

# TILA Litigation Reporter

*The national monthly journal that  
tracks and analyzes TILA lawsuits*

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<b>EDITOR'S NOTE</b> .....	2
<b>NEW CASES</b>	
Lawsuit alleges <b>World Savings</b> employed bait-and-switch techniques in its "Pick-a-Payment Equity Builder" mortgage program .....	2
Plaintiff invokes TILA in automobile "yo-yo" sale .....	4
Are stolen funds a finance charge in <b>Chase</b> mortgage? .....	6
<b>Countrywide</b> sued over loan splitting .....	7
<b>First American Title</b> files TILA-based lawsuit against <b>Chase Bank</b> and homeowner .....	9
Class action against <b>Low Pay, Inc.</b> , raises TILA issues regarding unsolicited credit cards .....	11
<b>Litton Loan Serving</b> named co-defendant in predatory lending complaint .....	12
<b>Bank of America</b> sued for TILA violations in automobile loan .....	14
Class action complaint filed against <b>First Margus Financial</b> for failing to make proper interest rate disclosures .....	15
<b>Chase Manhattan</b> arbitration award contested in credit card dispute .....	16
RESPA-based class action complaint against <b>Quicken Loans</b> dismissed .....	17
<b>Builders Title</b> named in class action complaint for TILA and RESPA violations .....	19
Alleged failure to deliver any loan document results in rescission of <b>Countrywide</b> mortgage .....	20
Multiple "Right to Cancel" notices lead to TILA action against <b>AmeriQuest Mortgage</b> .....	22
FAC filed in four-year battle against <b>Wells Fargo Home Mortgage</b> for out-of-range finance charge disclosures .....	22
SAC filed in <i>In re AmeriQuest Mortgage Company Mortgage Lending Practice Litigation</i> ...	24
<b>Fremont Investment</b> sued for failure to deliver disclosures .....	25
Lawsuit targets "foreclosure specialist" <b>United Development Group</b> for TILA violations .....	27
<b>INDYMAC</b> sued for miscalculated finance charge .....	28
Class action complaint alleges <b>Lincoln Technical Institute's</b> educational enrollment plan violates TILA .....	29

\*\*\* This issue includes court activity through September 7, 2007 \*\*\*

**EDITOR'S NOTE**

Welcome to the inaugural issue of **TILA Litigation Reporter**, Page Mill Publishing's newest monthly legal newsletter.

**WHO WE ARE ...**

Page Mill Publishing is a Silicon Valley-based firm that has, over the past three years, established a niche market among the 2,000 newsletters that dot the legal landscape. With this first issue, **TILA Litigation Reporter** joins its sister publications:

- Stock Option Litigation Reporter
- Venture Capital Litigation Reporter
- Hedge Fund Litigation Reporter

These publications were built along four key themes, and you can rely upon **TILA Litigation Reporter** to follow along those same lines.

1. **MONTH-TO-MONTH CASE UPDATES.** As readers of our publications know, we track and analyze dozens of cases monthly. This approach stands in sharp contrast to other newsletters that typically announce a lawsuit when it is filed, but that then frequently drop all mention of the case.  
  
Page Mill Publishing's products are different – our newsletters provide readers with monthly information on all events in each of the numerous cases we track. For example, we report upon motions for summary judgment, motions for sanctions, motions to compel, and on all other pleadings whose contents might help you conduct your practice. Up-to-the-minute information on these court activities is key to knowing how – and understanding why – a case is developing.
2. **NO ADVERTISING.** We don't accept advertisements. Consequently, you don't have to separate the wheat from the chaff, as is required in certain other publications that commingle true litigation news with press releases and ads masquerading as news. Our zero advertising policy also means that we don't taunt you with your competitors' ads.
3. **WE'RE FOCUSED.** Our newsletters' titles tell you about the cases the newsletters cover. We don't have catch-all publications that attempt to appeal to everyone.

4. **WE'RE INDEPENDENT.** Page Mill Publishing is small, privately owned firm, and we are passionately committed to our flat management structure that permits daily interaction between professionals at every level in the company. This close-knit organization permits us to focus on delivering useful, informative newsletters to our subscribers.

