SPRING 2008

A NEWSLETTER FROM THE LAW OFFICES
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Martin & Jones

Martin & Jones Wins Two Important Victories for NC Consumers

Martin & Jones won two important cases on behalf of North Carolina consumers at the North Carolina Supreme Court in recent weeks. Both cases involved the sale of a costly credit insurance product to subprime borrowers. The cases, Tillman v. Commercial Credit Loans, Inc., et al. (02 CVS 593, Vance County) and Richardson v. Bank of America, et al. (02 CVS 2398, Durham County) will help protect the rights of North Carolina consumers for years to come.

In Richardson v. Bank of America, Martin & Jones filed a class action lawsuit seeking to recover money on behalf of subprime borrowers who were unlawfully sold an exorbitantly expensive, abusive credit insurance product. A subsidiary of Bank of America, NationsCredit Financial Services Corporation, had sold credit insurance to borrowers with loans having a term of greater than 15 years' duration even though North Carolina law prohibited its sale with loans over 15 years. The lawsuit seeks to recover the premiums that were wrongfully collected and all loan costs that were increased as a result of the credit insurance having been included in the borrowers' loans. The trial court agreed with the plaintiffs that NationsCredit had committed an unfair trade practice and violated the duty of good faith and fair dealing in making the unlawful credit insurance sales. The defendants appealed that ruling and the North Carolina Court of Appeals affirmed the rulings in favor of class members. Defendants then sought to have the North Carolina Supreme Court reverse the rulings in favor of class members. In an opinion issued March 7, 2008, the North Carolina Supreme Court rejected the defendants' appeal. As a result, nearly 800 North Carolina borrowers will receive substantial refunds of money wrongfully taken from them by NationsCredit. Roughly 150 class members also have a punitive damages claim because the unlawful insurance sales to them were made within the three-year statute of limitations for the good faith and fair dealing claim.

In Tillman v. Commercial Credit Loans, Inc., et al., Martin & Jones represents a group of borrowers who were sold the same type of now-outlawed credit insurance product, by a different lender, Commercial Credit Loans, Inc. Commercial Credit had included in their loan agreements a clause which made it extremely difficult for any borrower to pursue any legal claims against the lender. The clause, known as an arbitration provision, stated that borrowers could not join their claims together. This meant that no matter how similar their claims and how much time and expense could be saved by borrowers pooling their resources and pursuing relief against the lender in a class action lawsuit, the Commercial Credit arbitration clause would not allow it. Martin & Jones challenged the enforceability of the arbitration clause, contending that it was essentially a liability shield. That is, the lender created

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Martin & Jones' Attorneys Honored by Peers

John Alan Jones, Spencer Parris, Hoyt Tessener, and Forest Horne have each been selected by their peers to receive special recognitions.

John Alan and Hoyt have been recognized as among North Carolina SuperLawyers 2008 as well as among the Best Lawyers in America 2008. Spencer Parris has been recognized as a North Carolina SuperLawyer 2008, and Forest Horne has been selected as among the Best Lawyers in America 2008.

Only five percent of the state's attorneys are selected in peer-review surveys each year as SuperLawyers. Attorneys are selected as Best Lawyers by more than two million peer-review surveys completed nationally.

Additionally, each attorney has achieved the highest rating, an "AV" rating, by Martindale-Hubbell legal directory, a peer-review ratings service based on the highest ethical standards and professional ability.

John Alan heads the firm's medical malpractice group. He has recently appeared before the North Carolina Supreme Court receiving favorable decisions on cases involving predatory lending practices in the state. The decisions will allow John Alan and his partner Chris Olson to continue their cases representing low-income borrowers against lending corporations.

Spencer Parris has long represented asbestos exposure victims and their families in cases against manufacturers and employers who knowingly exposed workers to the deadly material. Clients from more than 20 states have hired him to represent them over the past decade. Spencer was previously President of the North Carolina Academy of Trial Lawyers.

