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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Deceptive Trade Practice? - Sharing of Interest

Stone v. General Motors Acceptance Corporation, is a class action lawsuit pending in the Circuit Court of Saline County, Arkansas, Case No. CIV-218-3, filed on March 20, 2000, and involves whether or not the Defendant General Motors Acceptance Corporation ("GMAC") is engaging in an unfair or deceptive trade practice in the manner in which motor vehicles are being financed by GMAC for purchasers. In this case, Jason Stone ("Stone") was a purchaser of a vehicle which was financed by GMAC. Stone alleges for himself and on behalf of the proposed class that the interest rate quoted to him was GMAC's best or "real" rate, when in fact the rate was actually higher than GMAC's best rate in that GMAC splits a portion of the interest of each loan on a vehicle with the individual dealer that sells the vehicle. Stone argues that the spread or the inflated rate above GMAC's best rate of interest is a misrepresentation that is inherently unfair and deceptive in that the dealer and GMAC are not providing the purchaser of the vehicle with the best interest rate. Stone argues that the inflated rate as a result of the split of interest between the dealer and GMAC is willful misconduct by GMAC, and he should be awarded punitive damages in addition to his actual damages for the unlawful conduct of GMAC. Stone also alleges that not only is the conduct of GMAC a fraud on him but is also an unfair and deceptive trade practice in violation of the Arkansas Deceptive Trade Practices Act by charging finance charges which are in fact in excess of the best or "real" interest rate actually charged by GMAC. Lastly, Stone argues that the active participation between GMAC and its participating dealers is a conspiracy to mislead him to believe that the interest rate quoted was actually GMAC's best or "real" rate for a vehicle loan when in fact it was an inflated rate. No dealers have been named in the lawsuit at this time.

Internet Trade Name

In Interpretive Letter No. 881, the Office of the Comptroller of Currency ("OCC") responded to a request by Landmark Bank, N.A. to conduct business on the Internet under the name of "giantbank.com." The intent of the bank is to use the trade name exclusively on the Internet channel for those customers who wish to establish a relationship with an on-line bank. In its response to the bank, the OCC concluded that nothing in the National Bank Act prohibits the use of multiple trade names referring to OCC Bulletin 98-22 and OCC Interpretive Letter No. 698, reprinted in (1995-1996 Transfer Binder) Fed. Banking L. Rep. (CCH) ¶ 81-013 (February 1, 1996) regarding the use of trade names. The OCC stated that the official name of the bank must be used on all legal documents such as certificates of deposit, signature cards, loan agreements, account statements, checks and other similar documents. To address possible customer confusion with respect to FDIC insurance, new

deposit account customers of both "giantbank.com" and Landmark should sign a document indicating awareness of FDIC aggregation of deposits for the multiple identities. The OCC offered an example of a disclosure in the bank's deposit application forms and deposit disclosure documents on the "giantbank.com" website as follows:

> giantbank.com (Division of Landmark N.A.) and Landmark Bank N.A. are the same FDIC-insured institution. Deposits held under each trade name are not separately insured, but are combined to determine whether a depositor has exceeded the $100,000 federal deposit insurance limit.

Relationship of Bank and Borrower

Mans v. Peoples Bank of Imboden, 340 Ark. 518 (2000), involved the sell of credit life insurance by a bank to its borrower. The borrower executed a note payable to the bank with the proceeds to be used for home improvement. At the same time, the borrower (husband and wife) took out a joint credit life insurance policy on both of their lives to cover the amount of the note. The bank acted as agent for the insurance company and received a commission. Both the note and the credit life insurance policy were for two years. The bank financed the money borrowed and the premium on the policy based on a ten-year amortization schedule. At the end of the two-year period, the note became due and the bank and the borrower entered into an extension of the note with the monthly payments under the note remaining the same. The wife knew that the term of the credit life insurance policy was only two years, but she assumed coverage had been extended on the policy since the payments on the note remained the same. Following renewal of the note, the husband died and the wife made claim to the insurance company under the credit life policy to pay off the note. She was then informed by the insurance company that the policy had lapsed at the end of the original note and her claim would not be paid. The wife sued the bank for negligence in failing to notify her that the policy had lapsed. The court held that without substantial evidence that the banking relationship between the bank and the borrower was fiduciary in nature, or that the course of dealing between the bank and the borrower warranted some type of trust relationship, the borrower had no claim against the bank. In this case, the wife knew that the term of the credit life insurance policy was only for two years and the bank owed no duty to her. There is a dissent in the case that argues that since the bank acted as agent for the insurance company which offered the credit life insurance policy, and having received 30 to 40 percent of the premium paid, the bank assumed a duty to notify the borrower that the policy had lapsed and the bank had a responsibility to act with care in regard to the borrower.

SEC Proposed Privacy Rules

The Securities and Exchange Commission ("SEC") has proposed Regulation S-P which would require broker-dealers, mutual funds and investment advisers to disclose their privacy policies to customers initially and annually during the customer relationship. The proposal requires financial institutions to protect customer information and provide opt-out notices if the institutions plan to share consumer information with non-affiliated third parties. The comment period on proposed Regulation S-P ended on March 31, 2000 (Refer to related article on "Nonpublic Personal Information" in the February 1999 issue of Update.) Comments on proposed Regulation S-P are available on the SEC website at www.sec.gov.