. Washington Mutual Finance Group*,[26] the plaintiffs brought a class action claiming breach of fiduciary duties, breach of the implied covenants of good faith and fair dealing, fraudulent misrepresentation and/or omission, negligent misrepresentation and/or omission, civil conspiracy, negligence, and unconscionability. All of the plaintiffs' claims stemmed from the defendants' sale of credit life insurance in conjunction with loans made to the plaintiffs. The defendants moved for summary judgment and asserted that the plaintiffs' claims were time-barred by Mississippi's general three-year statute of limitations.

The *Agnew* court addressed both when the statute of limitations began to run on claims relating to credit life insurance policies, and whether to toll the statute of limitations on the plaintiffs' claims under the fraudulent inducement doctrine.

Regarding the statute of limitations issue, the court held that the statute of limitations began to run on the dates on which the various agreements were signed, all of which took place more than three years prior to the filing of the suit. While the plaintiffs claimed that the statute of limitations was tolled until they actually filed a claim on their credit life policy, all of the allegedly tortious conduct centered on the formation of the insurance agreements rather than on any later misconduct by the defendants. The alleged misconduct included false representations that credit insurance was a prerequisite for obtaining a loan and a breach of fiduciary duty by forcing the plaintiffs to purchase overly expensive insurance. The *Agnew* court found that the record did not indicate that any of the plaintiffs' claims were based on any wrongful refusal to pay or any conduct after the execution of the agreements. Since the court found that all of the alleged misconduct centered on misrepresentations made when the agreements were originally executed, the court concluded that the statute of limitations began to run on the dates when those agreements were first signed. Accordingly, the court held that the statute of limitations barred the plaintiffs' claims unless the plaintiffs could make a showing of fraudulent concealment.

***243** Under the Mississippi Code,[27] if the person liable for any personal action fraudulently conceals the cause of action from the person entitled to assert a claim, the cause of action is deemed to have accrued at the time when the fraud should have been or with reasonable diligence might have been first known or discovered. While the plaintiffs claimed that the defendant's misrepresentations acted to conceal the cause of action, the *Agnew* court applied Mississippi's duty-to-read doctrine and found that since the express terms of the contract clearly stated that credit insurance was not required, any reliance on an alleged misrepresentation of the contractual terms would be unreasonable. Accordingly, any oral statements made by the defendants could not constitute fraudulent concealment. Since the plaintiffs offered no other basis for finding that the defendants had fraudulently concealed the claims, the court held that the doctrine of fraudulent concealment did not apply in this case and the plaintiffs' claims were time-barred.

In *Howard v. CitiFinancial, Inc.*, [28] the plaintiffs filed a complaint against lenders, insurance agents, and credit insurers alleging state law claims of breach of fiduciary duty, breach of implied covenants of good faith and fair dealing, fraudulent and negligent misrepresentation and/or omission, civil conspiracy, negligence, and unconscionability. The plaintiffs alleged that, contrary to law, the defendants required them to purchase insurance as a condition of their loans and that the premiums paid on such insurance were excessive and inflated because of undisclosed commissions and other remuneration paid by the defendant insurers for sales of their policies. Further, the plaintiffs alleged that the defendants engaged in insurance packing, padding, flipping, and churning, in violation of Mississippi law. The defendants removed the action to federal court on the basis of diversity jurisdiction, contending that the agents had been fraudulently joined to destroy diversity. In order to determine whether the agents were fraudulently joined, the court considered whether liability could be imposed on each of the defendant agents under the relevant facts. Ultimately, the court found that the plaintiffs could not prevail on any of their claims against the defendant agents, and accordingly held that these non-diverse defendants had been fraudulently joined as defendants.

The *Howard* court first dismissed the breach of fiduciary duty claim against the agents because no fiduciary duty existed between the insurance agents and the borrowers. Under Mississippi law, a fiduciary relationship exists "whenever there is a relation between two people in which one person is in a position to exercise a dominant influence upon the other because of the latter's dependence upon the former, arising from ether weakness of mind or body or through trust." The court held that the borrowers were told that no fiduciary relationship existed between the borrowers and the insurance agents, and accordingly, could not make claims for breach of fiduciary duty.

The court also refused to subject an insurance agent who was not a party to the insurance contract to the implied covenants of good faith and fair dealing. The duty of good faith and fair dealing arises from the existence of a contract between the parties. Since the plaintiffs only contracted with the insurance company, the individual agent could not be held liable for a claim for the breach of implied covenants of good faith and fair dealing.