Also important is that, as a newsletter-centric organization, we don't compete internally with other divisions that are trying to sell you legal software or services. We simply focus on producing high quality newsletters that deliver useful content.

We believe it is for these reasons that *we now count more than 50 of the nation's 100 largest law firms as our customers.* Augmenting that list are major insurance firms, banks, venture capital and hedge funds, private investors, universities, and government agencies.

**TILA LITIGATION REPORTER**

Page Mill Publishing intends to make our monthly **TILA Litigation Reporter** the definitive source of information on TILA-related litigation across the consumer credit industry.

In this first issue, we cover 20 cases that involve mortgage lenders and brokers, title companies, credit card firms, and automotive lenders. We will track the majority of these cases monthly until they are resolved. This continuing coverage will permit readers to keep abreast of pending developments in TILA case law and prevent them from being caught flat-footed with a court's ruling on a TILA-critical matter.

Providing monthly snapshots of case particulars requires a lengthy newsletter. This month's 30-page issue will be surpassed in length by each future issue, as we provide monthly updates for on-going cases and initiate coverage of new cases.

Page Mill Publishing encourages feedback from all readers – attorneys, lenders, brokers, insurers, regulators, professors, judges, and politicians. With that feedback, we will hone our coverage and features to achieve our goal of having **TILA Litigation Reporter** become the definitive source of information on TILA litigation.

Very truly yours,  
Editor-in-Chief

**LAWSUIT ALLEGES WORLD SAVINGS EMPLOYED BAIT-AND-SWITCH TECHNIQUES IN ITS "PICK-A-PAYMENT EQUITY BUILDER" MORTGAGE PROGRAM**

***Elmer Buick, et al.***

v.

***World Savings Bank, et al.***

U.S. District Court (E.D. Cal.)  
Case No. 07-1447

Filed on July 19, 2007

**PLAINTIFFS**

Plaintiffs are Elmer and Kathy Buick (husband and wife) of Roseville, Cal.

**DEFENDANTS**

Defendants are: (1) World Savings Bank; and (2) Transamerican Financial Corp., a mortgage broker.

**SUMMARY**

This lawsuit attacks the strategies used to market the "Pick-a-Payment Equity Builder Loan," a mortgage product that was offered by World Savings during 2004, if not at other times.

(continued on next page)

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**CAUSES OF ACTION**

1. Violation of TILA
2. Violation of (unspecified) California laws dealing with false and misleading statements and breaches of fiduciary duties

**CASE HISTORY**

Compl. filed: July 19, 2007  
FAC filed: Aug. 14, 2007

Under this program, consumers made bi-weekly payments in an amount that was subject to change annually. Noteworthy, however, is that the loan's interest rate was subject to change bi-weekly.

This product was essentially a negative amortization loan that plaintiffs argue was deceptively labeled.

A distinctive feature of this loan product was that when interest rates rise the interest rate on the loan increases more quickly than the required minimum payment, resulting in an increased balance on the loan (i.e. the customer owing more than the amount originally borrowed), a condition known as negative amortization. Perhaps because negative amortization is a negative from a marketing standpoint, the words "Equity Builder" were included in the name of the mortgage product in order to convey [the] misleading impression that the loan product would help homeowners build up, rather than reduce, the equity in their homes.

Docket No. 3 at 2.

***ALLEGATIONS***

1. In March 2004, plaintiffs were contacted via letter by Dirk Kuivenhoven (aka Dirk Johnson), the manager of Transamerican Financial's office in Sacramento, Cal.
2. The letter stated, *inter alia*, that Kuivenhoven would provide plaintiffs with "honest straight forward information."
3. Kuivenhoven met with plaintiffs and provided them with documentation stating: (1) the initial interest rate would be 1.95% annually and the loan balance would decrease if plaintiffs made the required minimum payments; and (2) the interest rate would be capped at 4.798% annually (over the course of the 30-year loan).
4. Plaintiffs accepted the loan offer and closed on the mortgage in June 2004. "[T]hey signed the loan papers without reading them, assuming that they were consistent with what Mr. Kuivenhoven had told them." *Id.* at 4.

Plaintiffs allege that defendants failed to deliver a mortgage on the terms promised.

