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Illinois Financial Institutions Face Claims Under California's Broad Consumer Protection Statute

Recently, members of the Illinois plaintiffs' bar employed a new tool in their arsenal of consumer fraud claims against financial institutions—a complaint alleging violations of California's ubiquitous unfair competition law. Section 17200 of the California Business and Professional Code ("Section 17200") was enacted years ago by the California legislature as the intended cornerstone of California's consumer protection law. The law contains broad standing and liability provisions which make it an exceptionally attractive cause of action for the plaintiffs' bar. Not surprisingly, section 17200 has become a litigation "black hole" in California that supplants other causes of action and other procedural rules. Its recent use in Illinois signifies an alarming trend for financial institutions which have operations in California or which service the accounts of California residents.

The Complaint

In March, 2003, a Florida resident named William Wrock filed a class action complaint in the Circuit Court of Cook County against Citibank, FSB. In the complaint Wrock states that he obtained an unsecured line of credit from Citizens Federal Bank and Loan Association. The loan agreement purportedly was then sold to California Federal Bank, a federally chartered bank with its principal office in San Francisco. California Bank recently became part of Citibank, FSB, which is headquartered in Chicago.

The lawsuit is based on Wrock's allegation that California Federal Bank consistently posted loan payments several days after they had been received by the bank. He contends that this practice constitutes a breach of contract as well as an unfair and deceptive business practice. He alleges that he has been harmed by this practice in that he has incurred late charges and his credit history has been negatively affected. Wrock seeks to bring the action on behalf of all individuals whose loans have been serviced by California Federal Bank

during the past four years. In essence, Wrock is attempting to take what otherwise would be a relatively straightforward, single-plaintiff breach of contract case and turn it into a potentially significant claim by presumably thousands of individuals across the country.

California's Consumer Protection Statute

It is not surprising that the plaintiffs' bar is attempting to bring the extraordinarily consumer friendly California laws to Illinois and other states. The coverage of Section 17200 is sweeping, embracing virtually any unfair, unlawful or fraudulent business practice. The statute authorizes any plaintiff, whether an individual, organization, or corporation, to bring an action even if the plaintiff has not suffered any harm from the challenged practice, and even if there is no transactional nexus whatsoever between the plaintiff and the defendant. Moreover, the statute allows a plaintiff to bring an action "on behalf of the general public" without pleading and prosecuting a class action. Thus, a plaintiff can obtain injunctive, monetary restitution and other equitable relief on behalf of affected individuals without obtaining class certification.

Recently, several California legislators charged that Section 17200, is being abused by a handful of lawyers who are targeting businesses in a kind of legal shakedown. Notwithstanding such criticism, it is clear that Section 17200 claims continue to be filed at an alarming rate.

Whether the courts ultimately will permit the application of California's consumer friendly laws in Illinois and other states is yet to be determined. Until judicial guidance is provided, however, Illinois financial institutions and other entities would be well advised to protect their short-term and long-term interests by vigorously defending any such actions.