The court also rejected the plaintiffs' claims of misrepresentation based on the duty-to-read doctrine. Under Mississippi law, signatories have a duty to read the contracts they sign, and knowledge of the contents of the contracts are imputed to the contracting party. Any reliance on an alleged misrepresentation of those terms is *per se* unreasonable. As part of each of the subject loan transactions, the plaintiffs submitted a disclosure statement which stated that credit insurance was not required in order to obtain the loan. The court held that the plaintiffs had a duty to read the contract that was set before them and if they could not read the contract, they had an obligation to find someone who could read the contract to them. Accordingly, the plaintiffs could not reasonably rely on any representation made by the defendants that was contrary to the express language of the contracts they signed. Since the contracts expressly stated that credit insurance was not required to obtain the loan, the court found that as a matter of law the plaintiffs could not prevail on claims of fraudulent or negligent misrepresentation.

In addition, the plaintiffs attempted to assert claims of unconscionability under Mississippi's version of the Uniform Commercial Code, section 75-2-302 (UCC Article 2). The UCC Article 2 applies to sales of goods, and the court addressed whether an insurance policy fits within the definition of "goods." After cataloging a series of other courts which have held that insurance policies are not goods as defined in UCC Article 2, the court found that the subject insurance contracts were not goods as defined by Mississippi's UCC Article 2. Accordingly, the court held that as a matter of law the plaintiffs could not prevail on a claim of UCC Article 2 unconscionability against the defendant Mitchell.

Having found that the plaintiffs could insurance agents, the court dismissed all of the claims against these agents, and denied the plaintiffs' motion to remand the matter.

In *Crowe v. Martin Motor Co.*, [29] the buyer sued the seller car dealer for breach of fiduciary duty and violation of Ohio's Consumer Sales Practices Act. The district court granted summary judgment for the car dealer, and the plaintiff appealed. The *Crowe* court addressed whether the car dealer had a fiduciary relationship with the buyer, and whether the car dealer's conduct constituted deceptive trade practices in knowing violation of Ohio's Consumer Sales Practices Act.

The *Crowe* appellate court held that the trial court's award of summary judgment was in error because a genuine ***244** issue of material fact existed as to whether the car dealer had a fiduciary relationship with the buyer, and whether the dealer engaged in deceptive trade practices in violation of state law. Further, the court held the buyer could be entitled to treble damages and attorney's fees under the Consumer Sales Practices Act.

In determining whether a fiduciary duty existed, the court examined the particular facts at issue. Specifically, in *Crowe*, the dealer took responsibility to handle the buyer's credit insurance application and premium payment. Moreover, after the insurer denied coverage, the dealer failed to return the premium to the buyer or inform the buyer that she had become uninsured. The court held that these facts showed a genuine issue of material fact existed as to whether the car dealer had entered into an informal trust relationship and therefore created a fiduciary relationship with the buyer. Moreover, due to evidence that the dealer's advertisements advertised a discount when the buyer bought the car, and the assertions in the buyer's complaint indicated that the car dealer refused to honor those advertised discounts, there was also evidence that the dealer may have engaged in deceptive trade practices.

Under Ohio's Consumer Sales Practices Act, a claimant can receive treble damages for acts which are declared deceptive or unconscionable. The court found that credible evidence existed to find that the buyer could have been the victim of deceptive practices, and therefore could be entitled to treble damage under the Ohio Act.

In *Corbin v. Regions Bank*, [30] Regions Bank sued to recover a deficiency on a car loan after it sold the repossessed vehicle, and the borrower counterclaimed for wrongful possession, conversion, and defamation. The trial court granted partial summary judgment to the bank, and the plaintiff appealed. The appellate court addressed whether the lender breached a duty to its borrower when it failed to seek to collect credit insurance proceeds prior to repossessing the collateral, and whether the lender committed conversion when it demanded return of the vehicle without first seeking the credit insurance proceeds on the vehicle.

In *Corbin*, the borrower complied with the lender's demand to return the vehicle after the borrower was unable to make the payments due to his disability. Because the lender's file on the borrower included evidence of the borrower's credit disability insurance, and the borrower mentioned his disability to the lender's employee upon return of the vehicle, the court found the lender had a duty to seek to collect the credit insurance proceeds before it reclaimed the vehicle and sold it to recover a deficiency on the vehicle.

Furthermore, while the borrower had not made a claim for disability under his insurance policy, since the borrower had purchased the insurance as a part of the lender's loan agreement, and the agreement gave the lender the right to claim benefits under the policy, the fact that the borrower had not made a claim did not absolve the lender of its duty. Accordingly, the Georgia Court of Appeals held that the trial court should not have granted summary judgment because a genuine issue of material fact existed as to whether the lender had a duty to seek to collect the credit insurance proceeds prior to repossessing the collateral.

The *Corbin* court also found that a genuine issue of fact existed as to whether the lender had a right to demand repossession of the vehicle. Conversion consists of an unauthorized assumption and exercise of the right of ownership over personal property belonging to another. While the borrower offered no protest when he returned the vehicle at the lender's demand, the court held that a jury could conclude that the lender had no right to demand possession and sell the truck (due to the availability of the credit insurance), and that the lender had wrongly converted the vehicle.

