

sue with the decision to file a class action, as opposed to pursuing an administrative remedy—quite literally “[m]ak[ing] a federal case of it.”

“A bit of common sense and attention to the available administrative remedies should have been applied. Instead we have an opinion with endless pages of legal analysis, months of study and delay, and a determination that no benefit can be awarded.”

Scott C. Breneman and Joseph A. Grube, Ricci Grube Aita & Breneman PLLC, Seattle, represented the plaintiffs. Brian D. Boyle, Mark Davies, Samuel Brown, and Meaghan McLaine, O’Melveny & Myers LLP, Washington, D.C., represented Humana.

Full text at <http://pub.bna.com/lw/0635672.pdf>.

Banking

Advance America Agrees to Pay \$18.75M to Settle Lending Lawsuit

RALEIGH, N.C.—Advance America has agreed to pay \$18.75 million to settle a class action lawsuit filed in North Carolina alleging it charged illegal fees and interest, attorneys for the plaintiffs announced Sept. 21 (*Kucan v. Advance America*, N.C. Super. Ct., (New Hanover), No. 04-CVS-2860 motion filed 9/20/10).

The settlement, which still requires court approval, would resolve claims that Advance America’s lending practices violated state laws and constituted unfair and deceptive trade practices that were filed with the North Carolina Superior Court for Hanover County in July 2004. In June 2009, following a North Carolina Appeals Court ruling over compelling arbitration, the trial court granted the plaintiffs’ motion for class certification, a ruling now pending before the appellate court.

Annual Rates Exceeding 450 Percent. The plaintiffs allege that Advance America’s lending practices violated the North Carolina Consumer Finance Act (N.C. Gen. Stat. Section 53-164, et seq.), the state’s unfair trade practices statute (N.C. Gen. Stat. Section 75-1.1 and 75-1.6), and other state laws. The plaintiffs claim that they were charged interest on loans with annual percentage rates that exceeded 450 percent in violation of state law.

A North Carolina law allowing payday lending expired after four years, in August 2001. Following the sunset of that law, many such lenders ceased doing business in North Carolina, but some companies continued such practices by affiliating with state banks or otherwise altering their activities.

After a ruling by the state Commissioner of Banks, Advance America announced in December 2005 that it was no longer offering payday loans in North Carolina. The state Office of Attorney General also has reached settlements with three other major payday lenders—Check Into Cash, Check N Go, and First American Cash Advance—that required them to cease such loans in North Carolina.

According to the settlement agreement, approximately 144,000 North Carolina residents that received a payday loan from Advance America or National Cash Advance on or after March 1, 2003, would be eligible for a cash payment based on the fees they paid, with a minimum repayment of \$10. Under the agreement, approximately \$12 million would be distributed to con-

sumers, \$6.25 million would be awarded for attorneys’ fees, about \$500,000 would be given for the cost of settlement administration, and \$20,000 would be paid to each of the two named plaintiffs—John R. Kucan Jr., and Terry Coates.

Lender Denies Violating State Laws. As part of the settlement agreement, Advance America denied it violated state law.

Attorneys for the plaintiffs, which include lawyers from the Raleigh-based North Carolina Justice Center, Washington, D.C.-based Public Justice, and the Financial Protection Law Center in Wilmington, N.C., said they would continue class action lawsuits against other payday lenders.

“We are pleased that Advance America has agreed to compensate North Carolina consumers who have been adversely affected by [payday lending] practices,” Carlene McNulty, an attorney with the North Carolina Justice Center who represented the plaintiffs, said in a Sept. 21 statement. “It’s a model we encourage—to not only abandon bad practices but to try to make amends for them,” she said.

Spartanburg, S.C.-based Advance America (NYSE: AEA) claims to be the leading provider of cash advance services in the United States. According to the company’s web site, it has approximately 2,500 centers and operates in more than 30 states.

Jamie Fulmer, a spokesman for Advance America, told BNA that “this settlement does not involve any finding of wrongdoing by the company” and represents a business decision.

The company made its decision to settle due to the “continuing high legal costs” involved in the litigation that involves “a market where we no longer do business,” according to Fulmer. “We want to put this behind us and move forward,” he said.

By ANDREW M. BALLARD

Text of the settlement reached with Advance America is available at <http://op.bna.com/bar.nsf/r?Open=jtin-89juvu>. The motion to approve the settlement is available at <http://op.bna.com/bar.nsf/r?Open=jtin-89juwq>.

In Brief . . .

Securities

Gas Reports Aren’t Misrepresentations

Energy Transfer Partners L.P.’s truthful reports of natural gas transactions at artificially low prices cannot be considered misrepresentations supporting a claim of common law fraud, the U.S. Court of Appeals for the Fifth Circuit ruled Sept. 15, affirming the dismissal of a putative class action brought on behalf of natural gas sellers (*Rio Grande Co. Inc. v. Energy Transfer Partners L.P.*, 5th Cir. No. 09-20607, 9/15/10).

“That these transactions may have been carried out at artificially low prices does not render the reporting of those prices a misstatement,” Chief Judge Edith H. Jones said for the court.