Hoyt heads the firm's personal injury, nursing home, and Social Security disability practices. He teaches at Gerry Spence's Trial Lawyer's College, teaches jury selection to Campbell University third-year law students, and is a frequent instructor of continuing legal education programs. Hoyt has chaired the Litigation Section of the North Carolina Bar Association and is on the Board of Governors of the North Carolina Academy of Trial Lawyers.

Forest has held leadership positions in the North Carolina Academy of Trial Lawyers and the North Carolina Bar Association, and has been a speaker at seminars sponsored by these and other legal organizations. He recently represented clients in litigation and settlement with the pharmaceutical company Merck over its withdrawn painkiller, Vioxx.

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a costly, time-consuming grievance procedure to deter borrowers from bringing claims. For instance, the process the lender created meant that a borrower might have to risk several thousand dollars to get back half of that amount. As a result, not a single North Carolina borrower had been able to pursue any legal claim against Commercial Credit even though the lender was able to sue its borrowers in court more than 3,700 times during the same time period.

Martin & Jones' lawyers won a ruling from the trial court in Vance County that the Commercial Credit arbitration clause was unenforceable because it did not allow borrowers any meaningful opportunity to challenge Commercial Credit's lending practices. The case went up on appeal and in an opinion issued on January 25, 2008, the North Carolina Supreme Court affirmed the trial court's ruling in favor of borrowers. As a result, Martin & Jones will be able to pursue a class action lawsuit on behalf of Commercial Credit borrowers who were sold the now-outlawed credit insurance product which had resulted in a tremendous loss of home equity among Commercial Credit borrowers.

The Richardson and Tillman decisions represent incredibly significant victories for class members who stand to benefit from those lawsuits. However, the Supreme Court rulings are also very important for ALL North Carolina consumers. In the Richardson case, Martin & Jones helped establish as the law in North Carolina that a consumer who suffers damages as a result of an unfair trade practice is entitled to recover full damages of three times the amount of the injured person's out-of-pocket damages. The case also established that, as a matter of law, a mortgage lender owes its customers the duty of good faith and fair dealing at all stages of a mortgage loan transaction. If the lender violates that obligation, a borrower may be entitled to recover punitive damages. The Tillman case is important for North Carolina consumers because it helps ensure that individuals will have means to seek redress of grievances against stronger parties with whom they do business. As a result of the Tillman decision, large commercial corporations cannot impose on their customers unreasonable arbitration clauses which essentially shield the business from any legal challenge to its business practices.

ALERT:

Martin & Jones is investigating potential injury claims involving the drug Trasylol. This drug was administered during anesthesia to control bleeding in open heart surgery. Patients may not even be aware that the drug was used during their procedures. Trasylol was removed from use last November at the request of the FDA due to concerns of kidney failure and even death as a result of taking this drug. f you know of someone who may have been harmed by Trasylol, please invite them to call Martin & Jones for a free consultation. Our toll-free number is 800.662.1234.

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AW OFFICES OF MARTIN & JONES

Nursing Home Update - READ CAREFULLY BEFORE SIGNING!

When faced with the overwhelming decision to admit a family member to a skilled nursing home, your primary concern is finding a suitable facility that will provide the very best care for your loved one. Once you have found the facility that you hope will provide proper care, the admission process may seem like the easy part - that is, until the stack of paperwork requiring your signature is presented to you! It is important to take the time to read each document you are asked to sign and ask the staff to explain anything you do not understand.

A growing trend in the nursing home industry is to include an arbitration clause as part of the wording of the admission agreement or as a separate stand-alone document called an "Arbitration Agreement."

Hoyt Tessener, our attorney handling nursing home claims, answers some questions about arbitration agreements and what signing such an agreement could mean for your family.

Q - Have you seen an increasing number of arbitration agreements in the nursing home claims that you work with?

A - Yes. Approximately 80 percent of nursing home agreements now have an arbitration clause. Usually it is hidden among the admission documents.

Q - What is arbitration?

A - Arbitration is a way to settle a claim or dispute outside of our court system. The parties supposedly agree on the method of the arbitration. The agreement dictates how a dispute is decided, who decides it, and the amount you are allowed to receive.

Q - So, by agreeing to arbitration, does the resident's family give up something?