In *Hayes v. Osterman Jewelers*, [31] the plaintiff brought claims of fraud and violation of Ohio's Consumer Sales Practices Act, alleging that the defendant tricked her into purchasing credit insurance without her knowledge. The plaintiff bought a bracelet from the defendant, a jeweler, and opened a credit account for her purchase. The sales slip for the purchase contained certain boxes which should be marked "yes" if the buyer wanted credit insurance. The plaintiff alleged that the salesperson told her to initial both the "yes" and "no" boxes, and that due to this instruction the plaintiff initialed both boxes. As a result of this action, the jewelry store charged her premiums for credit insurance. While the monthly statements itemized the insurance charges, the plaintiff claimed she did not realize she was paying credit insurance on the purchases until five years later. The district court granted summary judgment for the defendant, and the plaintiff appealed.

In *Hayes*, the Ohio appellate court affirmed the district court's grant of summary judgment, stating that the defendant's conduct did not violate the Ohio Consumer Sales Practices Act, or constitute fraud. The court focused on the clear and unambiguous language of the contract which offered the plaintiff the option of purchasing or rejecting credit insurance, and refused to find that any statements of the sales person relieved the plaintiff of the obligation to be bound by such language. Under Ohio law, an individual is presumed to have read and understood the language of the contract she executes. Furthermore, since the credit charges were clearly shown on the monthly statements, which the plaintiff paid for five years, she could not allege misrepresentation.

The *Hayes* court also addressed whether a fiduciary relationship existed. Generally the relationship between a creditor and a debtor is governed by the principles of contract law, and is not a fiduciary relationship. In this case, the ***245** court held that there was no evidence of a relationship of trust and confidence which would rebut the general rule. Without a fiduciary relationship, there is no duty to disclose. Since the defendant made no affirmative material misrepresentation to Hayes when offering her the contract, the court held that reasonable minds could only conclude that the plaintiff could not recover for fraud.

In *Henley v. American Reliable Ins. Co.*,[32] the borrowers brought a state court action against the lender alleging that the lender should be liable for fraudulent misrepresentation and negligence in connection with sales of credit life and disability insurance. Specifically, the plaintiffs alleged that the lender misrepresented whether credit insurance was a condition of the loan agreements. After the initial execution of the loan agreements, and before filing the action, the plaintiffs renewed their loan and repurchased the credit insurance. The defendants removed the action to federal court and moved for summary judgment.

The *Henley* court awarded summary judgment for the defendants, persuaded largely by the fact that the borrower plaintiffs had renewed the loan and repurchased credit insurance as part of the renewal. The court concluded that borrowers who re-executed loan agreements and repurchased credit life and disability insurance from the lender waived claims against the lender related to alleged misconduct in connection with the initial sale of credit insurance. As in *Benson, Howard*, and *Hayes*, the court found that the loan documents the plaintiffs received plainly stated that they were not required to purchase credit insurance from the defendants, and each plaintiff should have read or had read those documents when they originally executed their loan documents. Because each plaintiff possessed this knowledge and subsequently re-executed renewal loans and again purchased credit insurance, the plaintiffs waived any claims they might have had based on the defendant's misconduct.

B. Commission/Premium Cases

Lenders and insurers also have defended allegations relating to the premiums and commissions that lenders or insurers earned in conjunction with credit property insurance.

In *Martin v. Equity One Consumer Discount Co.*,[33] the plaintiffs filed a one-count class action lawsuit against the defendant lender under the TILA. The plaintiffs contended that the defendant's failure to disclose that it received a commission on its sale of credit life insurance violated the TILA. The defendants filed a Motion to Dismiss pursuant to Fed. R. Civ. Proc. Rule 12(b)(6).

Under section 1638(a), [34] a creditor must make various disclosures to a consumer who seeks an open-end credit plan. Specifically, the creditor must disclose the "amount financed" and "a written itemization of the amount financed." Under the clear terms of the statute, the "amount financed" and the "written itemization" are separate items. Statutory damages are only available if the creditor violates the provision requiring disclosure of the "amount financed." Because the plaintiffs complained that the defendant had violated the portion of the TILA relating to a written itemization, the plaintiffs were foreclosed from recovering statutory damages. Since the plaintiffs had not sought any other relief, their claim was dismissed.

In *MIC Life Insurance Co. v. Hicks*, [35] the plaintiff filed suit against the defendant insurer and the defendant lender for failure to timely refund an unaccrued credit life insurance premium. The trial judge directed a verdict against both defendants for the amount of the unrefunded premium as actual damages. The jury then awarded a total of $36 million in punitive damages, which the trial court remitted to a total of $6 million. The appellate court found that a jury issue existed regarding the liability of the lender for the unrefunded insurance premium and reversed the punitive damages award against the insurer. The matter was then appealed to the Mississippi Supreme Court.

