



Mortgage Litigation on the Rise; New Regulations Threatened

A federal district court in Wisconsin recently granted summary judgment against a leading mortgage lender in a case that, according to a February 6, 2007 *Washington Post* story, “worries the lending industry because of the potential for heavy losses,” and “underscores the rising uncertainty surrounding the kinds of loans that have emerged in the past five years.” The class-action case, *Andrews v. Chevy Chase Bank, FSB*, 2007 WL 112568 (E.D. Wisc., Jan. 16, 2007), challenged the adequacy under the federal Truth-in-Lending Act of disclosures relating to the terms of nontraditional mortgages. The Court not only held the bank liable, but also held that “plaintiffs may avail themselves of the remedy of rescission.” According to the *Post*, plaintiffs may be entitled to “a refund of everything they have paid to live in their houses for years.”

In the same vein, *The Wall Street Journal* reported February 7, 2007 that “the Senate Banking Committee is holding hearings today on ‘predatory lending’” practices involving mortgage lenders and brokers. According to the *Journal*, Banking Committee Chairman, Chris Dodd, “is in high dudgeon” and is “threatening legislation.”

Mortgage providers will face increasing litigation and regulatory risk as market interest rates fluctuate, ARMs adjust, and the housing market corrects. The stakes are especially high for institutions that originated, marketed, brokered, or serviced nontraditional products — especially so-called option-ARMs, I/Os, and loans with teaser rates and/or prepayment penalties.

Arnold & Porter LLP’s Financial Institutions Litigation team has successfully defended banking institutions against claims based on the Truth-in-Lending Act, state consumer fraud statutes, and common-law causes of action, including claims based directly on the terms of ARM contracts (e.g., *Bastin v. FNMA*, 104 F.3d 1392 (D.C. Cir. 1997)). The firm’s attorneys have defeated motions to certify classes in a variety of high-stakes litigation contexts, and currently represent some of the nation’s most prominent financial institutions. Our legislative specialists stand ready to advise on matters pending at the federal and state level, and our regulatory attorneys enjoy strong credibility with the principal banking agencies.

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This summary is intended to be a general summary of the law and does not constitute legal advice. You should consult with competent counsel to determine applicable legal requirements in a specific fact situation.

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Arnold & Porter attorneys will continue to monitor the Andrews case and the Senate Banking Committee hearings. For additional information on these or any other issues facing mortgage lenders in today's legal climate, please contact any of these attorneys:

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