The loan terms were not as promised and represented. Instead, there was a bait and switch. The loan papers provide that plaintiffs' loan starts with an initial interest rate of 4.785% but adjusts within two months of the closing and can go as high as 11.950%. Currently, the interest rate on plaintiffs' loan is approximately 9.033%. This is a much higher interest rate than plaintiffs had before their deal with World Savings. The loan terms are also far worse for plaintiffs than the deal they were promised and far worse than they could have gotten (since their credit scores were above 700) in a fair market transaction.

Docket No. 3 at 4.

***CAUSES OF ACTION***

The complaint brings two causes of action (sidebar). Plaintiffs base their TILA claim on five alleged deficiencies in the disclosures plaintiffs received. Plaintiffs specifically allege that:

1. The *Notice of Right to Cancel* forms that were given to plaintiffs at closing misstate the date upon which the rescission period expired (12 C.F.R. § 226.23(b)(1)(v)).
2. Defendant World Savings did not provide plaintiffs with the correct number of copies of the *Notice of Right to Cancel* forms (12 C.F.R. §226.23(b)(1)).
3. World Savings misled plaintiffs by describing the loan as an "Equity Builder," when the product was actually a negative amortization loan (12 C.F.R. §226.5(b)).
4. World Savings misled plaintiffs into believing that the mortgage's interest rate would never exceed 4.798% annually (12 C.F.R. 226.18).

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	<p>5. World Savings falsely assured plaintiffs “that they would be able to switch to a fixed rate loan at no cost when in fact the loan provided for a substantial prepayment penalty during the first three years.” Plaintiffs assert that this act misled them regarding the cost of credit (12 C.F.R. § 228.18).</p> <p>Claim No. 2, which is based upon California law, is not well specified and does not cite any California statute. Rather, the claim simply asserts the following:</p> <ol style="list-style-type: none"> <li>1. “In connection with trade or commerce, defendants made false and misleading statements to plaintiffs intending to induce reliance. More specifically, defendants ... engaged in a bait and switch by baiting plaintiffs into the mortgage transaction by offering a relatively favorable set of terms and then switching to less favorable terms.” Docket No. 3 at 8.</li> <li>2. “It was also a fraud and breach of duty for Kuivenhoven to represent that he would get plaintiffs the best possible loan terms and that their mortgage interest rate would start at 1.95% and never exceed 4.798%. Defendants are responsible for this fraud because Kuivenhoven was their agent. Defendants are also responsible because they knowingly participated in the fraudulent misconduct.” <i>Id.</i> at 9.</li> </ol> <p style="text-align: center;"><b>CASE STATUS &amp; CALENDAR</b></p> <p>The initial complaint was filed on July 19, 2007. Docket No. 1. The FAC was filed on August 14, 2007 (Docket No. 3), before defendants had been served with the initial complaint. The FAC has now been served on defendants, and a response is due in late September.</p> <p>This summary includes docket entries through September 14, 2007. This case will be covered monthly in future issues. ■</p>
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**PLAINTIFF INVOKES TILA IN AUTOMOBILE “YO-YO” SALE**

