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CLASS ACTIONS ARE CRITICAL TO REMEDY FINANCIAL DISCRIMINATION AGAINST MINORITIES

Predatory lending and discriminatory practices by financial institutions are critical civil rights issues. Minority communities are often targeted for the worst kind of fraud and abuse. Private litigation has been critical not only to remedy past and prevent future fraud and discrimination by financial institutions but also to compensate those who have been defrauded.

Yet there are many reasons why filing an individual lawsuit against a bank, lender or insurance company (as opposed to joining a class action) is an unrealistic option for anyone experiencing financial fraud and discrimination. First, class actions may be the only way to prove or remedy "systemic discrimination." As explained by the NAACP Legal Defense & Educational Fund, Inc. (LDF), "Without a broad discovery of company-wide statistical and other data that class actions facilitate, it is difficult for civil rights plaintiffs to prove a pervasive pattern and practice of discrimination."[1]

In addition, it is extremely expensive to prove institutional discrimination. Notes LDF, "In many civil rights cases, most, if not all, pertinent information is within the exclusive province of the defendant—through its agents, employees, records, and documents. Discovery of this evidence—especially in challenges to institution-wide practices of large corporate defendants—is expensive; thus, the ability to spread the costs over a class is key to obtaining redress."[2]

Today, the ability to stop predatory and discriminatory financial practices is in jeopardy as a result of forced arbitration clauses with class action bans in consumer contracts. These clauses make private litigation against violators virtually impossible. They allow corporations and businesses to ignore financial and civil rights laws and operate with impunity.

The following are examples of recent class action settlements won on behalf of racial minorities who have suffered discrimination by financial institutions. They are all contained in CJ&D's extensive class action compilation, *First Class Relief*.[3] These cases illustrate just how critical class actions are, and what is at risk by the increasing use of forced arbitration clauses and class action bans in consumer contracts.

AUTO FINANCE DISCRIMINATION

African-American and Hispanic customers have often been systematically charged higher markups on auto loans than White borrowers. "It is this fact – coupled with federal laws outlawing discrimination in credit markets – that led to a series of lawsuits against auto lending institutions."[4] And while abusive practices by some companies continue, class actions have "helped reshape loan pricing throughout the industry"[5] and have been of tremendous help to individual victims. As LDF has noted, these class actions "exposed financial arrangements between leading vehicle financing companies and car dealerships that resulted in systematically higher mark-ups on financing for African-American and Latino purchasers than for similarly situated whites.… These class actions led to industry-wide reforms, including caps on dealer mark-ups, as well as pre-approved financing for minority customers and consumer education initiatives.[6] Typically, class action settlements have resulted in: 1) Limits on mark-ups; 2) pre-approved, no-markup offers of credit to victims of discrimination; and 3) consumer education and assistance programs aimed at helping communities with credit financing.[7]

PREDATORY LENDING

Class actions have been particularly helpful in stopping abusive lending practices in minority communities. One such practice is payday lending, where crooked payday loan companies impose illegal fees and interest leading to years of debt and obligations for borrowers. Minority borrowers have also been the target of unscrupulous mortgage practices, like misapplied payments, abusive and excessive fees, the selling of unnecessary single premium insurance products and even Ponzi schemes. Class actions against predatory lenders have resulted in significant settlements that return money to victims, cancel unlawful debt and force companies to stop these abusive practices and comply with the law.[8]

DISCRIMINATORY LENDING

Discriminatory mortgage and other lending occurs when minorities are charged disproportionately higher rates than non-minority borrowers with the same credit risks. This can happen when minorities are charged discretionary financing charges, mark-ups, or subjective fees, or when discounts are offered only in non-minority neighborhoods. Class actions against discriminatory lenders have resulted in substantial recoveries for these discrimination victims and changes to business practices.[9]

DISCRIMINATORY INSURANCE PRACTICES

Insurance companies discriminate when they sell inferior or higher-priced insurance products to minorities or use credit scoring to unfairly charge minorities higher rates. This has occurred with various types of insurance, including automobile and homeowner insurance, life insurance, and burial insurance. Class actions against these companies have resulted in monetary relief for discrimination victims and changes in company policies to prevent future discrimination.[10]