The Mississippi Supreme Court concluded that a directed verdict against the lender was inappropriate because a jury issue existed regarding the liability of the lender for the return of the unearned premium after its installment loan was satisfied. The lender had issued a written notice to its borrower suggesting that she contact the automobile dealer or the insurance company regarding a possible rebate of the unearned premium. The Mississippi Supreme Court found that the notice system was not the most effective way of refunding unearned premiums. If the lender used this system as a means to reduce the number of refunds requested, then a jury question would exist regarding the lender's breach of its obligations to its customer, including those of good faith and fair dealing. While the trial court record showed some evidence of a conspiracy between the lender and the insurer, there was not sufficient evidence to enter a directed verdict.

Moreover, while the defendant insurer's conduct warranted a finding of punitive damages, the Mississippi Supreme Court, applying *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, [36] found that the $1 million punitive damages award entered by the trial court was grossly excessive. Moreover, the Supreme Court found that a number of prejudicial trial errors warranted the reversal of the punitive damages award, including the trial court allowing the plaintiff's counsel to refer to an unrelated recent $38 million verdict.

In *Singleton v. Protective Life Insurance Co.*, [37] the plaintiffs filed a class action lawsuit against the defendant lender and defendant insurer, alleging that the plaintiffs were sold more credit life insurance than they needed. The trial court entered summary judgment in ***246** favor of both defendants and the plaintiffs appealed. The plaintiffs contended that the amount of the credit life insurance policy was based on the total face amount of the loan, rather than the remaining unpaid balance of the loan, and that the lender's employee who had sold the insurance made misrepresentations to the plaintiffs about the amount of insurance.

Singleton raised the question of whether the defendants sold excessive credit insurance or overcharged the plaintiffs on the credit insurance purchased. The appellate court affirmed the district court's entry of summary judgment for the defendants, stating that the borrower presented no evidence that the defendants overcharged them or committed fraud.

The plaintiffs in *Singleton* attempted to raise an argument under *McCullar v. Universal Underwriters Life Insurance Co.*, [38] to argue that the defendants should be liable for selling excessive credit insurance. In *McCullar*, the Alabama Supreme Court held that the defendants violated applicable banking regulations when they sold credit insurance to the plaintiff which at all times exceeded the unpaid balance of the loan, and represented to the plaintiff that the insurance was the amount needed. However, the *Singleton* plaintiffs could not provide evidence to support the contention that the lenders sold them more insurance than they needed. Further, the plaintiffs admitted that they knew the premiums were being charged on the balance of the principle and accrued interest. Accordingly, the *McCullar* analogy failed.

The plaintiffs then shifted their argument to allege first that the defendants overcharged them by charging excessive rates, and then that the rate was applied to the wrong loan amount. However, since the rates were disclosed to the borrowers and other parties, the plaintiffs' evidence could not support the allegation that the rates were misapplied.

Moreover, while the plaintiffs attempted to allege claims of fraudulent conduct, they could provide no evidence that the defendants materially misrepresented information. The plaintiffs knew the premiums were calculated on a daily basis and varied slightly, and since the rates and premiums were disclosed, no evidence of fraud existed.

In *Printis v. Bankers Life Insurance Company,* [39] the insured brought an action against a credit life insurer to recover excessive premiums, for a credit life insurance policy based on the total amount of payments through the life of the loan rather than on the amount of debt and accrued interest. The Georgia Superior Court dismissed the action and the insured appealed. The Court of Appeals affirmed, and certiorari was granted in the Supreme Court of Georgia.

The Georgia Supreme Court considered whether a premium for credit life insurance should be calculated on the total payments due, or on the amount financed. In *Printis*, the Court affirmed the judgment of the appellate court which held that the premium for credit life insurance could be calculated on the total payments due through the life of the loan.

Both appellate courts relied heavily on state statutes in reaching their holdings. The applicable Georgia state law, section 33-31-4(a), states that the amount of insurance shall not exceed the unpaid "indebtedness" on the date of death, and "indebtedness" is statutorily defined as "the total amount payable by a debtor to a creditor in connection with a ... credit transaction." The Georgia Supreme Court held that application of the statutory definition of "indebtedness" to the sentence within section 33-31-4(a) results in the conclusion that the allowable amount of insurance coverage is the unpaid portion of the total of payments, an amount that would include the remaining amount financed plus unearned interest. Since the insurance policy's coverage decreased every month by the amount of a monthly payment, the insurance coverage at the date of death will be equal to the unpaid portion of the total of payments. While the appellant insured argued that the maximum authorized amount of insurance should be the "payoff balance" on the day of death, an amount not including unearned finance charges, the statute does not limit the amount of credit life insurance that can be sold to the "payoff balance." Rather, the statute specifically provides that the maximum authorized amount of insurance is the unpaid portion of the total of payments, an amount that would include the remaining amount financed plus unearned interest, *i.e.*, the unearned finance charges. This reading of the statute led the *Printis* court to hold that the premium for credit life insurance, based on the total payment due through the life of the loan, was not excessive.