<p style="text-align: center;"><i>Derrick Dennis, et al.</i> v. <i>Team Dodge, Inc.</i></p> <p style="text-align: center;">U.S. District Court (N.D. Ga.) Case No. 07-1849</p> <p style="text-align: center;">Filed on August 6, 2007</p> <hr/> <p style="text-align: center;"><b><u>PLAINTIFFS’ COUNSEL</u></b> Rodney F. Tew, Esq. <b>Tew &amp; Associates</b> (Atlanta, Ga.)</p> <p style="text-align: center;"><b><u>DEFENDANT’S COUNSEL</u></b> No appearance as of September 14, 2007</p> <hr/> <p style="text-align: center;"><b><u>CLAIMS</u></b></p> <ol style="list-style-type: none"> <li>1. Conversion (defendant took wrongful possession of plaintiffs’ trade-in vehicle)</li> <li>2. Conversion (defendant took wrongful possession of the 2006 Dodge Charger)</li> <li>3. Violation of Georgia’s Fair Business Practices Act (O.C.G.A. § 10-1-391)</li> <li>4. Violation of FCRA</li> <li>5. Breach of contract</li> </ol>	<p style="text-align: center;"><b>PLAINTIFFS</b></p> <p>Plaintiffs are Derrick Dennis (Riverdale, Ga.) and Vivian Dennis (Atlanta, Ga.).</p> <p style="text-align: center;"><b>DEFENDANT</b></p> <p>Sole defendant is Team Dodge, Inc., an automobile dealership operating in Union City, Ga.</p> <p style="text-align: center;"><b>“YO-YO” SALES</b></p> <p>Over the past few years, litigation against automobile dealerships for so-called “yo-yo” sales has increased significantly. A “yo-yo” sale occurs when a consumer purchases a vehicle on what is essentially an incomplete written agreement (or sometimes even an oral agreement). In most such instances, the final purchase terms have not been fully committed to writing, although the consumer may believe otherwise. Consequently, the terms are subject to change by the dealer, with the consumer frequently arguing that the changes differ materially from those the parties had agreed upon orally.</p> <p>The instant complaint provides a (decidedly pro-consumer) perspective on this practice.</p> <p>This action arises out of the facts and circumstances surrounding an increasingly common practice in the retail automobile sales industry called “spot delivery” or a “yo-yo sale.” Using this practice[,] the dealer sell an automobile to the consumer “on the spot” but intends to string the customer out like a yo-yo, and then yank them back in to force them to agree to different terms. The customer signs all the paperwork, receives a certificate of ownership, temporary tags and possession of the automobile. All documents are signed by the consumer and the dealer tells</p> <p style="text-align: right;">(continued on next page)</p>
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- 6. Fraud
- 7. Violation of TILA

**CASE HISTORY**

Compl. filed: Aug. 6, 2007

the consumer that everything is approved. The consumer leaves the dealership believing they own the automobile.

The sale is financed by the dealer (as the creditor) on a Retail Installment Sales Contract which the dealer states will be, or already has been assigned to a third party. Typically the dealer knows that the contract cannot be sold to the third party, that the third party has refused to purchase the contract and that it will require the consumer to agree to more adverse terms in order to keep the car. Many consumers fall prey to this scheme and agree to the adverse terms.

Complaint at 1 – 2.

Of general interest is that several states have imposed regulations targeting yo-yo sales. In 2005, for example, Arkansas implemented fairly broad regulations that restrict the actions a business may take in yo-yo or similar sales.

[Arkansas] Act 1687 of 2005 establishes stricter procedures to better protect buyers of new-or-used vehicles. Under the new law, if a dealer suggests that a buyer take early possession, the dealer must notify the buyer that the deal is not final and the buyer has the right to cancel the sale without penalty if the terms change. A document must be signed by both the seller and the buyer containing all the anticipated terms of the agreement. While the terms are pending, the dealer cannot deposit the buyer’s down payment, and cannot re-sell a trade-in vehicle exchanged in the deal. If any of the terms change, the buyer has the right to cancel the deal with no charge or penalty.

“Yo-Yo Sales: When the Dealer Changes the Terms,” Consumer Protection Division of the Office of the Arkansas Attorney General, <[http://ag.arkansas.gov/consumers\\_protection\\_vehicles-yo-yo.html](http://ag.arkansas.gov/consumers_protection_vehicles-yo-yo.html)>

**ALLEGATIONS**

The complaint alleges the following sequence of events.

1. On July 12, 2006, plaintiff Derrick Dennis applied for credit with defendant.
2. Later on that same day, both plaintiffs entered into a retail installment sales contract (“Contract”) to purchase a 2006 Dodge Charger and an associated warranty policy. Plaintiffs were given a \$4,000 credit toward the down payment for trading in their current vehicle.
3. Along with the Contract, plaintiffs “received a copy of the finance contract showing the Truth in Lending Disclosures as firm numbers and not estimates.” Complaint at 5.
4. Plaintiffs gave their existing vehicle to defendant and took possession of the new car.
5. Several days later, plaintiffs received a call from defendant informing them that, for the financing to be acceptable, the warranty policy would have to be dropped and the contract would have to be re-written. Plaintiffs signed the new agreement, but they did not receive a copy of it or of the revised TILA disclosures.
6. On or about August 10, 2006, “Defendant called Plaintiff and said the car needed to be turned in. [¶] Plaintiffs agreed to come to the dealership the next morning. [¶] Plaintiff [*sic*, defendant] had the car towed in the middle of [that] night.” *Id.* at 6.

