

PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

February 3, 2011

Our [Access to Justice Campaign](#) and [Class Action Preservation Project](#) have just won another big victory -- in the Florida Court of Appeal!

A few years ago, [we brought a case](#) against McKenzie Check Advance, a payday lending company, in Florida trial court. In a great win for us at the time, the trial court [struck down the lender's class action ban](#).

Yesterday, a Florida appeals court affirmed our victory, holding that McKenzie's class action ban does indeed violate public policy. [Click here](#) for the full text of the decision. The [Palm Beach Post](#) has also done an [article](#) on this ruling.

Here's the human story behind it:

When Tiffany Kelly took out a small loan from McKenzie, she believed she was dealing with a by-the-books business.

"If it was against the law, McKenzie wouldn't be allowed to operate," she said. "At least that's what I would assume."

A co-worker had told her about McKenzie Check Advance, and Ms. Kelly, then a 24-year-old single mother with a year of college education, was in dire need of quick cash to make ends meet: she'd been turned down for public assistance and her bank would not lend her any money.

Unfortunately, Ms. Kelly's by-the-books assumption was wrong: McKenzie was in fact charging its customers interest rates that far exceeded Florida's laws. But when she learned about McKenzie's illegal practice and wanted to bring a lawsuit, the company said it couldn't be sued, citing an arbitration clause and class action ban squirreled away in its consumer contract.



Tiffany Kelly in 2009

So we got involved. Representing a number of local consumers who'd taken out loans from McKenzie, [Senior Attorney Paul Bland](#) presented the testimony of several prominent Florida consumer attorneys. They testified that it would be virtually impossible for an individual to find representation in a payday loan case absent a class action. Because payday loan cases are complex, time consuming, involve small amounts, and do not guarantee adequate awards of attorney's fees, individual plaintiffs cannot obtain competent counsel without using a class action.

In the appeal, [Goldberg Attorney Amy Radon](#) was the principal author of our brief.

Huge congratulations and thanks go to Paul, Amy, and the entire legal team, which included E. Clayton Yates of [Yates & Mancini, LLC](#) in Fort Pierce, FL; Theodore J. Leopold and Diana L. Martin of [Leopold~Kuvin](#) in Palm Beach Gardens, FL; Christopher Casper of [James, Hoyer, Newcomer, Smiljanich & Yanchunis P.A.](#) in Tampa, FL; and Richard Fisher in Cleveland, TN.

Congratulations and thanks to you, too, for making this great victory possible.

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