C. Class Certification Cases

Plaintiffs raising allegations of misconduct in connection with the issuance of credit insurance have often attempted to bring their claims on behalf of a class of similarly situated litigants.

In *Voyager Insurance Companies v. Whitson*, [40] the insurers appealed a class certification order obtained by policy-holders in an action alleging that the premiums being charged by insurers for credit life and credit property insurance were improperly calculated on the total of the payments or on some other amount greater than the amount actually financed. Voyager sold credit property insurance and credit life insurance to credit customers of certain lenders. After the credit customers financed their loan, the amounts of the Voyager premiums were added to the amount financed in the loan contracts. Voyager received approval from the Alabama State Department of Insurance for all credit insurance rates and used state-approved forms. Initially Voyager used the total of payments method of rating credit life insurance. In May 1996, Voyager began to rate credit life insurance on the modified "net plus one payment" formula.

***247** The plaintiffs purchased Voyager credit insurance policies when the policy's premium was calculated on the total payments of the loan rather than the amount financed. The insured policyholders initiated a class action alleging that the insurer had improperly calculated the premiums and was liable for unjust enrichment and negligent wanton hiring and supervision. The predominance inquiry for a class action tests whether the proposed classes are sufficiently cohesive to warrant adjudication by a single representation. In *Voyager*, the insured failed to meet the predominance requirement because each policyholder would have had to prove on an individual basis that he or she purchased credit life or credit property insurance under a mistake of fact or as a result of fraudulent supervision with respect to how the premiums were calculated. Since the negligent or wanton hiring and supervision claim could only be maintained if customers prove that the alleged oral misrepresentations or omissions were made to each class member, the evidence did not support a finding that questions of fact common to the class members predominated over questions applicable only to the individual class members.

In *Hammett v. American Bankers Insurance Co. of Florida*, [41] the insured parties brought suit against credit insurers alleging they had violated the Racketeer Influence and Corrupt Organizations Act (RICO) and breached involuntary unemployment insurance agreements by failing to pay minimum amounts on a credit account. The plaintiffs moved for class certification on this issue. The case concerned the defendants' administrative process for paying the minimum monthly payment to credit card holders who had purchased involuntary unemployment insurance from the defendants. The plaintiffs alleged that the defendants' policy provisions stating that the defendants would make minimum monthly payments on accounts in the event of "involuntary loss of employment" were not followed by defendants. The plaintiffs alleged that the defendants devised a scheme wherein claims were not processed on a timely basis, and further that the defendants created self-terminating policies by failing to pay amounts equal to the insureds' finance charges plus the credit insurance premium it automatically charged the insureds' accounts.

The *Hammett* court denied class certification because the predominance of the damages claims precluded a class action from being the superior method of adjudication. While the other requirements were satisfied by this action involving standardized forms and policies, the individual interests of the putative class members predominated over those of the class and certification was denied.

The court rooted its decision in the fact that the potential class members' claims for damages predominated over their claims for equitable relief. The court found that assessing entitlement to damages for the putative class would require individualized determinations involving each putative class members' credit card holder agreements, claims history, and the degree of non-pecuniary loss. This individual resolution of liability and damages claims for each class member would make the class unmanageable. In addition, the plaintiffs' state law claims would require adjudication under the laws of many states and the plaintiffs bore the burden of proving through extensive analysis that no material variations existed among the laws of the states. Since the plaintiff did not provide any analysis to assist the court, or to refute the defendants' contention that her breach of contract claim implicated state law, the court found that the plaintiff had not met her burden of showing that common questions of law would predominate.

In *Frelin v. Oakwood Homes Corporation*, [42] the plaintiffs moved for class certification of a "false insurance" class action claim against the defendants. The proposed class included all people who were sold a mobile home by the defendants and were assessed a charge for homeowner's insurance for credit life protection that was added to the principal amount of each class member's loan and/or was renewed without their consent or permission. Under Arkansas law, a trial court may certify a class only if the party seeking certification establishes: (1) numerosity; (2) commonality; (3) predominance; (4) typicality; (5) superiority; and (6) adequacy. The *Frelin* court denied certification of the false insurance class due to unmanageability of the class and failure to meet the requirements for class certification.

As to numerosity, the only evidence regarding the number of customers who were allegedly required to purchase American Bankers' home insurance as a condition of an Oakwood sale and financing transaction was based on the putative class counsel's speculation. It was insufficient for the plaintiff to simply allege numerosity as to the false insurance class without making a corresponding evidentiary demonstration on impracticality. Further, the threshold commonality was not demonstrated because the plaintiffs themselves admitted that, to know what was said to other members of the putative class on insurance issues, the fact finder would have to hear the individual testimony of each member.