**TILA ALLEGATIONS**

Plaintiffs bring seven claims (see sidebar), the last of which is that defendant violated TILA by:

1. Failing to provide plaintiffs with accurate, written disclosures of the cost of the credit (specifically the APR, amount financed, finance charge, and total amount of the payments); and
2. Treating the disclosures on the Contract as final, whereas they were only estimates.

(continued on next page)

	<p>If an automobile dealership intentionally seeks to use a yo-yo sale to alter the terms of an initial consumer contract, then the dealership must somehow induce the consumer into accepting a second contract containing the revised terms. (Failure to do so would produce clear TILA liability, since the new terms would necessarily differ from those specified in the initial contract.) The instant plaintiffs allege that they were fraudulently induced into signing such a second agreement after defendant informed them that the warranty policy they had purchased would have to be removed from the initial financing package and the contract.</p> <p style="text-align: center;"><b>REQUESTED DAMAGES</b></p> <ol style="list-style-type: none"> <li>1. Unspecified damages under Georgia’s Fair Business Practices Act (O.C.G.A. § 10-1-391)</li> <li>2. Actual and punitive damages of \$500,000 (under the fraud claim)</li> <li>3. Twice the amount of the finance charges plaintiffs paid. (Plaintiffs assert these damages under TILA, but they do not specifically request statutory damages for the alleged TILA violation.)</li> <li>4. Interest and attorneys’ fees and costs</li> </ol> <p>Plaintiffs filed the complaint on August 6, 2007, and there has been no court activity since then. This summary includes docket entries through September 14, 2007. This case will be covered in future issues. ■</p>
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**ARE STOLEN FUNDS A FINANCE CHARGE IN CHASE MORTGAGE?**