FOR-PROFIT COLLEGES

For-profit colleges with phony credentials sometimes use deceptive tactics to persuade students to obtain federal loans to attend schools. Some of these schools target African-American and low-income students specifically. Class action settlements have resulted in important monetary and other relief for these students, including loan forgiveness.[11]

NOTES

[1] Amicus brief filed by the NAACP Legal Defense & Educational Fund, Inc. in Support of Respondents in the case, *AT&T Mobility LLC v. Concepcion,* 131 S. Ct. 1740 (2011), p. 19; http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_RespondentAmCuNAACPLDEF.authcheckdam.pdf

[2] *Ibid*.

[3] http://centerjd.org/content/first-class-relief-how-class-actions-benefit-those-who-are-injured-defrauded-and-violated

[4] Mark A. Cohen, "Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation," Vanderbilt Law and Economics Research Paper No. 07-01 (December 14, 2006) at 1, http://ssrn.com/abstract=951827

[5] Ian Ayres, "Market Power and Inequality: A Competitive Conduct Standard for Assessing When Disparate Impacts are Justified," 95 *Cal. L. Rev.* 669, 714-5 (2007), http://digitalcommons.law.yale.edu/fss_papers/1168.

[6] *AT&T Mobility LLC v. Concepcion,* 131 S. Ct. 1740 (2011), p. 12; http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_893_RespondentAmCuNAACPLDEF.authcheckdam.pdf

[7] These class actions include: Baltimore v. Toyota Motor Credit Corporation, (2006), Case Number 2:01-cv-05564-FMC-(Mcx) (C.D. Cal.); Borlay v. Primus Automotive Financial Services, Inc. and Ford Motor Credit Company, (2007), Case No. 3-02-0490 (M.D. Tenn.); Jones v. Ford Motor Credit Company, (2005), Case No. 00-CIV-8330 (PAC)(KNF) (S.D.N.Y.); Willis v. American Honda Finance Corporation, (2005), Case No. 3-02-0490 (M.D. Tenn.); Smith v. Daimler Chrysler Services North America, LLC, (2005), Case No. 00-CV-6003 (D.N.J.)

[8] Edwards v. Geneva-Roth Capital Inc. (2013), Case Number 49C01-1003-PL-013084 (Cir. Ct. Ind.); Reuter v. Davis (2008), Case No. 502001CA001164XXXXMB, 2006 WL 3743016 (Fla. Cir. Ct.); Murdock v. Thomas, (2011), Case No. 06-cvs-01865 (Super. Ct. N.C.); Tillman v. Commercial Credit Loans, Inc, (2009), Case No. 5:08-cv-246 (E.D.N.C.); Arreola et al. v. Bank of America National Association et al., (2014), Case No.: 2:11-cv-06237-FMO-PLA (C.D. Cal.)

[9] Ramirez v. Greenpoint Mortgage Funding, Inc. (2011), No. 3:08-cv-369; Jones, et. al v. Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, et. al (2011), Los Angeles Superior Court, Case No. BC337821; In re First Franklin Financial Corp. Litigation (2010), Case No 5:08-cv-01515-JW; 08-02735 RS; Allen, et al. v. Decision One Mortgage, et al, (2010), Case No 1:07-CV-11669-GAO

[10] Norflet v. John Hancock Life Ins. Co., (2009) 658 F. Supp. 2d 350 (D. Conn.) DeHoyos v. Allstate Corp., (2007) 240 F.R.D. 269, (W.D. Tex.); Williams v. Nat'l Sec. Ins. Co., (2006) 237 F.R.D. 685 (M.D. Ala.); Moore, et al. v. Liberty National Life Insurance Company (2006). Case No 2:99cv3262.

[11] Morgan et al., v. Richmond School of Health and Technology, Inc. (2013) No 3:12-cv-00373-JAG, Dkt #78-1 (D.D.C.)