The court also held that the predominance requirement was not met because the action alleged different oral communications between the plaintiffs and defendants, which raised individual issues regarding state of mind, proximate causation, and damages. While the plaintiffs claimed that the defendant's sales agents were trained to follow a script during the closing process of the plaintiffs' sales transactions, and that the prospective class members were routinely misled, the court found that each class member would have to make his or her own highly individualized evidentiary demonstration regarding the oral sales presentations. Furthermore, the court found that the predominance requirements were not met in light of the ***248** fact that the state law issues required adjudication under the laws of several states and the courts would have to apply individual conflicts of law analyses to each plaintiff's claim. Since the case presented numerous individual issues that went to the heart of the defendants' and plaintiffs' conduct, causation, injury, and damages, the court found the defendants' liability to each plaintiff would have to be resolved on a case-by-case basis. Accordingly, individual issues of causation and reliance would predominate over common issues at trial.

Moreover, in order to meet the typicality requirement, a class representative's claims or defenses must be typical of the claims or defenses of the class. Yet, common requests for relief for common legal theories do not establish typicality when the facts required to prove the claims are markedly different among class members. In *Frelin*, since proof of the plaintiff's loss of the insurance premiums would not necessarily demonstrate the defendants' liability to all other putative false insurance class members, the court held that the plaintiffs failed to show that the typicality requirement had been met. Each individual class member's insurance claim would depend on individualized facts relating to what they were allegedly told by Oakwood sales representatives and, accordingly, the class representatives claims could not be typical of the putative class members.

Finally, Fed. R. Civ. Proc. Rule 23 required the court to find that a class action was both the superior method of adjudicating the claims and was practically manageable. Under this test the class vehicle must be better than, not merely as good as, other methods of adjudication. While the plaintiffs argued that the false insurance class was superior because individual plaintiffs have very little incentive to pursue their rights in court under the statutes on which this claim was based, a plaintiff could still recover substantial individual damages for his or her claim. In addition, since an individualized inquiry would be required to determine what each putative class member was told in oral sales presentations, class certification was deemed to impose an excessive managerial burden on the court. Moreover, since each putative false insurance class member would have to offer proof on the amount of damage he or she allegedly suffered, the need for a complex individual determination weighed strongly against class certification. The *Frelin* court held that certification of the class should be denied on class identification superiority and manageability grounds alone.

Rule 23 also requires that the representative parties fairly and adequately protect the interests of their proposed class members. To satisfy this adequacy element, the plaintiffs' counsel merely alleged that they were "highly experienced in class action litigation." The court deemed this allegation insufficient because the plaintiffs themselves must make an evidentiary demonstration of their adequacy as class representatives. Since the recorded evidence suggested adequacy difficulties concerning the representative plaintiffs, the court held that the plaintiffs did not meet the requisite adequacy demonstration sufficient for certification of the class.

D. Arbitration/McCarran-Ferguson Cases

Often lenders or insurers attempting to defend claims of misconduct in connection with credit insurance will move to compel plaintiffs to submit their claims to arbitration pursuant to the form arbitration clauses customarily found in loan documents. Common obstacles and issues faced in a motion to compel arbitration are discussed in the cases below.

In *American Heritage Life Insurance Company v. Orr*, [43] borrowers who obtained consumer loans which included the purchase of credit life and credit disability insurance brought an action in state court against the lender and insurers alleging fraudulent misrepresentation and conspiracy to sell unnecessary insurance at an exorbitant premium. The lenders and insurers brought a separate action in federal court seeking to compel arbitration under the Federal Arbitration Act (FAA) and stayed the state court proceedings. The federal district court entered an order compelling arbitration and staying the state court proceedings, and ordered the case closed. The borrowers appealed.

The Fifth Circuit U.S. Court of Appeals held that: (1) the district court's order closing the case was a final, immediately appealable decision under the FAA; (2) the McCarran-Ferguson Act did not reverse preempt the application of the FAA to the arbitration agreements at issue; (3) the borrowers were not entitled to a jury trial under the FAA or the Seventh Amendment; and (4) the alleged high cost of arbitration did not render the arbitration agreements unenforceable.

The *Orr* appellants alleged that because the district court's order compelled arbitration and "closed" the case instead of compelling arbitration and "dismissing" the case, the court lacked jurisdiction to hear the appeal of the ruling of the district court. Yet the *Orr* court noted that the U.S. Supreme Court has held that an order dismissing an action is a "final decision," *i.e.*, one that "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment." [44] The *Orr* court found that in distinguishing the terms "dismiss" and "close" as they apply to a disposition of a case, the appellees were attempting to disregard the Supreme Court's instruction to apply the well-established meaning of the term "final decision." The court stated that there was no practical distinction between "dismiss" and "close" for purposes of this appeal.