<p style="text-align: center;"><i>Eugene Johnson, et al.</i> v. <i>Chase Home Finance, et al.</i></p> <p style="text-align: center;">U.S. District Court (E.D. Pa.) Case No. 07-3633</p> <p style="text-align: center;">Filed on August 30, 2007</p> <hr/> <p style="text-align: center;"><b><u>PLAINTIFFS’ COUNSEL</u></b></p> <p style="text-align: center;">Robert P. Cocco, Esq. L/O of Robert P. Cocco (Philadelphia, Pa.)</p> <p style="text-align: center;"><b><u>DEFENDANTS’ COUNSEL</u></b></p> <p style="text-align: center;">No appearance as of September 7, 2007</p> <hr/> <p style="text-align: center;"><b><u>CLAIMS</u></b></p> <p>1. Violation of TILA (failure to rescind)</p> <hr/> <p style="text-align: center;"><b><u>CASE HISTORY</u></b></p> <p>Compl. filed: <span style="float: right;">Aug. 30, 2007</span></p>	<p style="text-align: center;"><b>PLAINTIFFS</b></p> <p>Plaintiffs are Eugene and Ethel Johnson of Philadelphia, Pa.</p> <p style="text-align: center;"><b>DEFENDANTS</b></p> <ul style="list-style-type: none"> <li>▪ Chase Home Finance. Chase was assigned the loan in question by BNC Mortgage, which “had merged with originating lender, Finance America LLC. BNC Mortgage, a wholly owned subsidiary of Lehman Bros. Bank is now defunct[,] having been shut down in August, 2007 by Lehman Bros. due to the subprime loan marketplace meltdown.” Docket No. 1 at 2.</li> <li>▪ First National Abstract, Inc., a Pennsylvania corporation that plaintiffs assert is no longer a viable business.</li> <li>▪ Jonathan Ganz, a loan officer formerly employed by “mortgage broker Bryn Mawr Mortgage Group which has since [<i>sic</i>, since] filed chapter 7 bankruptcy[.]” <i>Id.</i></li> <li>▪ Calvin Harris, owner of the Philadelphia Home Improvement Outreach Program (“PHI”), a Pennsylvania corporation.</li> </ul> <p style="text-align: center;"><b>ALLEGATIONS</b></p> <ol style="list-style-type: none"> <li>1. In 2005, when they were seeking to make home improvements, plaintiffs contacted defendant Harris, who introduced them to defendant Ganz to arrange funding via a mortgage on plaintiffs’ primary residence.</li> <li>2. Plaintiffs signed documents for a \$31,450 mortgage on or about October 15, 2005. The loan paid off plaintiffs’ former first mortgage (\$21,000) and was to provide them with \$6,908 in cash for home improvements.</li> <li>3. Defendant First National then “made payable to PHI the \$6,908 intended for plaintiffs and directly sent such check to PHI and/or Harris who cashed the funds[.]” <i>Id.</i> at 3 – 4.</li> <li>4. Harris failed to perform any work on plaintiffs’ home.</li> </ol> <p>Noteworthy is that plaintiffs wish to consider the \$6,908 that BNC paid directly to defendant Harris as a finance charge. “The stolen loan funds do not fall within</p> <p style="text-align: right;">(continued on next page)</p>
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	<p>the excluded finance charges of TILA’s implementing Reg. Z 226.4(c)(7) because none of the charges are ‘bona fide and reasonable’ insofar as the loan conferred no benefit upon borrower plaintiffs.” <i>Id.</i> at 5.</p> <p style="text-align: center;"><b>RESCISSION</b></p> <p>Plaintiffs allege that, on February 25, 2007, they notified BNC that they were rescinding the loan on the ground that BNC had failed to provide certain accurate disclosures. Although the complaint does not identify the allegedly deficient disclosures, it does refer to them as HOEPA-required disclosures.</p> <p>On or about March 19, 2007, BNC allegedly agreed to rescind the loan. Plaintiffs, however, assert that BNC never took the steps necessary to implement the rescission.</p> <p>Plaintiffs bring the lawsuit against Chase because BNC transferred the loan to Chase (and because BNC is defunct), although the complaint does not specify when the transfer occurred or even if it pre-dated BNC’s agreement to rescind the loan.</p> <p style="text-align: center;"><b>REQUESTED DAMAGES</b></p> <p>Plaintiffs make the following demands of defendants:</p> <ol style="list-style-type: none"> <li>1. Rescission of the transaction</li> <li>2. Termination of the security interest</li> <li>3. Return of all funds paid by plaintiffs</li> <li>4. Damages in an amount equal to the total finance charges plaintiffs paid</li> <li>5. Statutory damages of \$2,000 for failure to rescind</li> <li>6. Attorneys’ fees and costs</li> </ol> <p>If the stolen funds are classified as a finance charge, they would be reimbursable in the event defendant Chase is ordered to rescind the mortgage and refund all finance charges.</p> <p style="text-align: center;"><b>CASE STATUS</b></p> <p>This summary includes docket entries through September 7, 2007. As of that date, defendants had not responded to the complaint. This case will be covered in future issues. ■</p>
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**COUNTRYWIDE SUED OVER LOAN SPLITTING**

<p style="text-align: center;"><i>Edward H. Devine, Jr., et al.</i> v. <i>America’s Wholesale Lender, et al.</i></p> <p style="text-align: center;">U.S. District Court (E.D. Pa.) Case No. 07-3272</p> <p style="text-align: center;">Filed on August 9, 2007</p> <hr/> <p style="text-align: center;"><b><u>PLAINTIFFS’ COUNSEL</u></b> David A. Scholl, Esq. <b>L/O of David A. Scholl</b> (Newtown Square, Pa.)</p> <p style="text-align: center;"><b><u>DEFENDANTS’ COUNSEL</u></b> No appearance as of September 7, 2007</p>	<p style="text-align: center;"><b>PLAINTIFFS</b></p> <p>Plaintiffs are Edward H. Devine, Jr., and Victoria Ann Devine (husband and wife) of Wayne, Pa.</p> <p style="text-align: center;"><b>DEFENDANTS</b></p> <ul style="list-style-type: none"> <li>▪ America’s Wholesale Lender (a subsidiary of Countrywide Home Loans, Inc.)</li> <li>▪ Countrywide Home Loans, Inc.</li> <li>▪ U.S. Bank</li> <li>▪ Patriot Mortgage Company of America</li> </ul> <p style="text-align: center;"><b>ALLEGATIONS</b></p> <ol style="list-style-type: none"> <li>1. Plaintiffs sought a short-term mortgage that would be repaid upon the sale of their home.</li> <li>2. In meetings held at plaintiffs’ home, representatives of defendants Patriot and Countrywide assured plaintiffs that they “would receive a</li> </ol> <p style="text-align: right;"><i>(continued on next page)</i></p>
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**CLAIMS**

