

UPDATE

News of Developments in the Financial Sector and Related Areas

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Arkansas Usury Law

Jessup v. Pulaski Bank, No. 02-3314 is a recent decision by the United States District Court for the Eighth Circuit which allowed Pulaski Bank having all of its banking locations in Arkansas to rely upon the usury rate of Alabama law in connection with a credit card issued to a Texas resident. Pulaski Bank charged the credit cardholder, Jessup a resident of Texas, a rate of 18.5% which would have been usurious under Texas law and under the provisions of the Arkansas Constitution. However, Section 731 of the Gramm-Leach-Bliley Financial Modernization Act (the "Act") permits in-state banks, i.e., banks chartered in Arkansas to charge the same rate of interest as the home state of any out-of-state bank that has a branch in Arkansas, *except when the Arkansas bank has made any loan in any state other than Arkansas*. The facts in the case reflected that Pulaski Bank was chartered in Arkansas and had no branches outside of Arkansas. The credit card application was mailed from Arkansas to the cardholder in Texas. The cardholder utilized the card solely in Texas. The credit card application provided that the

loans made by use of the card would be governed by Arkansas and federal law. The Court noted that the provisions of Alabama interest rate law governed because Regions Bank, a federally insured bank chartered under Alabama law, with its home office in Alabama, maintained branch offices in Arkansas. Therefore, Arkansas banks could charge the interest rates allowed by Alabama law in order for Arkansas banks to compete with out-of-state banks having branches in Arkansas. The cardholder argued that the loan was made in Texas, but the Court held that the loan was made in Arkansas because of the following: (i) the credit card application was mailed to the cardholder from Arkansas, (ii) the application was returned to the bank in Arkansas, (iii) the approval of the application was made in Arkansas and (iv) the credit card agreement stated that all charges would constitute loans under Arkansas and federal law. The Court also relied on an Interpretive Letter issued in August 2001 by the Office of the Comptroller of the Currency in upholding that the loan was made in Arkansas and the imposition of interest charges under Alabama law since the bank had no out-of-state branches. The Comptroller's Interpretive Letter provides that a loan is made at the location of the branch that approves the loan, that extends credit, and that disburses funds. Utilizing this criteria and the fact that Pulaski Bank had no branches outside of Arkansas, the loan to the cardholder was made in Arkansas.

Tax Legislation

The Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act") was recently passed by Congress and gives immediate tax relief to individuals and small businesses. Since the majority of tax breaks are retroactive to January 1, 2003, and the Act lowers marginal

tax rates across the board, it will mean extra disposable income for taxpayers. Some of the major highlights are lower individual marginal tax rates and lower taxes paid on both capital gains and stock dividends. The new law changes the marginal rates for 2003, retroactive to January 1, 2003, to 10, 15, 25, 33 and 35 percent. The tax rate on capital gains drops from 20 to 15 percent for all taxpayers except those in the lowest brackets. Taxpayers in the 10 and 15 percent brackets will pay five percent on any capital gains recognized (down from 10 percent). The 15 percent rate applies to transactions occurring for gains able to be recognized on or after May 6, 2003, and remains in effect only through December 31, 2008. In 2008, taxpayers in the 10 and 15 percent brackets will be taxed on their capital gains at zero percent. In 2009, the capital gains rates are scheduled to return to 20 and 10 percent levels. Stock dividends, which had been taxed at the same rate as ordinary income, will be taxed at 15 percent for most taxpayers effective January 1, 2003. This rate remains in effect until December 31, 2008. Lower income taxpayers will pay taxes on dividends at five percent effective January 1, 2003 through December 31, 2007. In 2008, lower income taxpayers will pay a zero percent tax on dividends.

Variable Annuities

The National Association of Securities Dealers, Inc. ("NASD") has issued an Investor Alert entitled *Variable Annuities: Beyond the Hard Sell* in an effort to curb abuses in the sale of variable products especially in the area where seniors are the targeted investors. The NASD news release reflects that there has been a dramatic increase in the sales of variable products in the last several years and the marketing efforts used by some variable annuity sellers deserve scrutiny when seniors are the targeted investors. Variable annuities are issued by a life insurance company and provide investment choices and the opportunity for tax deferred growth. The Investor Alert notes that while variable

annuities can be appropriate as an investment under the right circumstances, an investor should be aware of the restrictive features, understand that substantial taxes and charges may apply if the investor withdraws his money early, and guard against fear-inducing sales tactics such as a variable annuity protecting the investor from lawsuits or seizures of his assets. The NASD issued the Investor Alert to help seniors and other prospective variable annuity buyers to make informed decisions about how to invest for their retirement. The news release and the Investor Alert is available on the web site of the NASD at www.nasd.com.

Cases, Releases and Rulings

The Federal Trade Commission's Safeguards Rule, which implements the security provisions of the Gramm-Leach-Bliley Act, recently became effective. Financial institutions that are subject to the Rule must have in place a comprehensive security program to ensure the security and confidentiality of customer information. Financial institutions covered by the Rule include companies that engage in a wide variety of "financial services," such as brokering or servicing loans, transferring or safeguarding money, preparing individual tax returns, providing financial advice or credit consulting, providing residential real estate settlement services, collecting consumer debts, and array of other activities that are deemed "financial" by pre-existing regulations. The Safeguards Rule and a list of the financial activities that trigger the Rule can be found on the web site of the Federal Trade Commission at www.ftc.gov.

Mr. Binns is available to meet with your organization or group relating to shareholder issues, increasing capital, regulatory and compliance, areas of profitability, marketing and management responsibilities. He is a frequent speaker on matters regarding mergers, acquisitions, commercial law, securities and banking law. Prior to entering the private practice of law, Mr. Binns was an accountant practicing with an emphasis on securities regulation and regulatory compliance.

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