A - Most definitely. There is nothing wrong with choosing arbitration as long as it is fair. Unfortunately, the arbitration agreement in the nursing home admission documents is not explained to the family members and is very one-sided. For example, most arbitration agreements require that a claim be decided by a nursing home person. In addition, the loser may have to pay the costs to the winner. Finally, the amount of damages is severely limited.

Q - Can you give some general guidance to families that might be faced with this issue?

A - Ask if there is an arbitration clause or agreement. If there is, ask for an explanation of the arbitration procedure. Remember that you are in a bargaining position. Try to find another nursing home available for your loved one. If you are not comfortable signing the arbitration clause and another facility does not require arbitration, tell the administrator. If unsure about what you are signing, ask an attorney to review the documents before you sign.

Consumer Corner: "Debt Adjusting"

Consumers should be wary of companies promising help with managing debts, foreclosure assistance, or debt or foreclosure counseling. A number of companies have taken advantage of North Carolina homeowners in recent years when those homeowners are at their most vulnerable. These companies regularly review court dockets to obtain the names and addresses of homeowners who have recently been named as defendants in foreclosure proceedings. After getting a list of names of homeowners in foreclosure, these companies typically send a flyer or letter solicitation to the distressed homeowner, urging the homeowner to contact the "debt relief" or "foreclosure assistance" company for "foreclosure consulting." When homeowners contact the company, the homeowners are typically told that the company can likely save the homeowners' home from foreclosure. The company will often represent that their success rate in preventing foreclosure is "about 95%." The company will tell the homeowner that the company must collect a "foreclosure consulting fee" before it begins "foreclosure assistance" or "foreclosure consulting services." These companies then often tell the homeowner that the homeowner must have no further contact with their mortgage lender.

After collecting their service fee, usually equal to the homeowner's mortgage payment, the company will do nothing that is of any benefit to the homeowner. For instance, the company may simply contact the consumer's mortgage lender to confirm the amount of the arrearage and the amount the lender would be willing to accept to reinstate the mortgage. This information, of course, is of no benefit to most consumers because they are already aware of the amount they owe their mortgage lender and are unable to pay that amount. As a result, the consumer loses money they desperately need to try to get current with their mortgage loan and ultimately fall further behind with their payments. Meanwhile, the "debt relief" or "foreclosure assistance" company does nothing worthwhile, avoids the customer's calls or represents that "they are working on it" until shortly before the scheduled foreclosure hearing, when the company may finally concede that it is unable to stop the foreclosure of the borrower's home. In addition to misrepresenting to homeowners what the company will or can do to "help," a number of these companies have falsely represented that they are non-profit organizations.

The actions of these companies are unfair and deceptive. As of December 31, 2005, those practices, known as "debt adjusting" are expressly unlawful. North Carolina General Statute § 14-423(a)(2) makes it illegal to collect an up-front fee for acting as an intermediary between a debtor and his or her lender or other creditor. Thus, the practices described above, where a company offers to provide "foreclosure assistance" or otherwise engages in "debt adjusting" for an advance fee is unlawful.

Consumers should be aware of companies promising help with "foreclosure assistance" and "debt relief." If you or someone you know has lost money due to unfair or deceptive consumer practices, please feel free to contact our firm for a free consultation regarding your legal rights.

Chris Olson Named Shareholder

In January, Chris Olson became a shareholder in the law firm of Martin & Jones. Practicing law since 1994, Chris has been at Martin & Jones since 2001. At Martin & Jones, he has represented individuals who suffered serious workplace injuries. He has also represented individuals in premises liability and motor vehicle collision cases. Chris continues to work on cases involving defective products and toxic chemicals. Currently, he is working on consumer protection cases, including class actions and predatory lending lawsuits.

Prior to joining Martin & Jones, Chris practiced for almost five years with a defense law firm in Raleigh. Immediately after law school, he served as a law clerk to the Honorable Franklin T. Dupree, Jr., United States District Court Judge, United States District Court for the Eastern District of North Carolina. Chris graduated from Campbell University School of Law with honors in 1994. He received his undergraduate degree from the University of North Carolina at Chapel Hill in 1990.

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