1. Violation of TILA (failure to make certain disclosures)
2. Violation of TILA (failure to make certain disclosures)
3. Violation of RESPA (failure to respond to borrower's written request for information)
4. Common law fraud (citing Pennsylvania Credit Services Act, Pennsylvania Loan Broker Trade Practices Regulations, and Pennsylvania Unfair Trade Practices and Consumer Protection Law)

**CASE HISTORY**

Compl. filed: Aug. 9, 2007

loan product with an option to pay approximately \$3,500.00 per month[.]” Docket No. 1 at 2.

3. However, when “the settlement occurred in the Plaintiff’s home, the settlement agent advised the Plaintiffs that their desired option was not included in the agreement as proposed. As such, the Plaintiffs immediately called Gjurich [of Patriot] and were assured by him that the documents as presented were a mistake, and that he was told by Schriber [of Countrywide] that the desired option would be added to the package and that the Plaintiffs could sign the documents on the assumption that the desired option would be added. However, this was not the case and no correction of this omission was ever made.” *Id.*
4. Plaintiffs ended up with a loan that was split into two separate loans and that had a combined monthly payment of \$10,700. (Plaintiffs state that their monthly payments were \$8,400 for the first loan and \$2,300 for the second loan, but they do not specify the loan amounts.)
5. Plaintiffs allege that they had “expected to receive one loan secured by a mortgage and were not informed prior to settlement that the instant transaction would result in their receiving two loans.” *Id.*
6. Plaintiffs further state that although they received a (presumably complete and accurate) set of disclosures for the first loan, they received only a portion of the required disclosures for the second loan.
7. Of specific importance to readers, however, is plaintiffs’ assertion that they should also have received a full set of disclosures for the entire loan package. “Since this was a single transaction which involved ‘loan splitting,’ the Plaintiffs were entitled to full TILA disclosures which described the entire loan package. However, these disclosures were also not provided.” *Id.*

In sum, plaintiffs are asserting that they should have received three sets of disclosures: one set for each of the individual loans and a set for the combined transaction.

8. Plaintiffs also complain that the fees they were charged were both improperly disclosed and excessive. The disputed fees include a \$36,968 “premium” for arrangement of the smaller loan.
9. Since the transaction occurred at plaintiffs’ home, it is subject to door-to-door sale rescission disclosures required by 73 P.S. § 201-7 of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”). Plaintiffs allege such disclosures were not provided.
10. On or about June 11, 2007, plaintiffs notified U.S. Bank and America’s Wholesale Lender that plaintiffs were rescinding the loan under TILA. Accompanying that notification was plaintiffs’ RESPA-based request for certain information on the loan.
11. As of August 9, 2007, neither U.S. Bank nor America’s Wholesale Lender had responded to the rescission notice or the RESPA request.

***REQUESTED DAMAGES***

1. Claim No. 1: Statutory damages (\$2,000) and rescission under TILA.
2. Claim No. 2: Unspecified damages and the refund of plaintiffs’ payments pursuant to 73 P.S. §§ 201-7 and 201-9.2(a) of the UTPCPL.
3. Claim No. 3: Statutory damages under RESPA (\$1,000).
4. Claim No. 4: Three times the amount of all fees defendants collected with respect to the loan (pursuant to UTPCPL and 73 P.S. § 2191 of the Pennsylvania Credit Services Act).
5. Attorneys’ fees and costs.