Furthermore, the court held that where a district court, with nothing before it except the issue concerning whether to compel arbitration in state court proceedings, issues an order compelling arbitration, staying the underlying state court proceeding, and closing the case, thereby effectively ending the entire matter ***249** on its merits and leaving nothing more for the district court to do but execute the judgment, the decision is final within the contemplation of the FAA. Accordingly, the district court's order was a final, appealable decision.

The *Orr* court noted that the McCarran-Ferguson Act bars application of the FAA to insurance contracts only to the extent that a state statute addresses the same issue. In this case no Mississippi statute addressed, much less prohibited or restricted, arbitration of the credit insurance-related disputes. While the appellees cited opinions of the Mississippi Attorney General to suggest that arbitration of such disputes is not permitted, the court found that "mere policy statements of state officials or administrative rule interpretations of government entities do not bar application of the FAA to insurance contracts." Rather, a state statute must bar application of the FAA to such insurance contracts. The appellate court affirmed the district court's ruling that under the FAA the agreements were valid, enforceable, and irrevocable, and the McCarran-Ferguson Act did not preempt application of the FAA to these agreements.

The FAA permits parties to demand a jury trial to reserve factual issues surrounding the making of an arbitration agreement or the failure, neglect, or refusal to perform the agreement. While the *Orr* appellants argued that their allegations that the agreements were unconscionable put the making of the agreements in issue, the court held that procedurally, unconscionability is not the equivalent of questioning the "making" of an arbitration agreement. Accordingly, the court held that under the FAA, the appellants had not met their burden to show that they were entitled to a jury trial. Further, appellants also did not have a right to a jury trial under the Seventh Amendment since the clear language of the arbitration agreement waives such a jury trial.

The appellants in *Orr* attempted to side-step this waiver by arguing that the agreements were unenforceable because the plaintiffs could be charged arbitration fees. The court rejected this argument, citing the Fifth Circuit in *Williams v. CIGNA Financial Advisors*,[45] which held that without more, the mere possibility that a party may have to share in a payment of the arbitrator's fees is not a sufficient reason to invalidate an arbitration agreement. Furthermore, the *Orr* court held that when a party fails to specify excessive arbitration costs and instead speculates that a risk exists that the party will be saddled with prohibitive costs in the arbitration proceeding, the court is not required to invalidate the arbitration agreement.

In *Anderson v. Ashby*,[46] a borrower/life insurance beneficiary brought an action against the lender and credit life insurer to recover benefits under a decedent's credit life insurance policy. The circuit court denied the defendant's motion to compel arbitration and the defendants appealed.

The borrower and her now deceased husband had gone to defendant American General Finance's office to obtain credit life insurance. While at the office, the borrower claimed that she and her husband asked the insurer's agent to explain the loan documents to them because they were unable to read and understand the documents. Furthermore, the operating procedures of American General Finance applicable to those who are blind or illiterate require the representative to explain the documents to the customer before obtaining the customer's signature.

The agent alleged that he explained the loans and the credit life insurance documents to the Ashbys, but Mrs. Ashby denied that the agent explained the arbitration clause in the agreement. The note and security agreement executed by the Ashbys contained an arbitration clause which extended arbitration to every cause of action that might conceivably rise in favor of the Ashbys, and applied to every individual or entity against whom the Ashbys might bring a claim. Furthermore, the arbitration agreement gave the defendants exclusive authority to choose or reject arbitration, and limited the Ashbys' recovery to no more than five times the economic loss, while preserving American General Finance's right to seek full redress for its claims.

On appeal, the Supreme Court of Alabama held that the arbitration clause in the note and security agreement was unconscionable and unenforceable and that the question of whether an arbitration agreement between lender and an illiterate borrower was obtained by fraud is reserved for the jury.

The *Ashby* court found that the arbitration clause, which applied to every cause of action that could conceivably arise, purported to invest the defendants with the threshold issue of arbitrability, exempt the lender from a duty to arbitrate, and limit the borrowers' right to recovery while preserving the lender's right to seek full redress, and was unconscionable and unenforceable. Furthermore, since the borrowers would have had to expend considerable time and effort to find a lender that did not require arbitration, and as illiterate borrowers were not informed of the arbitration agreement, such that they were not given a meaningful choice in accepting its terms, the arbitration agreement was unenforceable due to a lack of bargaining power.

The court also found that the circumstances in *Ashby* presented a question of fact as to whether Anderson had a duty to disclose the existence of the arbitration agreement to Mr. Ashby, and whether he did in fact make such a disclosure. Because these issues addressed the validity of the Ashbys' agreement to arbitration, the court held that the issues should be resolved with a fact finder, and summary judgment would be inappropriate.