***CASE STATUS***

This summary includes docket entries through September 7, 2007. As of that date, defendants had not responded to the complaint. This case will be covered in future issues. ■

**FIRST AMERICAN TITLE FILES TILA-BASED  
LAWSUIT AGAINST CHASE BANK AND HOMEOWNER**

*First American Title Insurance Co. of Oregon*  
v.  
*David D. England, et al.*

U.S. District Court (D. Or.)  
Case No. 07-1239

Filed on August 17, 2007

**PLAINTIFF'S COUNSEL**

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Sabrina P. Loiselle, Esq.  
**Miller Nash**  
(Portland, Or.)

**DEFENDANTS' COUNSEL**

No appearance as of September 7, 2007

**CLAIMS**

1. For entry of a judgment that a trust deed should be placed against defendant England's real property
2. Such other relief that the Court determines to be appropriate

**CASE HISTORY**

Compl. filed: Aug 17, 2007

***PLAINTIFF***

Sole plaintiff is First American Title Insurance Company of Oregon.

***DEFENDANTS***

- David D. England and Carrie England (husband and wife) of Dayton, Or.
- Chase Bank

***SUMMARY***

This case presents the very interesting scenario in which defendant Chase ordered plaintiff First American to disburse funds on a mortgage transaction that the prospective borrowers had rescinded within the statutory period.

***ALLEGATIONS***

Defendants David and Carrie England applied to Chase for a home mortgage, and they thereafter received a firm commitment for a mortgage in the amount of \$247,000. On July 26, 2007, the Englands signed loan documents at the offices of plaintiff First American. Among those documents were two copies of a *Notice of Right To Cancel*, which the Englands, by their signatures, acknowledged receiving.

The following timeline of relevant events is presented in the complaint.

Pursuant to Reg. Z § 226.23, England had until midnight on July 30, 2007 to send notice of their intention to cancel their loan from Chase. First American is informed and believes that England sent notice of intention to cancel to Chase and Chase received this notice of intention to cancel on July 30, 2007, at 9:05 a.m. ...

But, on July 31, 2007, Chase nevertheless funded the loan by wiring funds to First American without informing First American that Chase had received [the rescission notices.]

First American thereafter on July 31, 2007 disbursed loan proceeds as described in the settlement statement[.] First American had no notice from England or Chase of an intention to cancel when it disbursed loan proceeds.

Docket No. 1 at 3.

***THE CASE***

In its complaint, First American recognizes that Chase is obligated to take certain, well-specified steps within 20 days after receiving a rescission notice. However, First American also states that "those procedures may be modified by court order in an action commenced within 20 days after the creditor receives notice of rescission." *Id.* By filing this action on August 17, 2007 – 18 days after the Englands rescinded their loan – First American has met that deadline.

Problematic for all parties, however, is the fact that the disbursed funds have been widely dispersed, with the Englands having directly received less than \$4,000 of the loan proceeds. Although the majority of the proceeds went to pay lien holders and mortgage brokers, more than \$35,000 was used to pay off at least six credit cards and other consumer debts.

In the complaint, First American asks the court to take whatever actions are necessary to permit the deed of trust to remain on the Englands' property.

The court should modify procedures to protect Chase during the pendency of this action by ruling that the trust deed ... remains a valid and

(continued on next page)

existing lien on the real property described therein, so that it has security for the money it has loaned to the benefit of England until England repays the loan proceeds to it.

Complaint at 4.

Although it has not yet responded to the complaint, Chase is likely to disagree with First American regarding the liability each party has to the others. First American anticipates Chase's perspective on the matter as follows.

First American and Chase dispute whether Chase is solely responsible for any remedy to which England is entitled. First American contends that (a) by funding the loan after receiving notice of rescission, Chase assumed sole responsibility for any potential remedy in favor of England, and (b) a written agreement between First American and Chase removes First American from any liability on account of any consumer protection, truth-in-lending, or similar law. Chase denies these contentions.

*Id.*

#### **REQUESTED RELIEF**

First American's first claim for relief is for the court to enter a judgment that the trust deed may be maintained on the Englands' property. The second claim is non-specific, with First American generally asking the court to determine relief that is appropriate.

#### **CASE STATUS**

This summary includes docket entries through September 14, 2007. As of that date, defendants had not responded to the complaint. This case will be covered in future issues. ■

**Pages 11-30 have been omitted  
from this Evaluation Copy.**