V. Conclusion

As is apparent from the catalog of cases described above, the credit insurance industry has been bombarded with criticism and legislative upheaval in the last decade. Providers of credit insurance across the country have faced attacks in ***250** almost every arena. Due to the form-based nature of the lending and insurance businesses, when tested in court the strength of these claims largely focuses on the individual circumstances surrounding each sale of insurance. However, the legal issues raised in the cases described above, from the filed-rate doctrine to FAA preemption, provide a framework for providers seeking to avoid and defend allegations of misconduct in the future.

Footnotes

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1 Consumer Credit Insurance Association, Credit Insurance: Affordable Value and Sensible Protection for Consumer Loans, available on request from the Consumer Credit Insurance Association at www.cciaonline.com.

2 *Id.*

3 Consumer Federation of America/Center for Economic Justice. Credit Insurance Overcharges Hit $2.5 Billion Annually, November 15, 2001 *available at* www.consumerfed.org/credins.pdf.

4 Anthony Rollo, *A Primer on Consumer Credit Insurance*, 54 Consumer Fin. L.Q. Rep. 52 (2000).

5 15 U.S.C. § 1601, *et seq*.

6 Due to the fact that Mississippi courts have been the most active forum in recent years for such suits against the credit insurance industry, a number of the cases cited originated in Mississippi courts. However, the issues raised in these Mississippi cases evidence a nationwide trend. Moreover, the lessons learned from such decisions are widely applicable.

7 S.B. 1149, codified at NCGS 24-1.1E, 24-10.2; effective July 1, 2000.

8 66 Fed. Reg. 65617 (Dec. 20, 2001), adopted at 12 CFR § 226.32.

9 *See, e.g.*, Colo. Rev. Stat. § 5-3.5-103 (2004); Conn. Gen. Stat. § 36a-746 (2004); Fla. Stat. Ann. § 627.679 (2004); Ga. Comp. R. & Regs. r. 120-2-27.09.

10 *See, e.g.*, Colo. Rev. Stat. § 5-3.5-103(1)(F) (2001).

11 Conn. Gen. Stat. § 36a-746f(a) (2004).

12 *Id.* at § 36a-746f(b).

13 Fla. Stat. Ann. § 627.679(c) (2004).

14 Ga. Comp. R. & Regs. r. 120-2-27-.09(7)(d) (2004).

15 *Id.*

16 *See* 12 CFR § 226.4(b); *compare* 12 CFR § 226.4(d)(1) (setting forth circumstances where credit insurance does not have to be disclosed as part of the finance charge), and 12 CFR § 226.4(d)(3) (setting forth circumstances where debt cancellation fees do not have to be disclosed as part of the finance charge).

17 274 F.3d 1118 (7th Cir. 2001).

18 Regulation Z, 12 CFR § 226.4(d)(1).

19 *Id.*

20 237 F.3d 803 (7th Cir. 2001).

21 McGee v. Kerr-Hickman Chrysler Plymouth, 93 F.3d 380 (7th Cir.1996).

22 12 CFR § 226.4.

23 2003 WL 21471913 (S.D. Miss.).

24 Civ. Act. No. 3:01CV91WS (S.D. Miss. July 14, 2003).

25 799 So.2d 25 (Miss. 2001).

26 244 F. Supp.2d 672 (N.D. Miss. 2003).

27 Miss. Code Ann. § 15-1-67 (2004).

28 195 F. Supp.2d 811 (S.D. Miss. 2002).

29 2003 WL 1248119 (Ohio App. 9 Dist. 2003).

30 574 S.E.2d 616 (Ct. App. Ga. 2002).

31 2002 WL 1608445 (Ohio App. 6 Dist.).

32 2002 WL 31051003 (N.D. Miss.).

33 194 F. Supp.2d 469 (W.D. Va. 2002).

34 TILA, 15 U.S.C. § 1638(a) (2004).

35 825 So.2d 616 (Miss. S.Ct. 2002).

36 532 U.S. 424, 121 S.Ct. 1678, 1683 (2001).

37 2003 WL 860663 (Ala. S.Ct. 2003).

38 687 So.2d 156 (Ala. 1996).

39 2003 WL 21486897 (June 30, 2003 Ga.).

40 2003 WL 21040594 (May 9, 2003 Ala.).

41 203 F.R.D. 690 (S.D. Fla. 2001).

42 2002 WL 31863487 (Nov. 25, 2002 Ark. Cir.).

43 294 F.3d 702 (5th Cir. 2002).

44 Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 85, 121 S.Ct. 513, 519-21 (2000).

45 Williams v. Cigna Financial Advisors, Inc., 197 F.3d 752, 764-65 (5th Cir. 1999), *cert. denied*, 529 U.S. 1099 (2000).

46 2003 WL 21125998 (May 16, 2003 Ala.).

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